

The injury took place in the spring and early summer of 1911. The writ was issued on the 18th December, 1911; and the action is only now brought to trial. The delay has created a good deal of confusion in the evidence.

During the preceding winter, the plaintiff had purchased the property, which was then in very bad condition, the water-pipes throughout the building having been broken by frost. On his taking possession, the cellar where three ovens were situated, was found to be wet: most of the water coming from the rear, and supposed to flow from the stable yard of an adjoining livery stable. This rendered one oven entirely useless. The plaintiff, a baker in a small way, used the other two ovens, situated under the sidewalk.

The premises were regularly inspected by the Medical Officer of Health, who prohibited any attempt to use the front oven while the water from the stable ran into it.

There seemed to be a good deal of difficulty in locating the actual source of this trouble. When the water began to leak at the front of the building, this was regarded in the first instance as an entirely minor matter; and I think that the plaintiff is now unjustifiably attempting to put forward complaints made with reference to the leakage at the rear as some justification for the present action. He made no complaints in writing, nor did he personally attend at the city offices for the purpose of lodging a complaint. Most of the communications on his behalf were through the telephone, and were addressed to the Medical Health Office. The plaintiff sought to eke out the meagre evidence he was able to give by calling a number of civic employees, with a view of bringing home notice of the existence of the defect in this way. These witnesses all appeared to me to be most reliable, and I am quite prepared to accept their evidence.

Mr. Hayward is employed in the department of health and is charged with the duty of inspecting bakeshops. This inspection is primarily directed to the maintenance of sanitary conditions; and I think that the plaintiff is attempting to treat some of Hayward's visits as being the visits of water-works officials in response to his complaint.

On the 6th July, Hayward inspected the place and found that steps were being taken to stop the leakage from the stable. He heard no complaint as to the leakage in front. On the 26th his attention was drawn to the leakage at the front oven. The leakage was located and stopped on the 3rd