

The plaintiffs say that the water flowed over the sidewalk only three or four times during the winter of 1913-14. Mrs. Gauthier saw no ice there except on the morning of the accident, and the witness Pettigrew on but that and another occasion. Martindale and his wife both swear they never observed ice on the sidewalk, formed, as this was, by flowing water, except on the occasion when Mrs. Gauthier was injured. On the same day the witness Harris slipped and fell at the same place; and shortly before or shortly afterwards Miss Lyons also fell there. Neither observed ice there previously; and Harris says he would not have fallen but for the circumstance that the ice was lightly covered with snow.

It is strenuously urged that the defendants should have placed a catch-basin with proper drainage at a point where it would gather and dispose of such water as overflowed, and, when frozen, rendered dangerous the sidewalk. Failure to provide such a means of disposing of the overflow is in fact the chief negligence attributed to the defendants, and the only negligence—if such it can be called—established against them.

The facts established do not, in my opinion, afford the plaintiffs any right of action.

Since 1894 no municipal corporation has been liable for accidents arising from persons falling owing to the presence of ice upon a sidewalk except in cases where "gross negligence" on the part of the corporation has been established: 57 Viet. ch. 50, sec. 13. The enactment then passed has been carried down through the several revisions of the Municipal Act, and is now found in R.S.O. 1914 ch. 192, sec. 460, sub-sec. 3.

Prior to 1894, when mere negligence to repair on the part of a municipal corporation gave a right of action, it was held, in a case where the facts are very like those of the present case, that the plaintiff was not entitled to recover: *Forward v. City of Toronto* (1888), 15 O.R. 370. In the judgment of the Common Pleas Division, unanimously reversing the verdict at the trial, Mr. Justice Rose said (p. 373): "To permit this verdict to stand would in effect be to declare that wherever the corporation build sidewalks in front of lanes, or carriage ways, where the land sloped toward the street, or indeed in front of any land sloping towards the street, it at once became burdened with the duty of preventing water running from such higher land upon the walks and forming into ice, or with the duty of without delay removing such ice, although it had no notice of its formation other than the notice derived or imputed from the formation of the land and the building of the walk. To declare such to be the law, would be to