

It was open to the magistrate to draw the conclusion, on the facts proven, and in the absence of explanation satisfactory to him of the defendant's conduct, that what happened was not merely an isolated act; and that the accused was guilty of the offence of which he was convicted.

The application should be dismissed with costs.

KELLY, J.

JULY 24TH, 1919.

HUTCHISON v. CITY OF TORONTO.

*Highway—Nonrepair—Injury to Pedestrian by Fall on Icy Sidewalk—Negligence of Municipal Corporation—Dangerous Condition Due to Excessive Slope and Broken Concreting as well as Ice—“Gross Negligence”—Municipal Act, sec. 460 (3), (4)—Cause of Injury—Absence of Contributory Negligence—Notice of Injury—Damages.*

Action for damages for injuries sustained by the plaintiff by a fall upon a sidewalk in the city of Toronto, on the 20th February, 1918.

The plaintiff alleged negligence, nonfeasance, and misfeasance of the defendants in regard to the dangerous condition of the sidewalk on that day.

The action was tried without a jury at a Toronto sittings.

T. R. Ferguson, for the plaintiff.

Irving S. Fairty, for the defendants, the city corporation.

KELLY, J., in a written judgment, said that, having regard to the state of the weather on the day of the accident and the previous day, if the accident could be attributed solely to the ice on the sidewalk, he was not prepared to say that the defendants were guilty of gross negligence (Municipal Act, sec. 460 (3)) or that liability would attach to them under those conditions. But there were other conditions which were immediately related to the plaintiff's injuries. Galt avenue, where the accident happened, has a downward grade from the north to the south; this in itself called for care in the construction and maintenance of the sidewalk so as to guard against any unusual risk to persons passing over it. In two respects that care was not exercised. The accident happened on the westerly sidewalk, which at the locus in quo had an incline towards the kerbstone of two-thirds of an inch to the foot—the standard grade being one-fourth of an inch