

IDINGTON, J.

DECEMBER 23RD, 1904.

TRIAL.

THOMAS v. TOWNSHIP OF NORTH NORWICH.

*Way—Non-repair—Injury to Person—Proximate Cause—
Repair of Road—Obstacle—Warning—Liability.*

Action by William H. Thomas, an infant, by George H. Thomas, his father and next friend, against a township corporation to recover damages for injuries sustained by plaintiff owing to the alleged negligence of defendants in not keeping a highway in repair.

S. G. McKay, Woodstock, for plaintiff, relied upon Rowan v. Toronto R. W. Co., 29 S. C. R. 717; Sherwood v. City of Hamilton, 37 U. C. R. 410; Ferguson v. Township of Southwold, 27 O. R. 66; Am. and Eng. Encyc. of Law, 2nd ed., vol. 15, pp. 467, 474; Thomson v. Ridgeway, 7 Pick. 188; Connell v. Town of Prescott, 22 S. C. R. 147; Homewood v. City of Hamilton, 1 O. L. R. 266; Toms v. Corporation of Whitby, 35 U. C. R. 195.

J. P. Mabec, K.C., for defendants, cited Atkinson v. City of Chatham, 26 A. R. 521; S. C., sub nom. Bell Telephone Co. v. City of Chatham, 31 S. C. R. 61; Foley v. Township of Flamborough, 26 A. R. 42; Castor v. Township of Uxbridge, 39 U. C. R. 113.

IDINGTON, J.—Defendants were at the time of the accident in question admittedly responsible for keeping in repair the highway whereon plaintiff, with his father, was travelling when he received the injuries complained of.

Defendants' council, by their committee, on 29th April, 1904, inspected a culvert on this highway, and, finding it in such a condition as to be dangerous, if further used, determined to let a contract for its re-construction, and meantime to close it by a barrier erected to prevent travellers using it.

Steps were taken within a reasonable time to have the work done. When the contract was let, the committee in charge of the work directed the contractor to place a stick of timber across the travelled part of the highway for the purpose of turning the travel off that to a side road that led alongside it, and crossed the little stream on the east side of the place where the culvert had been and was to be reconstructed. This stick of timber was 10 by 12 inches in thickness and 24 feet long. It was placed obliquely across the road.