

SECOND DIVISIONAL COURT.

OCTOBER 20TH, 1916.

*PALMER v. CITY OF TORONTO.

Highway—Nonrepair—Stairway Used as Approach to Foot-bridge Connecting City Streets—"Sidewalk"—Duty of City Corporation to Keep in Repair—Municipal Act, R.S.O. 1914, ch. 192, sec. 460—Snow and Ice—"Gross Negligence"—Evidence—Climatic Conditions—Injury to Person Slipping on Steps and Falling—Liability of Corporation.

Appeal by the defendants from the judgment of CLUTE, J., who tried the action without a jury at Toronto, in favour of the plaintiffs.

The action was brought by a man and his wife to recover damages arising from an injury to the wife by a fall upon the steps of an overhead foot-bridge over railway tracks, connecting two highways in the city of Toronto, the plaintiffs asserting that the steps were in a dangerous condition owing to snow and ice and that the defendants neglected their duty to keep them in proper repair.

The judgment awarded \$1,000 to the wife and \$100 to the husband, with costs.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

Irving S. Fairty, for the appellants.

W. Proudfoot, K.C., for the plaintiffs, respondents.

MEREDITH, C.J.C.P., read a judgment in which he said that the plaintiffs' claim was based altogether upon an alleged breach of the defendants' duty, under sec. 460 of the Municipal Act, R.S.O. 1914 ch. 192, to keep every highway and bridge, under their jurisdiction, in repair; and the liability, in like manner, imposed upon them, "for all damages sustained by any person" through their "default" in that respect. The duty is to keep such public ways reasonably sufficient for the purpose of the traffic over them; and the defendants are not to be held liable for such damages except upon reasonable proof of damages sustained through "such default." Such a way may be out of repair and damages may be sustained without the municipality being in default. Reasonable opportunity must be afforded for the per-

*This case and all others so marked to be reported in the Ontario Law Reports.