

D. W. Dumble, K.C., for the children of John Dorgan and the children of Catherine Daly, legatees. E. C. Cattanach, for the Official Guardian. V. J. McElderry, for the widow of the testator and for Mary Croft. F. J. Hughes, for Irene Gibbons and other legatees.

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COUNTY COURT OF THE COUNTY OF HASTINGS.

DEROCHE, Co. C.J.

OCTOBER 18TH, 1918.

McAFEE v. TOWN OF DESERONTO.

*Highway—Nonrepair—Injury to Person Falling on Sidewalk Covered with Ice—Municipal Act, sec. 460—"Gross Negligence"—Evidence.*

Action by Lillie McAfee against the Corporation of the Town of Deseronto to recover damages for injury sustained by the plaintiff from a fall upon a highway in the town, said to be out of repair: Municipal Act, sec. 460.

Section 460 (4) requires "notice in writing of the claim and of the injury complained of."

The notice relied on by the plaintiff was contained in a letter written by her to the Mayor of the town, on the 2nd March, 1918, in which she said: "This is to notify you that on Sunday Feb. 24th I fell on the icy pavement of a street in Deseronto, which fall resulted in a broken ankle, and that I intend to enter action for damages against the Town of Deseronto."

The action was tried by the County Court Judge without a jury.

W. S. Herrington, K.C., for the plaintiff.

W. N. Ponton, K.C., and R. D. Ponton, for the defendants.

DEROCHE, Co. C.J., in a written judgment, said that, aside from the wording of the notice served on the Mayor, it must be found that there was no cause of action.

The particular spot where the plaintiff fell and broke her ankle was on a well-constructed cement-walk, level, except the usual fractional slant to shed water. It was therefore (as some of the witnesses testified) in perfect condition as to construction and repair, except as it might have been affected by snow and ice.

At the time of the injury the ice covered the walk, as it covered