

The Ontario Weekly Notes

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APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

OCTOBER 27TH, 1920.

*FULLER v. CITY OF NIAGARA FALLS.

Highway—Nonrepair—Injury to Person Walking on Sidewalk—Municipal Act, sec. 460.—Construction and Effect—Failure to Give Notice under sub-sec. 4—Absence of “Reasonable Excuse” under sub-sec. 5—Evidence—Finding of Trial Judge—Appeal—Costs.

Appeal by the plaintiffs from the judgment of LENNOX, J., 18 O.W.N. 129.

The appeal was heard by MEREDITH, C.J.O., MAGEE, HODGINS, and FERGUSON, JJ.A.

A. C. Kingstone, for the appellants.

George Wilkie, for the defendant corporation, respondent.

MEREDITH, C.J.O., reading the judgment of the Court, said that the sole question for decision on the appeal was whether or not the appellants had established that there was reasonable excuse for their failing to give the respondent corporation notice of the injury within 7 days after the happening of it, as required by sec. 460 (4) of the Municipal Act.

In the cognate case of a failure to give notice of the injury as required by sec. 4 of the Employers' Liability Act, the cases under that Act have decided that if the mental attitude of the injured workman is that he says to himself, "I have had an accident the results of which are serious, but I think they will alter for the better—I shall not give to my employer notice of the accident, because, if, as I hope, the results alter for the better, I shall never give notice of a claim for compensation at all," that is not a reasonable cause for the failure to give notice of the accident; but, if he says to himself, "If things continue as they are, I shall never require

* This case and all others so marked to be reported in the Ontario Law Reports.