

ants for leave to appeal from the orders of RIDDELL, J., of 9th November, ante 300. Motion dismissed. J. M. Godfrey, for the defendants. John MacGregor, for the plaintiffs.

GATTO v. CITY OF TORONTO—MIDDLETON, J.—NOV. 18.

*Damages—Water Leaking from Pipe—Oven Made Wet—Evidence—Inspection by M.H.O.—Notice of Complaint—Negligence—Statutory Defences.*]—Action to recover damages, for injury sustained by water leaking from a broken service pipe and making an oven, constructed in an area under the sidewalk, wet, so that the plaintiff was unable to bake bread therein for a period of 42 days. The trial Judge said that, on reflection, he retained the opinion expressed at the trial, that the plaintiff's claim had little merit, and was grossly exaggerated. After a detailed review of the evidence, the judgment proceeds: "Even making large allowance to the plaintiff by reason of his inability to speak English, I think he ought to have drawn the attention of the Water Works Department to the leak in some more effective way; and, further, I believe he would have done so if he was suffering any such inconvenience as he now suggests. I have no doubt that some inconvenience was suffered; and at the trial I stated that, in my view, two hundred dollars would be an outside allowance if he was entitled to recover, and entitled to damages by reason of inability to bake enough bread to answer his requirements. The evidence as to this is most unsatisfactory. Particulars had not been given; special damage had not been pleaded; and there was every indication of a desire to exaggerate. If this element of damages is too remote, I would think that fifty dollars would more than compensate for the inconvenience. As I am unable to find any negligence on the part of the city I think the action fails; but if I had thought the plaintiff entitled to recover, I would not have certified to prevent a set-off of costs. In addition to the other grounds, the defendants rely upon statutory defences which were originally given to the Water Commissioners, and which they claim have passed through them as part of the "privileges" referred to in the legislation. See 35 Vict. ch. 79, secs. 19, 21, 28, and 41 Vict. ch. 41, sec. 1. I do not find it necessary to pass upon this contention. W. E. Raney, K.C., for the plaintiff. C. M. Colquhoun, for the defendants.