

other persons to recover damages sustained by the plaintiff by being thrown out of her carriage, owing to her horse having shied at a pile of tile drain pipes which had been left by the defendants, while rebuilding a culvert, by the roadside, without any covering. The action was first tried at the Spring Sittings at St. Thomas in 1893. The defendants raised the objection that they were fulfilling a public duty, and the placing of the tiles on the roadside was done by them in the performance of such duty, and that they were entitled to notice of action. The learned Judge ruled in favor of this contention and dismissed the action for want of notice of action. The case was carried to the Divisional Court (Armour, C.J. Q.B., and Falconbridge, J.), and the judgment of the Judge at the trial was reversed, and a new trial ordered: 25 O.R. 45. The case was then carried to the Court of Appeal, and the judgment of the Divisional Court was affirmed. The case accordingly came on for trial a second time on 10th February, 1896, when, on the answers of the jury to certain questions submitted to them, a judgment was given in favor of the plaintiff for \$400. Now mark the next step in the legal drama: the case was again carried to the Court of Appeal, this time by the defendants, and in January, 1897, after four weary years of litigation, it is ultimately decided that the plaintiff had no right of action against any of the defendants, and the judgment in her favor is set aside and the action dismissed (Burton and MacLennan, J.J.A.—Osler, J.A., dissenting): 24 A.R. 31. Considering the comparative smallness of the amount of the claim, this appears to be a very deplorable result, and as Burton, J.A., very justly remarks, "it is not very creditable to our system of jurisprudence, that it has taken two trials, one motion to the Divisional Court, and two to this Court, before reaching this result." We think even stronger language might be justified, and that it is little short of an outrage on common sense, that it should have taken all that circumlocution to arrive at a final adjudication of the case.

It may be useful therefore to inquire in what way all this round-about method of determining the case might, and ought to have been, avoided.