

Armour, C.J., Falconbridge, J.] SMITH v. BOYD. [Feb. 18.
Amendment—Pleadings—Trial—Partnership—Conspiracy—Accounts—Parties—Terms—Costs.

The action as framed was to recover damages for an alleged conspiracy between the defendants, the plaintiff's partner in a mercantile business and another, whereby they fraudulently and secretly withdrew money from the assets of the firm. The real grievance was the alleged misappropriation by the plaintiff's partner, with the assistance of the other defendant, of partnership funds to the injury of the partnership and of the plaintiff. At the trial the plaintiff sought to amend by alleging that moneys were received by the other defendant in trust for the firm, and by adding the firm's assignee for the benefit of creditors as a party, and by claiming an account.

Held, that the amendment should have been granted upon proper terms as to costs.

DuVernet, for plaintiff. *Delamere*, C.C., for defendant Boyd. *H. S. Osler* for defendant Cooper.

COUNTY COURTS.

COUNTY OF YORK.

O'BRIEN v. TORONTO.

Municipal corporation—Negligence—Icy sidewalks—55 Vict., c. 42, s. 531—57 Vict., c. 50, s. 13—Granolithic pavement.

Held, that a municipal corporation has the right to select such material for sidewalks as in its discretion may think best, so long as it is a material which is generally used or adaptable for the purposes required, and the corporation is not liable for damages which may result, merely because such pavement becomes at any time so affected by natural causes, over which the corporation has no control, that more than ordinary caution is required by the public using such sidewalk to prevent accidents.

[TORONTO, 1897, MORGAN, J.J.]

This was an action brought against the City of Toronto, for damages sustained by the plaintiff through the alleged negligence of the defendants.

The plaintiff while walking along a sidewalk in the City of Toronto slipped and fell violently, seriously injuring herself. It appeared that the sidewalk in question was a granolithic pavement, and had been in a slippery condition since the inception of the winter, that at the time of the accident it was covered with thin slippery ice, that the walk had been so covered for some five days prior to the accident.

At the close of the plaintiff's case the defendants moved for a non-suit.

A. Mills, for plaintiff.

J. S. Fullerton, Q.C., and *H. L. Drayton*, for defendants.

MORGAN, J.J.: I have felt for a long time the difficulty that must come up and must eventually be decided with respect to the icy and dangerous condition of foot pavements. The city is not bound to construct a foot pavement of any description, either wooden or otherwise. If in the absence