

formance of the duty thus imposed. And when a "personal injury" is caused by snow or ice upon a sidewalk there is no such liability "except in case of gross negligence."

Upon a review of the evidence, the learned Chief Justice was of opinion that there was no default on the part of the defendants; that the appeal should be allowed and the action dismissed.

RIDDELL, J., in a written judgment, referred to the contention of the defendants that the foot-bridge was a sidewalk, and that they were not therefore liable except for "gross negligence." In the view the learned Judge took of the case, he did not think it necessary to decide as to this contention. The case, he thought, should be considered as though the defendants should be held liable if the accident happened through their negligence, "gross" or simple.

The duty of the defendants was subject to circumstances; it was not their duty to have any highway at all times such that a person might with reasonable safety travel on it. Snow might fall, ice form, a torrential rain come, rendering a way unsafe for a time. The defendants would not be liable for that—all that they could be called upon to do was to exercise due care in making and keeping their ways reasonably safe.

Upon all the evidence, it was impossible to say that the defendants' duty was not done; and, therefore, the appeal should be allowed and the action dismissed.

MASTEN, J., in a written judgment, said that it was established by the evidence: (1) that the foot-bridge, including the steps by which it was approached, was between 200 and 300 feet long; (2) that the defendants employed a competent man to keep the bridge and steps in proper condition for the use of passengers; (3) that at 8.15 a.m. on the day of the accident, this man was seen engaged in clearing the snow from the steps; (4) that during the storm which then occurred two and a half inches of snow fell, and the storm lasted from some time in the night before the accident till about the time when the accident happened; (5) that at the time of the accident there was about half an inch of snow on the steps where the plaintiff fell; (6) that, by inference, the steps were cleared between 8 and 9 on the morning of the accident, and afterwards snow continued to fall. The conclusion from these facts was that the defendants could not be held guilty of negligence, gross or otherwise, and that the appeal should be allowed and the action dismissed.