

TROMBLEY v. CITY OF PETERBOROUGH—LATCHFORD, J.—OCT. 5.

Highway—Nonrepair of City Street—Cap of Pipe Projecting above Sidewalk—Injury to Pedestrian—Negligence—Absence of Contributory Negligence—Damages.—The plaintiff Eliza Trombley, while walking upon a concrete sidewalk in a business street of the city of Peterborough, was tripped by the cap of a water cut-off pipe set in the sidewalk and projecting above it about three-quarters of an inch; falling, she broke her right leg at the hip joint. She and her husband brought this action to recover damages caused by the injury which she suffered. The action was tried without a jury at Peterborough. LATCHFORD, J., in a written judgment, detailed the effect of the evidence and a view of the locus taken by him; and stated his finding that the street was out of repair, and that its condition was due to negligent construction, of which the defendants, the city corporation, had or ought to have had notice and knowledge; that the plaintiff Eliza Trombley was not guilty of contributory negligence; and that her injury was caused by the want of repair. The defect was an obvious one, which should have been remedied when the walk was first put down: *Roach v. Village of Port Colborne* (1913), 29 O.L.R. 69, 70. Judgment for the plaintiffs for \$2,600 with costs, the husband's damages being assessed at \$600 and the wife's at \$2,000. D. O'Connell and J. R. Corkery, for the plaintiffs. G. N. Gordon, for the defendants.