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Ice and Snow Covered Sidewalks - The Test for Liability

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ICE AND SNOW COVERED SIDEWALKS—THE TEST FOR LIABILITY

Snow has been falling all day alternately melting and freezing. Landowner *A* looks at his sidewalk. He sees a gleaming smooth sheet of ice. He thinks, "*I* better get this cleaned off; if someone falls I could be sued." No, *A*. Don't worry about being sued. As long as the ice on your sidewalk remains perfectly smooth you have no duty to any hapless pedestrian who might *slip* and break a leg.

But if across the street on *B's* sidewalk children have been pulling sleds, churning up the snow so that it has frozen into hills and ridges, *B* should not linger an unreasonable length of time before wielding his shovel, or he may find himself being sued should some pedestrian *trip* over a ridge of ice on his sidewalk. Such is the result of the law in Pennsylvania. As said by Mr. Chief Justice Kephart in *Whitton v. H. A. Gable Company*:[1]

> "There is no liability created by a general slippery condition on sidewalks. It must appear that there were dangerous conditions due to ridges or elevations which were allowed to remain for an unreasonable length of time."

Again this doctrine was reiterated in the latest case of date.[2] In this case, in the lower court, the plaintiff testified that she had tripped over ridges of ice that were at least two and one half inches in height while trying to avoid the "slippery parts." The judge charged the jury as follows: "If the ice and snow exist such a reasonable length of time to become a menace and you have actual knowledge of its existence which you must if it is on your pavement, you are responsible." The plaintiff recovered.

On appeal, *inter alia,* the charge was assigned as error. The defendants contended that the charge of the court was to the effect that the menace or the dangerous condition of the sidewalk and the defendant's liability arose simultaneously. This contention was upheld. The court reversed and awarded a new trial but corrected the lower court's charge not only as to how long the menace must exist before liability, but also defined the menace. In the words of the court: "It must appear that there were dangerous conditions due to *ridges or elevations* which were allowed to remain for an unreasonable length of time."

Just what the law requires in "hills and ridges" is not clear. There appears to be no limit on height, but as indicated in *Davis v. Klienman*[3] if the pedestrian saw the ridges and walked into them, he could be contributorily negligent. Thus, the higher the elevations are, the easier to see. On the other hand, as said in *Bailey v. Oil City*:[4] "The mere uneven surface caused by walking on snow and ice

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1 331 Pa. 422, 200 A.2d 49 (1938).
2 Davis v. Klienman, 162 Pa. Super. 82, 56 A.2d 316 (1948).
3 162 Pa. Super. 82, 56 A.2d 316 (1948).
4 305 Pa. 330, 157 A. 681 (1931).

as it freezes does not constitute such an obstruction as the law condemns." This line of cases is entertaining reading, evidencing the imaginative minds of plaintiffs who describe ice on sidewalks in such colorful terms as "like a dishpan turned upside down"[5] or "like a washboard."[6] There is not a snow or ice case in which there is not some reference in a witness's testimony to hills and ridges varying in length, width, and height from veritable hurdles to insignificant depressions.

How did the law develop to such a point that the liability of a landowner, or a municipality, depends on the physical condition of the accumulations of ice and snow on a sidewalk?

In Pennsylvania there is a duty on the possessor of land over which there is a sidewalk to maintain that sidewalk in a reasonably safe condition for travel.[7] While there is also the same duty on the municipality, it is the primary duty of property owners to keep in proper condition the sidewalks in front of their respective properties.[8] Thus, in a suit for injuries resulting from a dangerous condition of a sidewalk the plaintiff can sue either the municipality or the landowner. If the plaintiff should recover from the municipality, the municipality has an action over against the landowner. Therefore, the latter is the one most concerned with when the duty to maintain his sidewalk in a safe condition arises, and if his duty extends to the removal of snow and ice from his pavement.

The general rule is that there is no absolute duty on the part of a landowner to keep his premises and sidewalks free from ice and snow at all times.[9] However, he does have the duty to maintain his sidewalks in a reasonably safe condition for travel, but he breaches that duty by failing to remove snow and ice in only two limited situations: first, where the slippery condition on his sidewalk has been due to his antecedent negligence, such as a broken hydrant,[10] or the stoppage of a drain;[11] second, where injuries result from a fall on ridges or hills of ice or snow.[12]

The purpose of this note is to point out that there is no justification for such an arbitrary rule of law as that defining a dangerous condition of an icy sidewalk as one on which the ice has accumulated in hills and ridges.

