

remainder of the roadway was at the moment occupied by a team with a loaded waggon, he attempted to stop by back-peddling. But the chain then came off the sprocket wheel, and, being unable to check his speed, he tried to turn into a lane on the higher side of the obstructions. His speed was too great, however, and he ran into the excavation at the edge of the lane, being seriously injured. It was clear that the defendant Luce was responsible for both the obstructions on the street and the unguarded excavation. It also appeared that the proper city officials had notice of the obstructions being on the street for a considerable time previously.

It was contended on behalf of the city that the plaintiff was guilty of contributory negligence, as he was aware of the condition of the street and of the chance that it might be wholly blocked at any time, and that he should not have run the risk of the chain slipping off whilst going down the incline. He was, however, an experienced bicycle rider and had used the same wheel for several years without the chain having ever come off.

*Held*, that he was not guilty of contributory negligence in the matter.

The city also set up that notice of the claim had not been served on the city clerk, as required by s. 722 of the Winnipeg charter, 1 & 2 Edw. VII. c. 77. The notice relied on was a letter which the plaintiff delivered personally to the chairman of the Board of Works, and which contained full particulars of the accident and of the injuries received. This letter reached the city clerk within the time required by that section.

*Held*, 1. The statute was sufficiently complied with to entitle the plaintiff to recover.

2. Under s. 728 of the charter, the city was entitled to relief over against Luce for the amount of the plaintiff's judgment and all its costs in the action.

*Dennistoun and Machray*, for plaintiff. *T. A. Hunt*, for the city. *T. R. Ferguson and McKay*, for Luce.

Dubuc, C.J.]

SHAW v. BAILEY.

[June 12.]

*Specific performance—Notice of prior unregistered sale—Fraud.*

After the defendant James has sold the property in question to the plaintiff by signing an agreement of sale and a transfer