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BOYD, C.

MAY 7TH, 1907.

TRIAL.

LYNN v. CITY OF HAMILTON.

Highway—Non-repair—Injury to Pedestrian by Fall on Sidewalk—Dangerous Condition by Reason of Snow and Ice—Evidence as to Period of Condition—Rapid Climatic Changes—Liability of Municipal Corporations—Gross Negligence.

Action by Eleanor Lynn to recover \$1,000 damages for personal injuries sustained by her on 24th December, 1906, by a fall upon a sidewalk on a street in the city of Hamilton, which, she alleged, was out of repair and unsafe, owing to the negligence of defendants in not removing or causing to be removed therefrom large quantities of ice which had accumulated thereon.

The defendants denied negligence and set up that notice in writing of the alleged accident and the cause thereof was not served upon them within 7 days after the accident, and relied upon the Municipal Act, 1903, sec. 606, sub-sec. 3.

M. J. O'Reilly, Hamilton, for plaintiff.

F. R. Waddell, Hamilton, for defendants.

BOYD, C:—I do not think there can be a recovery in this case, even apart from the question of notice. I think it would be very unsafe, having regard to the terms of the statute—"gross negligence"—to hold the city corporation liable in a case of this sort, where the evidence is of so conflicting a character. I think plaintiff's witnesses have exaggerated the depth of the snow, and some of the others