

The appeal was heard by FALCONBRIDGE, C.J., BRITTON, J., RIDDELL, J.

W. E. Middleton, for defendants.

D'Arcy Scott, for plaintiff.

RIDDELL, J.:—It was argued that, assuming the state of the street to be such as found by the trial Judge, there was nothing to justify a finding of gross negligence against the municipality. A great many cases were cited to us, some from the English Courts and some from Canadian Courts, and many from the American Courts. I have read all the English and Canadian cases and many of the American, but I find nothing which would justify us in departing in any degree from the decision in the Supreme Court of Canada in *City of Kingston v. Drennan*, 27 S. C. R. 46. Mr. Justice Sedgewick, in giving the judgment of the majority of the Court, discussed the meaning of the phrase "gross negligence," and came to the conclusion that it meant "very great negligence." I do not know that this advances the matter very much, if any; but I have seen no definition that is any better. Without attempting further to define the expression, it appears to me that if the jury could properly find "gross negligence" in the *Drennan* case, the present case is a fortiori.

The facts as admitted and as found by the trial Judge are in his own words as follows: "The ice . . . on the inside of the walk . . . ran up to 6 and possibly 7 inches in height." "This condition existed for three or four weeks previous to the accident without any reason being given why this ice could not have been removed." "During a mild winter, with the appliances used by the city for the removal of just such dangers. . . . It is in a populous section of the city, much travelled, within half a dozen doors of one of the most travelled streets of the city, . . . its presence appears to have been known to those whose duty it would seem to me to be, under the by-law, to see that it was removed." This ice sloped down to the level in a distance of two or three feet—as it is put by the ward foreman, the ice sloped down to nothing above the middle of the sidewalk—the sidewalk being 5 or 6 feet wide. The Judge finds that this was "gross negligence" within the section so as to make the defendants liable.