

The action was tried without a jury at Sandwich.
F. C. Kerby, for the plaintiff.
A. St. G. Ellis, for the defendant corporation.

MIDDLETON, J., said that on the 13th February, 1915, the plaintiff fell on the sidewalk upon Ouellette avenue, one of the main streets of Windsor, and sustained serious injury. The fall was undoubtedly caused by the defective condition of the sidewalk, and the lack of repair of the sidewalk was the result of actionable negligence on the part of the municipality.

The walk was constructed of concrete, but a hole had formed in it as the result of natural decay. This hole had been in existence for a long time; and, although it was upon a main thoroughfare of the city, and daily passed by thousands, it was permitted to remain. The negligence was the lack of any kind of system to secure information as to the condition of the municipal pavements.

The difficulty in the plaintiff's way was that, although the accident was on the 13th February, no notice was given to the defendant corporation until the 12th March; sec. 460 of the Municipal Act, R.S.O. 1914 ch. 192, provides (sub-sec. 4) that no action shall be brought in the case of an urban municipality unless notice of the action is given within 7 days after the happening of the injury. The Court has power, under sub-sec. 5, to disregard the failure to give notice if of opinion that there is reasonable excuse for the lack of notice, and that the corporation was not thereby prejudiced in its defence.

The corporation was not prejudiced in its defence in this action; but, it could not be found, on the evidence, that there was a reasonable excuse for the lack of notice. The case was entirely governed by *Anderson v. City of Toronto* (1908), 15 O.L.R. 643. The plaintiff could not be said to have been incapable of considering her situation except as a sufferer. She undoubtedly was in pain from the time of the accident, but was in no such condition as that of the plaintiff in *Morrison v. City of Toronto* (1906), 12 O.L.R. 333. She went home unaided; she ought to have laid herself up and had the injury properly taken care of. Instead of that, she did not seek medical aid until the 11th March, and then her injured limb was much inflamed and very painful.

The action should be dismissed without costs.

The plaintiff's damages were assessed at \$600 to avoid the necessity for a new trial in the event of a successful appeal.