

on a highway, done by the defendants, the township corporation. The judgment appealed from was upon motion for a nonsuit, made before the verdict of the jury, which was in favour of the plaintiff for the recovery of \$125 damages, the motion being renewed after the verdict.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

W. E. Raney, K.C., for the appellant.

C. R. McKeown, K.C., for the defendants, respondents.

MEREDITH, C.J.C.P., read a judgment in which he set out the facts, and said that the grounds upon which the judgment in appeal was based were, that the action was really one for damages caused by the neglect of the defendants to keep a highway vested in them in repair, and that no notice of the action had been given; in other words, that the plaintiff had no right of action except under sec. 460 of the Municipal Act, R.S.O. 1914 ch. 192, which provides that no such action shall be brought unless notice has been given within 30 days; and no such notice was given.

The only ground for holding that the action was one based upon such neglect was that the sand which was deposited on the plaintiff's land came from a cutting made by the defendants in the highway for the purpose of more effectually draining it; but that circumstance could not make the claim one for neglect of the statute-imposed duty of the defendants to keep the road in repair; it was immaterial to the plaintiff, so far as the matters in question in this action were concerned, what state of repair the road may have been in, or where the sand came from, or in what manner it was lodged upon his land—or whether the cutting was repair or neglect to repair; all that he was concerned with was, that the defendants brought it there to his injury, which they had no right to do, and so were answerable to him for the loss he had sustained by that unlawful invasion of his property rights.

Strang v. Township of Arran (1913), 28 O.L.R. 106, distinguished and commented on.

The appeal should be allowed, and judgment be entered for the plaintiff in the Court below.

The other members of the Court agreed in the result, each giving reasons in writing.

Appeal allowed.