

BOYD, C.

MAY 29TH, 1913.

## \*ROACH v. VILLAGE OF PORT COLBORNE.

*Highway—Nonrepair—Sidewalk — Projecting Water-pipe — Injury to Pedestrian — Knowledge of Defect — Liability of Municipal Corporation—Damages.*

Action for damages for personal injuries sustained by the plaintiff by a fall upon a sidewalk alleged to be out of repair.

The action was tried before BOYD, C., without a jury, at Welland.

G. F. Shepley, K.C., for the plaintiff.

M. K. Cowan, K.C., for the defendants.

BOYD, C.:—This case lies close to the line of liability, but falls, I think, within it. After hearing the evidence, I took a view of the locality, in the presence of the solicitors; and it was evident (as the solicitors agreed) that the protruding part of the pipe could have been easily and inexpensively reduced to the level of the walk. The pipe appears to have been in place originally as it now stands; but at first it was outside of the old board walk. When this was replaced by the more modern cement work, the walk was made wider so as to include the pipe as part of, and yet protruding from, the walk, before the plaintiff's house. The pipe with cap was about one inch from the edge, close to where a crossing is marked on the plan, with lines along the walk, but there is no change in level between walk and crossing. The cap on the pipe slanted so that it was fixed two inches on one side and one and three-quarter inches on the other side above the level of the cement surface, and the higher part was towards the outside edge of the walk. The rim of the cap was a little wider than the pipe, and so projected outside of it. The plaintiff went down to the street, as usual, to buy meat from the butcher (the street being six inches lower) and on finishing her purchase stepped up on the walk, but on the next step on the walk her foot caught on the higher side of the pipe, and she fell, with serious results. Her leg was fractured at the neck of the femur, and she may become a confirmed invalid. No doubt, she knew of the existence of this obstacle; she had even seen various people tripping over it at different times; but on this occasion she inadvertently became herself the victim.

Contributory negligence is not pleaded or suggested; the whole question is, "Was the situation such that it can be pro-

\*To be reported in the Ontario Law Reports.