

of the sum awarded may be for damages allowed in the matters referred not under the Acts, and, if this appeal were allowed, it would, in effect, be giving an appeal upon the merits in respect of matters not appealable.

It was further urged that the reeve of the municipality had no power to enter into the agreement in question. I do not think that objection is open on this appeal. For the purpose of the present appeal, it must, I think, be assumed that the municipality had authority to do what it has done. At all events the want of such authority cannot be invoked as a reason for holding that an appeal upon the merits lies, where no provision for such appeal exists.

I think the appeal should be dismissed with costs.

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APRIL 2ND, 1906.

DIVISIONAL COURT.

MORRISON v. CITY OF TORONTO.

*Way—Non-repair—Hole in Sidewalk—Injury to Pedestrian—Negligence of Municipal Corporation—Contributory Negligence—Notice of Accident—Reasonable Excuse for not Giving—Incapacity by Injury—Absence of Prejudice.*

Appeal by defendants from judgment of CLUTE, J., in favour of plaintiff for the recovery of \$750 damages in an action for personal injuries caused by a fall into an open space in a sidewalk.

The appeal was heard by MULOCK, C.J., TEETZEL, J., ANGLIN, J.

W. R. Riddell, K.C., for defendants.

Z. Gallagher, for plaintiff.

MULOCK, C.J.:—On the evening of 14th November, 1904, plaintiff was proceeding from his hotel, the Walker House, in Front street, to the office of the Toronto "Telegram" in Bay street, in the city of Toronto, and, when walking north-erly along the east side of Bay street, fell into an open space in the sidewalk, sustaining serious injury, and this action was brought to recover damages by reason thereof.