

J. B. Clarke, K.C., for defendants.

J. A. Huïcheson, Brockville, for plaintiff.

The judgment of the Court (OSLER, MACLENNAN, MOSS, GARROW, J.J.A.) was delivered by

OSLER, J. A. (after agreeing with the trial Judge in all his findings):—I cannot avoid thinking that the amount at which the damages have been assessed is too liberal an allowance, considering the nature of the injuries—a sprained ankle and an affection of the sciatic nerve—no doubt, a severe and painful one, arising some time after the accident, and attributed, whether rightly or wrongly, to it, but from the effect of which the plaintiff may expect to recover at no very distant time. Taking everything into consideration, an award of \$900 would more nearly meet the justice of the case.

Judgment reduced to \$900, and appeal dismissed with costs.

JUNE 28TH, 1902.

C. A.

GABY v. CITY OF TORONTO.

Municipal Corporation—Highway—Non-repair—Accident to Foot Passenger—Negligence.

Appeal by defendants from judgment of MACMAHON, J., in favour of plaintiff, in action tried at Toronto, brought by the widow and administratrix of Levi Gaby, late of Richmond Hill, deceased, to recover damages for injuries which caused his death. The trial Judge found, after a lengthy review of the evidence, that deceased left the Commercial Hotel, in Jarvis street, in the city of Toronto, on 19th November, 1900, at 8.30 p.m., in a sober condition, and that his body was found between 7 and 8 o'clock the next morning in a hole, 4 1-2 feet wide and nearly 8 feet deep, dug three weeks before by the contractor for masonry work of the new St. Lawrence market, added as third party; that the hole was not properly guarded, and was 16 feet from the building wall, and on the west side of Jarvis street, and deceased fell into it; and that, under his contract with the defendants, the third party, James Crang, was liable to them.

A. F. Lobb and W. C. Chisholm, for defendants.

T. H. Lennox, Aurora, and S. B. Woods, for plaintiff.

The judgment of the Court (OSLER, MACLENNAN, MOSS, GARROW, J.J.A.) was delivered by

OSLER, J.A.:—We are satisfied that there was abundant evidence of negligence, for which the city is responsible, in