

1926

*Nov. 17.
*Dec. 1.

THOMAS HOLLAND (PLAINTIFF) APPELLANT;

AND

THE CORPORATION OF THE CITY }
OF TORONTO (DEFENDANT) } RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME
COURT OF ONTARIO

*Negligence—Municipal corporation—Highway—Icy condition of sidewalk
—Injury to pedestrian—Liability of municipality—"Gross negligence"
—Consolidated Municipal Act, 1922, Ont., c. 72, s. 460 (3)—Reversal
of concurrent findings of fact.*

APPEAL from the judgment of the Appellate Division of the Supreme Court of Ontario (2) affirming judgment of Mowat J. dismissing the plaintiff's action to recover damages from the defendant city for personal injury sustained in a fall on an alleged icy sidewalk on Doel Avenue in the city of Toronto.

The main question involved was whether, on the evidence, there was "gross negligence" within s. 460 (3) of *The Consolidated Municipal Act, 1922*, c. 72, for which the city was responsible.

*PRESENT:—Anglin C.J.C. and Duff, Mignault, Newcombe and Rinfret JJ.

The judgment of the Supreme Court of Canada, delivered (on 1st December, 1926) by the Chief Justice, after referring to an apparent misapprehension in the minds of the majority of the judges of the Appellate Division as to the basis (with regard to credibility of evidence) of the judgment of Mowat J., and pointing out that in view thereof there is not presented the formidable obstacle to the success of the present appeal which usually arises from concurrent adverse findings on a question of fact, discusses the factors to be considered in determining whether the fault (if any) attributable to a municipal corporation is so much more than merely ordinary neglect that it should be held to be very great or "gross" negligence, within s. 460 (3), reviews the evidence in the case, and concludes that there is established "gross negligence" of defendant city's sectionman in not taking steps for the remedying of the condition of the sidewalk, which the judgment finds to have been highly dangerous.

1926
HOLLAND
v.
CITY OF
TORONTO.

The judgment of the Supreme Court of Canada is reported in full in 59 Ont. L.R. 628, at pp. 631-637.

Appeal allowed with costs.

Gideon Grant K.C. for the appellant.

G. H. Kilmer K.C. and *W. G. Angus* for the respondent.
