

KELLY, J.

APRIL 5TH, 1917.

ELLIS v. CITY OF TORONTO.

Highway—Nonrepair—Accumulation of Snow and Ice—Injury to Pedestrian by Fall—Evidence—Failure to Establish “Gross Negligence”—Municipal Act, R.S.O. 1914 ch. 192, sec. 460.

Action for damages for injury sustained by the plaintiff by a fall upon a sidewalk in the city of Toronto, alleged to have been caused by the slippery and unsafe condition in which the defendants, the city corporation, had negligently left it.

The action was tried without a jury at Toronto.
Gideon Grant and P. E. F. Smily, for the plaintiff.
Irving S. Fairty, for the defendants.

KELLY, J., in a written judgment, said that about 10.30 in the forenoon of Sunday the 30th January, 1916, the plaintiff, accompanied by two other women, was walking easterly on the sidewalk on the north side of Bloor street east, in Toronto, and, when opposite the house No. 20, she fell and was injured. She alleged that this happened by reason of the slippery and unsafe condition of the sidewalk caused by the defendants negligently permitting snow and ice to form in ridges. The evidence of the plaintiff and one of her companions (the other was not called as a witness) was, that the sidewalk was rough and lumpy with snow and ice, the snow having been trodden down; that the lumps were $2\frac{1}{2}$ or 3 inches high; and that it was raining and freezing. There was other evidence on both sides, referred to by the learned Judge, who said that there was much difficulty, when all the circumstances were viewed, in arriving at the conclusion that there had been established that degree of negligence which was necessary to impose liability upon the defendants under sec. 460 of the Municipal Act, R.S.O. 1914 ch. 192—i.e., gross negligence. There was a complete absence of evidence to shew how long the condition which the plaintiff said existed on the 30th January had continued, or that it had continued for such time as would make its non-removal an act of negligence, not to say gross negligence. On the whole evidence, it could not be found that there was gross negligence.

The plaintiff's case was a hard one; her injuries were serious.