

severe. Her left wrist was broken, and she was also injured internally, but not, I think, upon the evidence, in either respect permanently.

The negligence complained of was permitting an accumulation of ice and snow to be and remain upon the sidewalk upon which the plaintiff fell. Kelly, J., dismissed the action with costs, upon the ground that gross negligence had not been established, as required by sec. 450, sub-sec. 3, of the Municipal Act, R.S.O. 1914 ch. 192—a provision which has long formed part of the municipal law of the Province.

In discussing the evidence in his judgment delivered at the trial the learned Judge seemed to be of the opinion, based upon the evidence of certain witnesses called for the defence, that the account given by the plaintiff and her witnesses of the condition of the sidewalk at the time of and shortly before the accident was erroneous, or at least overstated, although not deliberately so. This does not, in my opinion, amount to a definite finding against the credibility of the plaintiff and her witnesses, but is rather a balancing of the plaintiff's case against that presented in defence, with a final inclination towards the latter upon the weight of evidence. The learned Judge having, therefore, himself supplied the corrective for the exaggerations, if any, on the part of the plaintiff, I have the less diffidence in expressing my own view, derived from a careful perusal of the evidence, upon the question of fact presented, which, with deference, differs from the conclusion arrived at by the learned Judge.

The condition of the sidewalk at the time of the accident, as given in evidence by the plaintiff, is, that she fell in front of Campbell's drug store, "the ice being lumpy and slanted there, and very slippery, and a slope from the inside out to the street."

If the case stood as it did at the close of the plaintiff's evidence, the plaintiff's right to recover could scarcely, it seems to me, be in doubt. She had, it appears to me, proved very clearly that upon one of the busiest streets in the town there was, where she fell, an obstruction caused by an accumulation of ice and snow which rendered its use in that condition dangerous, as is evidenced by the undisputed fact that within a period of five days three other persons all fell at the same place. No one on behalf of the defendant has offered a single suggestion to explain why they should all have fallen at that particular place.

The case thus made is not, in my opinion, fairly met or displaced by the evidence given on behalf of the defence, largely