

ROSE, J.

APRIL 3RD, 1920.

RICHARDSON v. TOWNSHIP OF WARWICK.

Highway—Nonrepair—Break in Surface of Road—Injury to Person Driving on Road—Wheel of Vehicle Going into Hole on Dark Night—Liability of Township Corporation—Absence of Direct Notice of Condition of Road—Breach of Statutory Duty—Municipal Act, sec. 460—Evidence—Failure to Shew Adoption of all Reasonable Means to Prevent Continued Existence of Dangerous State of Nonrepair—Damages—Injury to Married Woman—Expense Incurred by Husband.

Action by a man and his wife for damages for injuries sustained by reason, as alleged, of the nonrepair of a highway in the township.

The action was tried without a jury at Sarnia.

A. Weir, for the plaintiffs.

John Cowan, K.C., for the defendant.

ROSE, J., in a written judgment, said that on the 14th September, 1919, the two plaintiffs drove in a buggy from their farm, over the road in question, to Watford, some 5 miles distant, in a westerly direction. In the evening they returned, reaching the place of the accident some time after 10 o'clock. The night was dark and rain was falling; so that Richardson, who was driving, had not a very definite idea as to where he was, and thought that he had passed the very narrow part of the road where the accident occurred. At this point, the road is raised by a "fill" a few feet above the general level; the fill is traversed by a culvert, consisting of a pipe some 12 inches in diameter, by which water flows from the ditch on one side of the road to the ditch on the other, the top of the pipe being about $2\frac{1}{2}$ or 3 feet below the level of the centre of the road, and the top of the fill being about 14 feet wide. Of this 14 feet, a width of about 12 feet is occupied by the gravelled road, the remaining 2 feet, at the north side, being grass. The northern end of the pipe—a section about 2 feet 8 inches long—had collapsed, from causes unknown, and the part of the fill immediately above it had caved in, making a break, triangular in form, on the surface, the apex of the triangle touching or extending a short distance into the gravelled surface of the road, and the base taking in a foot or two, measured from east to west, of the grass north of the gravelled surface. The break had existed since about the 19th August.