

was not effectively done, and for that reason, or because the corrugated surface became worn by use, the walk was, at the place referred to, so smooth at the time of the accident as to be dangerous in wet or frosty weather. The defendant corporation, having originally corrugated it, must be taken to have recognised that if it should become smooth it would be dangerous unless further corrugated or roughened. The walk was in the condition described for a period long enough to impute notice to the defendant corporation, if its smoothness and consequent danger in wet and frosty weather could be considered non-repair.

Upon a review of the circumstances, the learned Judge found that the walk was so out of repair as to be dangerous; that notice was to be imputed to the corporation; and that it was this want of repair that was the cause of the accident.

Reference to the Municipal Act, R.S.O. 1914 ch. 192, sec. 398, sub-sec. 29; *Caswell v. St. Mary's and Proof Line Junction Road Co.* (1869), 28 U.C.R. 247, 254; *Hutton v. Town of Windsor* (1874), 34 U.C.R. 487, 496; *Ewing v. City of Toronto* (1898), 29 O.R. 197, 201; *Ince v. City of Toronto* (1900), 27 A.R. 410, 416.

The plaintiff was entitled to use the sidewalk although it was out of repair; but, as he knew its condition, he was bound to exercise care commensurate with his knowledge: *Gordon v. City of Belleville* (1887), 15 O.R. 26, 31. There was no want of care on the plaintiff's part—he was taking reasonable care at the time of his injury.

Damages assessed at \$800; and judgment to be entered for the plaintiff for that sum with costs.

BRADEN v. VARLOW FOUNDRIES LIMITED—SUTHERLAND, J.
—JULY 7.

Contract—Construction—Scope of Sub-contract for Ventilating and Heating of Building—Temporary Heating during Progress of Work — Breach of Contract — Damages.—The plaintiff had a contract in writing with the Dominion Government for the construction of the Fort William Examining Warehouse, according to certain plans and specifications. The defendants contracted with the plaintiff to install the heating and ventilating apparatus in the building for \$15,000. Disputes arose between the plaintiff and the defendants; and the plaintiff,