

Canada Law Journal.

VOL. XXXIV.

MARCH 1, 1898.

NO. 5.

We publish in another place (p. 165) an interesting judgment by His Honor Judge Morgan, Junior Judge of the County Court of York, as to the liability of a municipal corporation for damages resulting from ice on sidewalks. The same learned Judge has since given a judgment in the case of *Duhig v. City of Toronto*, on a somewhat similar point. In this case a sidewalk known as the Bryce pavement, which it was alleged was of a soft and spongy character, became out of repair in patches, which were mended by filling the decayed places with granolithic pavement, which is exceedingly hard and becomes very slippery in the winter time under certain conditions of atmosphere and temperature. There was no want of care in the mode of reparation of the sidewalk. The plaintiff slipped on one of the hard patches, and suffered injury, and brought an action against the city for negligence. On behalf of the corporation it was urged that there was neither negligence nor want of repair, and that the plaintiff's claim was in effect that the judge should adjudicate upon whether or not the material used was under the circumstances proper for the purpose, it being contended that this was a matter of sound discretion to be exercised by the corporation, and was in fact reasonably exercised.

The learned judge held that although the patching might be dangerous in bringing in juxtaposition materials differently affected by the weather, the reparation had been properly done, and would under ordinary circumstances prove satisfactory, that the pavement only became dangerous under conditions over which the corporation had no control, the evidence showing that there were days in winter when it was safe, and other days when it was not quite safe. He held that the corporation in repairing the sidewalk was not bound to do