

upon the comment. In this case, however, as the matters commented on are not explicitly set forth on the face of the article, nor particulars given in the pleading, and the plaintiff may have therefore been taken by surprise, he should have a new trial on payment of costs.

*Per* ROBERTSON, J. : The evidence was properly admissible, and the jury having considered it and the whole article in which the alleged defamatory matter appeared, and having concluded that under the circumstances what was said in the article was not libellous, the verdict should not be interfered with.

*Clement* for the motion.

*Johnston*, Q.C., *contra*.

#### DEROCHIE v. CORNWALL.

##### *Municipal corporations—Defective sidewalk—Ice—Negligence.*

At a certain point in the sidewalk in a frequented street in the town of Cornwall, the sidewalk, having settled through age and decay, formed a depression where water lodged and ice gathered so as to impair the safety of pedestrians, more or less, throughout the winter. On March 7th, 1891, ice, seven inches in thickness, had formed at the place, and the plaintiff met with the accident complained of in this action. No outlet had been provided by the municipality for the water thus gathered upon the place of passage. Many complaints had been made to the corporation about the state of affairs at this point, and the place had been in as bad condition as at the time of the mishap for over a week.

*Held*, that the plaintiff was entitled to damages as found by the jury.

*Per* BOYD, C. : The walk was out of repair because not safe at this point, having regard to the travel on it and the resources of the municipality.

*Per* ROBERTSON J. : This was not the case of a sudden thaw and an equally sudden change of temperature to freezing, where the whole sidewalk in the municipality would be slippery and dangerous to walk upon, in which case no reasonable attention or care on the part of the authorities could avert the state of things, and it would be unreasonable to hold the municipality liable; but it was the case of disrepair and decay of the sidewalk, which it was within its power to prevent by ordinary care and watchfulness.

MEREDITH, J., *dissentiente*. The evidence did not prove negligence, and judgment should be entered for the defendants.

*B. B. Oster*, Q.C., and *Leitch*, Q.C., for the appellants.

*Moss*, Q.C., *contra*.

#### COLEMAN v. CITY OF TORONTO.

##### *Trial—Dispersing jury before verdict—Irregularity—Waiver—Verdict on one of several issues.*

Action for damages for nuisance causing diphtheria.

At the trial of this case, the matter was left to the jury at six o'clock in the evening. The judge afterwards informed the sheriff's officer that if the jury had not come to an agreement by nine o'clock, he was to let them go. After nine o'clock the officer dispersed the jury, telling them they could go where