

grave question whether litigation can be maintained, even in a more meritorious case, if an appeal or other resort had not been made to the local Lodge, as contemplated by the rules.

I may mention that I do not think the provision cited of the Insurance Act, R. S. O. 1897 ch. 203, sec. 165 (1), applies to a case like this, where the payment of monthly dues is fixed by the by-laws, and the dues are collected at the regularly appointed meetings, as appears by the rules of the Lodge: see Cunningham's Case, 29 O. R. 708. *Wintemute v. Brotherhood of Railway Trainmen*, 27 A. R. 524, would indicate that the section does not apply to this Benefit Fund. And *quære*, was the original of the Act in force when the suspension was declared in 1891 or 1892? The month was February, and the Act was first passed 14th April, 1892.

The facts in *Dale v. Weston Lodge*, 24 A. R. 351, are widely distinguishable from those now in hand.

The action must be dismissed, and, I suppose, with costs, if asked for. Under rule No. 9, before mentioned, I do not now see my way to direct the repayment of any or all of the assessments paid by or for the deceased—but the dismissal of the action may be without prejudice to that claim.

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FEBRUARY 4TH, 1909.

DIVISIONAL COURT.

SANGSTER v. TOWN OF GODERICH.

*Highway—Non-repair—Injury to Pedestrian—Liability of Municipal Corporation—Notice—Misfeasance—Hole in Highway Caused by Works Undertaken by Corporation.*

Appeal by defendants from judgment of TEETZEL, J., in favour of plaintiff, in an action for damages for injuries sustained by plaintiff by a fall upon William street, in the town of Goderich, owing, as alleged, to the street being out of repair. There was no sidewalk on the east side of the street. There was a roadway in the centre fit for horses and vehicles. The plaintiff was leaving a house on the