

but the question at issue was important as regards joint stock companies.

It had been held in this proceeding that it was beyond the power of a company incorporated under the Dominion Joint Stock Company's Act to enact a by-law preventing shareholders from transferring any of their fully paid-up shares except with the consent of the directors. The learned Chief Justice in giving judgment on the above application said that the above holding was the first express decision to that effect, though the point had been dealt with in the following cases: *In re Smith and Canada Car Co.*, 6 P.R. 107; *In re Macdonald*, 6 P.R. 309; *In re Imperial Starch Company*, 10 O.L.R. 22; *In re Panton*, 9 O.L.R. 3.

Held, that the question was one of so much consequence to companies that it was proper to grant leave to appeal; but, having regard to the position and rights of a proposed respondent terms were imposed as to costs.

Lefroy, K.C., for company. *H. S. White*, for applicant.

HIGH COURT OF JUSTICE.

Britton, Teetzel, Riddell, JJ.]

[May 12.

BROWN v. CITY OF TORONTO.

Municipal law—Negligence—Ont. Jud. Act, s. 104—Non-repair of streets—Nonfeasance and misfeasance—Jury notice.

Appeal from order of Boyd, C., restoring plaintiff's jury notice which had been struck out by the Master in Chambers. The action was for negligence on the part of the defendants in taking up an old sidewalk and not properly repairing it, whereby the plaintiff was tripped and thrown on to the roadway and thereby injured. The question was whether the action was based on nonfeasance or misfeasance. The statute applicable to the case is s. 104 of O.J. Act, which provides that "All actions against municipal corporations for damages in respect of injuries sustained through non-repair of streets, roads or sidewalks shall be tried without a jury."

Held, that "non-repair" within the meaning of the above section is an abstract noun, meaning the state or condition of a street, and not a verbal noun meaning "not repairing." "Non-repair" means only the state of being out of repair, i.e., not being in repair. This being so, such state may be occasioned by mis-