

Province of Ontario.

COURT OF APPEAL.

O'CONNOR v. CITY OF HAMILTON. [June 29.]

*Way — Non-repair — Negligence of municipal corporation —
Notice of accident — Reasonable excuse for want of.*

While the plaintiff was engaged in driving a watering cart along the street, the surface suddenly gave way, and the cart falling, or partly falling, into the hole thus caused, the plaintiff was thrown out and injured. The break in the street was caused by the falling in of a sewer pipe which had been laid some 12 or 14 feet below the surface of the ground. In an action to recover damages for the injuries, the negligence alleged was, that the street was at this time, and for a long time previous had been, out of repair and dangerous for travel, to the knowledge of the defendants; that the bed of the street was of quick sand; that the sewer pipe had been improperly and negligently laid therein.

Held, upon the evidence, reversing the judgment of a Divisional Court, 8 O.L.R. 391, that there was no sufficient evidence of the existence of surface indications of danger below, which the defendants could be charged with negligence in not having attended to before the day of the accident; and that negligence could not justly be imputed to the defendants either in the original construction of the sewer or the absence of subsequent examination and inspection.

Seem, as regards the question whether there was reasonable excuse for omission to give the statutory notice of the accident under section 606 of the Municipal Act, 3 Edw. VII., c. 19 (O.), that what may constitute reasonable excuse is not defined and must depend very much upon the circumstances of the particular case. Where there is actual knowledge or oral notice, it may be regarded as an element of the excuse, but something more is required. The fact of the accident, by itself, is not a reasonable excuse, if it is not accompanied by some disabling circumstance. The plaintiff was not misled by any one into not giving notice, and was under no disability except that of ignorance of the law.

Armstrong v. Canada Atlantic R.W. Co. (1902) 4 O.L.R. 560 explained.

F. MacKelcan, K.C., for the appellants. *William Bell*, for the plaintiff.