

Mrs. Gauthier's injuries were very serious. Her left leg was broken in two places. While she made a good recovery, she is still lame and suffering from pain and from shock to the nervous system.

The weather on the day prior to the accident was warm, and the snow on the lawns of the plaintiffs and their neighbour Martindale melted rapidly. Some of the resulting water was not absorbed by the still frozen sod, but flowed over and upon the granolithic sidewalk on the north side of the street, there forming, when the temperature fell during the night, a coating of ice, about a quarter of an inch in thickness, and extending diagonally across the sidewalk over an irregular area not more than two or three feet in greatest width.

During the night there was a slight fall of snow—just sufficient to cover and conceal the ice formed on the pavement, which at the point in question has an inclination towards the east of about one foot in twenty.

The lightly covered ice upon the down grade of the pavement eastward made the sidewalk unsafe and dangerous, and the accident to Mrs. Gauthier was caused by this dangerous condition, and not by any negligence on her part.

A number of credible witnesses living west of the plaintiffs on the same street, and on their way to and from work using the sidewalk several times each day, testified that they never saw water flowing across the sidewalk near the driveway or forming ice there. No complaint was ever made to the defendants by the Gauthiers or any other person regarding the condition of the sidewalk at the point referred to, nor had the defendants any knowledge or notice of the formation of the ice.

I find that under ordinary circumstances the water from the lawns did not flow over the pavement but ran down easterly inside the line of the sidewalk. The levels taken by Mr. Fair, a civil engineer of long experience, shew that in a distance of five feet north from the inner line of the pavement there is a fall of over two inches. This depression would have to be filled before there could be a flow over the sidewalk. Vehicles passing into or out of Martindale's, when the soil in the driveway was soft, would sink and form, on each side of the wheels, elevations which, especially when frozen, would impede the flow to the east, and tend to divert it over the pavement. The evidence on the point is slight, but to my mind sufficient. Such conditions could exist but seldom at the same time, and the overflow would accordingly be of the rare occurrence spoken of by the witnesses.