

tion and maintenance, who lived with the deceased, and was being reared as one of his family, and of a nephew and an adopted child of the deceased. It was proved that traction engine, of equal weight had for some years, to the knowledge of the city officials, crossed over the bridge in question; that that bridge was the strongest one across the river for many miles; that one of the timbers in the approach had rotted more than the others in consequence of water getting into an unplugged spike hole in it, and that the bridge formed part of a public highway in the city on which work had been performed, and public improvements made by the city; also that the approach referred to was not safe for the heaviest part of the traffic which, to the knowledge of the city officials, had been passing over it for the previous two years, and that no attempt had been made to stop such traffic, or to warn those in charge of it of any danger.

Held, following *Manley v. St. Helens*, 2 H. & N. 840, and *Lucas v. Moore*, 3 O.R. 602, that under s. 667 of The Municipal Act, R.S.M. 1902, c. 116, the defendants were liable for the damages resulting from their negligence in not having the bridge and its approaches strong enough for the passage of the traction engine referred to.

Plaintiffs' counsel argued that defendants were guilty of negligence amounting to misfeasance, so as to make them liable in damages, independently of the statute, because they had not stopped up the spike hole, referred to, so as to prevent water lodging in it, and cited the case of *Patterson v. City of Victoria*, 5 B.C. 628; but the Judge distinguished that case on the ground that there an augur hole, an inch and a quarter in diameter, had been purposely bored to test the wood, and left open.

Held, also, that the notice of action required by the section quoted, to be given to the municipality need not be signed by the claimant personally, or shew that she was claiming in her representative capacity.

It was contended, on behalf of defendants, that, the negligence relied on, if proved, having existed for nearly two years, notice of the action had not been given "within one month after the happening of the alleged negligence," as required by the same section.

Held, that, to give effect to the manifest intention of the Legislature, the words quoted should be construed to read "after the happening of the injury or damages, resulting from the alleged negligence," or it might be held that the negligence continued to "happen" up to the time that the damages resulted from it, otherwise no notice of the action or claims could be given to comply with the statute, in any case, where the negligence had existed for more than a month before the injury resulted from it.

The Judge allowed the plaintiff \$2,000 for herself, \$300 for the grandson; but nothing for the son, who, in the circumstances and position of his father, had no reasonable expectation of pecuniary advantage from the continuance of the life, and nothing for the nephew or adopted child, who