

LENNOX, J., dissented, for reasons stated in writing. He was of opinion that in the city of Toronto, where snow-storms are frequent, the defendants, maintaining a stairway-highway of the character described in the evidence, must be taken to have notice in advance that dangerous conditions must from time to time arise if the steps are allowed to become covered with snow or ice, and are called upon to exercise exceptional vigilance by reason of the exceptional and quasi-dangerous character of the structure they have provided for public use, and are bound to take effective measures to prevent the occurrence of conditions such as confronted the plaintiff and occasioned her injuries on the 13th December, 1915. The defendants wholly failed to discharge these obligations; and—whether the stairway was a sidewalk or not—were guilty of gross negligence. The appeal should be dismissed.

*Appeal allowed; LENNOX, J., dissenting.*

SECOND DIVISIONAL COURT.

OCTOBER 20TH, 1916.

\*KILLELEAGH v. CITY OF BRANTFORD.

*Highway—Nonrepair—Dangerous Condition—Sidewalk in City Street below Level of Ground—Snow and Ice—Duty of City Corporation—Municipal Act, R.S.O. 1914 ch. 192, sec. 460—“Gross Negligence”—Injury to Person—Cause of Injury—Absence of Contributory Negligence—Climatic Conditions—Liability of Corporation.*

Appeal by the defendants from the judgment of the Judge of the County Court of the County of Brant, who tried the action without a jury, in favour of the plaintiff.

The action was for damages for injury (broken arm) sustained by the plaintiff by a fall upon an icy sidewalk in the city of Brantford on the 22nd December, 1915—the plaintiff asserting that the sidewalk was in a dangerous condition by reason of non-repair. The trial Judge gave judgment for the plaintiff for \$250 and costs.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

A. J. Wilkes, K.C., for the appellants.

W. M. Charlton, for the plaintiff, respondent.