

MASTEN, J., also agreed in the conclusions of the Chief Justice, for reasons briefly stated in writing.

Appeal allowed in part.

SECOND DIVISIONAL COURT.

FEBRUARY 18TH, 1916.

*WALLACE v. CITY OF WINDSOR.

Highway—Nonrepair—Injury to Pedestrian by Fall on Defective Sidewalk—Negligence—Failure to Give Notice to Municipality in Due Time—Municipal Act, R.S.O. 1914 ch. 192, sec. 460(4), (5)—Reasonable Excuse—Prejudice.

Appeal by the plaintiff from the judgment of MIDDLETON, J., ante 100, dismissing the action, which was brought to recover damages for injury sustained by the plaintiff by a fall on a sidewalk in the city of Windsor, said to be out of repair.

The trial Judge dismissed the action because he found that the plaintiff had not given notice to the defendants, the city corporation, within the time limited by sec. 460(4) of the Municipal Act, and that there was no reasonable excuse (sub-sec. (5)) for not giving it, although he found that the defendants were not prejudiced by the lack of notice.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

A. C. McMaster, for the appellant.

F. D. Davis, for the defendants, respondents.

MEREDITH, C.J.C.P., was of opinion, for reasons stated in writing, that there was no reasonable excuse for not giving the notice, and that the defendants were prejudiced by the lack of notice. The appeal should, he considered, be dismissed.

MASTEN, J., for reasons stated in writing, agreed with the Chief Justice that there was no reasonable excuse for not giving the notice, but agreed with the trial Judge as to the absence of prejudice. He was of opinion that the appeal should be dismissed.

RIDDELL, J., for reasons given in writing, was of opinion that there was reasonable excuse for not giving the notice, and also that the defendants were not prejudiced by the want of it. He was in favour of allowing the appeal and entering judgment for