

Moss, C.J.O.

JUNE 28TH, 1907.

C.A.-CHAMBERS.

MOOR v. CITY OF TORONTO.

Appeal to Court of Appeal — Leave to Appeal from Order of Divisional Court — Absence of Special Grounds — Non-repair of Highway — Injury to Pedestrian — Action not Brought in Time—Misfeasance—Nuisance.

Motion by plaintiff for leave to appeal to the Court of Appeal from order of a Divisional Court affirming judgment at the trial dismissing the action.

J. W. McCullough, for plaintiff.

F. R. MacKelcan, for defendants.

Moss, C.J.O.:—In this action, which is for injuries alleged to have been received by plaintiff owing to a plank in a sidewalk on the east side of Bathurst street having given way under him while walking upon it, the trial Judge assessed the damages at \$300, but dismissed the action because it was not brought until after the lapse of more than 3 months from the occurrence of the accident. A Divisional Court unanimously affirmed the decision of the trial Judge, and plaintiff now asks leave to appeal to this Court.

Upon consideration, I do not find in the case any special reasons for treating it as exceptional, and compelling defendants to submit to a further appeal. *Miller v. Township of North Fredericksburg*, 25 U. C. R. 31, seems very much in point. It appears to have stood unquestioned during the many years that have elapsed since it was decided, and if it is to be reviewed it should be in a case involving greater interests than the present.

The point that the accident was due to misfeasance on the part of defendants does not strike me as even plausibly maintainable upon the evidence, and the same may be said of the suggestion that the maintenance of the defective sidewalk was a public nuisance causing special damage to plaintiff.

Motion dismissed without costs.