

of a pavement the snow fell upon the earth as it stood in its original character and was tramped down by foot passengers, it is very doubtful whether there would be the same condition of dangerous slipperiness as is complained of here; and, presuming such condition existed, it is exceedingly doubtful whether, in the absence of an artificial sidewalk the city would be bound to interfere with conditions of slipperiness that nature has produced by frost or fallen snow upon the places where foot passengers ordinarily go.

But, it may be argued that if the city chooses to change the condition of the original earth by putting down some sort of improvement for the convenience of passengers, and that the presence of that improvement produces a higher degree of slipperiness than would exist in the absence of the improvement, that to that extent they must at all times take care, under all circumstances and climatic influences, to protect the public against a condition of affairs that would not have existed but for the improvement and if they had not interfered with existing conditions. One would properly regret that this should be the law, because the demands of civilization call for these foot pavement improvements, the convenience of the public calls for, they are all put there with the consensus of the public, they are all enjoyed by the public and the public would naturally object if these pavements were not put down, and the city is only yielding to a well appreciated and well understood public demand if these things are done. Then can it be said, when the corporation, in obedience to a public demand, makes these sidewalk improvements, and makes them of the best and most durable material that experience seems to suggest as the proper thing for sidewalks, and that when these sidewalks, affected by the forces of nature, uncontrollable by the city—namely, snow and frost—at times become very slippery, that the city is bound, ail over these sidewalks, at all times and under all circumstances, to protect the public against a danger caused by the forces of nature? I do not think I can say so.

The Legislature has recently provided that in damage actions for injury through snow and ice on sidewalks gross negligence must be proved (57 Vict., c. 50, s. 13). I think that the intention of the Legislature was to disturb an existing state of the law as expressed in decided cases and produce a different state of the law, that state of the law being to relieve the city from responsibility in cases on all fours with this; and I think I must give effect to the legislation intended and hold that in cases of this description the city is not liable and that the plaintiff has not made out such a case as would bring her within the right to recover.

The action must be dismissed.