

reason of some defect incapable of sustaining such a weight, collapsed, and the greater part of the bricks were sunk and lost to the plaintiff.

Held, that the defendants, having placed the dock in such a position as invited any vessel owner desiring to unload a cargo to do so if prepared to pay the dock charges which the statute gave the defendants authority to levy, and having passed a by-law establishing tolls for the use of it, thereby invited the public to make use of it for such purposes as public docks are ordinarily used for, and, if they wished to limit the use of it, they should have made that known in some public way; and, the evidence shewing that the mode adopted in this case of unloading and piling was that usually adopted at public docks, the defendants were liable for the loss.

A. St. G. Ellis, for plaintiff. *Aylesworth*, K.C., for defendants.

Meredith, C.J., MacMahon, J., Lount, J.]

[March 19.

HOMEWOOD v. CITY OF HAMILTON.

Way—Non-repair—Opening in sidewalk—Injury to pedestrian—Defective eyesight—Want of guard—Municipal corporation—Negligence—Liability—Relief over.

The plaintiff, whose eyesight was defective, was walking in a city street, when, stepping into a doorway leading into a tavern, he stubbed his toe against the step or door-sill, and, stumbling back, fell into an area in the sidewalk used by the tavern-keeper, by the permission of the municipality, for the purpose of putting beer into his cellar, and then open and being used for such purpose. A keg had been placed at each of the outside corners of the opening to warn passers by.

Held, that the municipality were liable for negligence in leaving the opening without an adequate guard; that contributory negligence could not be imputed to the plaintiff; and that the tavern-keeper was liable over to the defendants.

Nesbitt, K.C., for plaintiff. *MacKelcan*, K.C., for defendants. *W. W. Osborne*, for third party.

Meredith, C.J.]

FULFORD v. WALLACE.

[March 25.

Defamation—Pleading—Statement of defence—Striking out—Embarrassment.

In an action for slander the plaintiff, a merchant and a Senator, complained of words spoken by the defendant to the effect that the plaintiff had paid \$50,000 to the Government for his title, and was advertising in Europe that he was made a Senator by the people of Canada because of the benefits conferred upon them by his discovery in pills; the innuendo being that the plaintiff had corruptly bribed members of the Government and had purchased the office of Senator, etc. In par. 2 of his defence the defendant pleaded that, if he did speak the words, they, even with the innuendo, were