

MESSENGER v. THE TOWN OF BRIDGETOWN.

1901

Municipal corporation—Negligence—Obstruction on highway.

*Feb. 26, 27.

*Mar. 18.

APPEAL from a judgment of the Supreme Court of Nova Scotia, *en banc* (1), affirming the judgment of McDonald C.J. (2), dismissing the plaintiff's action with costs.

The action was for damages for injuries caused through alleged negligence of the corporation in permitting a mound of earth about eight inches in height to remain at the filling over a trench dug to lay a pipe across a public street. In passing over the obstruction during the night plaintiff's horse stumbled and fell throwing the plaintiff from the vehicle whereby the injuries were sustained. The court below held that there had been no negligence on the part of the defendant, that the obstruction was not serious or unusual, and that the accident occurred through want of proper care by the plaintiff in approaching, in the darkness, the dangerous place which he had previously seen in the same condition by daylight.

After hearing counsel for the parties the court reserved judgment, and on a subsequent day dismissed the appeal with costs.

Appeal dismissed with costs.

Roscoe K.C. for the appellant.

J. J. Ritchie K.C. for the respondent.

*PRESENT :—Taschereau, Gwynne, Sedgewick, King and Girouard JJ.