

have exaggerated the condition of affairs, and the defence must be looked at in this case. The city corporation have charge of a large area of streets, and it is an impossibility, under the climatic conditions which obtain in our winters here, to keep all places perfectly safe. Accidents are continually occurring; persons slip, getting legs broken and arms broken. Perhaps I do not speak from judicial experience, but it is common knowledge, it almost may be said, that these cement pavements are the most dangerous things possible in particular kinds of weather. It is one of the penalties we have to pay for our modern civilization. It is practically impossible to get wood. I suppose we have to adopt them; wood is too expensive; some substitute must be obtained, and this appears to be the most available and permanent, but it has its drawbacks in certain kinds of weather; with a little water or a little ice on, it is a most troublesome matter. And, although there may have been some small lumps on this sidewalk, yet I cannot, upon this evidence, say they were of such a nature or of such appearance as to fix the city with liability for gross negligence. That is what we have to get at.

Now, according to the evidence, the fall of snow which probably made this condition, was on the Thursday. The witnesses do not put the snow back more than 2 or 3 days. Well, I suppose you may take that as 2 days. Even if you take it as 3, it would bring the lumpy condition—slight lumps—to Saturday. Then there was Sunday intervening, and this accident took place on Monday. Now, it is a serious proposition of law to say that this was a state of facts on which the city corporation were guilty of gross negligence. The sidewalk appears to have been cleared on each side more than at this particular place, but, according to the evidence of two of the witnesses, their attention was not called to this; it was not observed by the authorities; although other witnesses passing by observed the same thing, they did not notice anything out of the ordinary; and it is just one of those cases where, on inspection by a person interested or hurt, the place may appear to be dangerous, and its appearance may be taken as some evidence of carelessness; and yet I cannot say that it is of such gross character that defendants should be penalized.

I do not deal with the question of notice; the notice may have been in time; but on the facts I think the action ought to be dismissed. No costs.