

so deals with a portion of the street adjoining a public building as to invite the public to use that part of the street as a crossing place for foot passengers, the city is under an obligation to make it safe for that purpose, although the place so used is not a continuation of any sidewalk and was not paved in the manner usual for street crossings in that locality.

See also *Breen v. City of Toronto*, 2 O.W.N. 690; *Brown v. City of Toronto*, 2 O.W.N. 982; *Lowery v. Walker*, 27 Times L.R. 83 (H.L.); *City of Vancouver v. Cummings*, 2 D.L.R. 253, 45 S.C.R. 194.

R. T. Stackhouse, for plaintiff, appellant. *J. A. Jarry*, K.C., for city, respondent.

Province of British Columbia

SUPREME COURT.

Gregory, J.]

[March 14.

BALAGNO V. LEROY.
(10 D.L.R. 601.)

Landlord and tenant—Forfeiture of lease—Waiver—Non-payment of rent—Relief—Usage.

Held, 1. A failure on the part of the lessor to re-enter the demised premises and to declare a forfeiture under the terms of the covenant for non-payment of rent, does not constitute such a waiver of rights as is contemplated by sub-sec. 17 of sec. 2 of the Laws Declaratory Act, R.S.B.C. 1911, ch. 133, to the effect that no relief shall be granted against forfeiture of a lessee's term where a forfeiture under the covenant in respect of which relief is sought "shall have been already waived out of court in favour of the person seeking the relief," so as to preclude the lessee from maintaining a summons for relief against such forfeiture.

2. A lessee of demised premises is entitled to an order for relief against forfeiture on the ground of non-payment of rent, under the Laws Declaratory Act, sec. 2, sub-sec. 14 (B.C.), where it appears that he had been in the habit of paying several months' rent at a time instead of monthly as called for by the lease, with which arrangements the lessor seemed to have been satisfied, that no request for payment was made by the