

CLUTE, J.

JANUARY 9TH, 1918.

## McMILLAN v. CITY OF TORONTO.

*Highway—Nonrepair—Ice on Sidewalk—Injury to Pedestrian—  
Liability of Municipal Corporation—"Gross Negligence"—  
Municipal Act, sec. 460 (3).*

Action against the Corporation of the City of Toronto to recover damages for injury sustained by the plaintiff on the 28th February, 1917, from a fall on the sidewalk of a city street. The accident occurred at 11 o'clock in the morning in front of house No. 993 Gerrard street east.

The action was tried without a jury at Toronto.

E. C. Ironside, for the plaintiff.

Irving S. Fairty, for the defendants.

CLUTE, J., in a written judgment, said that the plaintiff slipped on ice on the sidewalk and received serious injury to her knee and back.

The negligence complained of was, that the sidewalk was in a bad state of repair, being depressed at the point where the accident occurred, and allowing an accumulation of water, from which ice was formed. The evidence was, that the sidewalk was partly covered with ice from Monday morning until the morning of the accident—the following Wednesday. The snow had been cleared from the sidewalk, but some small quantity of water had collected at the place of the accident, and frozen. There was no evidence as to whether or not it had existed earlier than on the Monday before the accident.

It was established by the evidence for the defence that the sidewalk itself was properly laid, and that the accumulation of water and ice was occasioned by there being a slope from the boulevard or land to the sidewalk; the slight inclination of the sidewalk carried the water down and it was detained and frozen.

The sidewalk, at the time of the accident, was out of repair in the sense of being dangerous; but the learned Judge could not find, upon the evidence, that there was gross negligence (Municipal Act, sec. 460 (3)) on the part of the defendants; and upon this ground the plaintiff failed.

The sum of \$550 would be a reasonable compensation by way of damages if it should be hereafter held that the plaintiff was entitled to recover.

*Action dismissed without costs.*