The origin of this rule was in the case of *McLaughlin v. City of Corry*[13] in 1875. In that case the lower court decided as a matter of law, by taking the case from the jury, that evidence of accumulations of ice and snow were not sufficient to maintain an action of negligence against the city. On appeal, the Supreme

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5 276 Pa. 310, 120 A. 131 (1923).
6 276 Pa. 310, 120 A. 131 (1923).
7 192 Pa. 137, 43 A. 597 (1899); 296 Pa. 126, 145 A. 706 (1929).
8 192 Pa. 137, 43 A. 597 (1899).
9 305 Pa. 330, 157 A. 681 (1931).
10 151 Pa. 241, 25 A. 36.
11 178 Pa. 276, 35 A. 959.
12 305 Pa. 330, 157 A. 681 (1931).
13 77 Pa. 109 (1874).

Court reversed and held that whether "through the default of the officers of the City of Corry, the ice and snow had been permitted to accumulate upon the sidewalk in question in such a manner as to be dangerous to foot passengers was a question for the jury, and as such the court should have submitted it." The court then added, "a municipality cannot prevent the general slipperiness of its streets caused by the recent precipitation of ice and snow during the winter, but it can prevent such accumulations thereof in the shape of ridges and hills as to render their passage dangerous."

Following this case, in *Borough of Mauch Chunk v. Kline*,[14] the plaintiff admitted that there was no high ridge or mound of snow or ice, but testified that he had slipped on a surface which was icy and very slippery and which had been allowed to remain in that condition for a month or six weeks. The plaintiff recovered. In reversing, Mr. Chief Justice Sharswood said: "The plaintiff must satisfy them (the jury) that there was an obstacle other than the mere slippery condition and smoothness of the surface that made the passage over the crossing where he fell dangerous," citing *McLaughlin v. City of Corry*.

Since this case the courts have accepted the "hills and ridges" doctrine as the test for the dangerous condition that must exist as a matter of law before liability can arise, and with the exception of antecedent negligence, have permitted no other factual situation to go to the jury. In one case, *Holbert v. Philadelphia*,[15] Mr. Justice Mestrezat attempted to broaden the rule by way of dicta but unsuccessfully. As stated in that case:

> "It is the duty of a municipality to keep its streets including its sidewalks in a reasonably safe condition . . . A sidewalk may be made defective or dangerous by the accumulation of ice or snow . . . The municipality, however, is not responsible unless the defective condition of the walk is due to its negligence. The liability for injuries resulting from the accumulation of ice on a pavement is not confined to cases where the accumulation has resulted in hills or ridges . . . The accumulation of ice *may* cause a pavement to be dangerous and convict the city of negligence, but the city is equally responsible if the sidewalk is made dangerous to public travel by reason of any accumulation of ice and snow caused by the negligence of the city."

But to remove any doubts as to what facts will be submitted to the jury on the question of negligence, the case of *Bailey v. Oil City*[16] is conclusive authority. The Supreme Court affirmed the refusal of the lower court to take off a compulsory non-suit where the plaintiff's only proof of negligence was that the defendants neglected to clean the sidewalk and keep it clear of ice and snow and negligently permitted snow and ice to accumulate on the sidewalk, thereby rendering the sidewalk slippery and dangerous as a public thoroughfare. The court said

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[14] 100 Pa. 119 (1882).
[15] 221 Pa. 266, 70 A. 746 (1908).
[16] 305 Pa. 330, 157 A. 681 (1931).

that "the proof failed to show any material ridge of ice" and that a city "is liable for a fall only on a ridge of ice or snow."

No review of the most frequently cited cases in this type of litigation would be complete without mention of the case of *Hulings v. Pittsburgh*.[17] This case most aptly illustrates the refinements to which this doctrine has been subjected. To quote: " 'And what caused you to fall?' She (the plaintiff) said: 'Well my feet slipped on the ice. I just fell right straight down on my back . . . After I fell I was reaching around . . . And I could feel large ridges and ruts . . .' If she fell on the smooth surface of ice on the sidewalk there can be no recovery and she does not say that a ridge of ice caused her to fall . . . The sensation of falling because of a ridge of ice is different from slipping on a smooth icy pavement and if the fall was caused by a ridge of ice she would have known it and so testified."

The practical result of this rule is that where there is no antecedent negligence, the plaintiff will have to establish by evidence the existence of snow and ice in hills and ridges to take his case to the jury. This doctrine, reiterated for seventy-five years in Pennsylvania courts, is an excellent example of the inflexibility and absurd consequences that can follow where negligence is established as a matter of law.

Undoubtedly the courts have tried to limit the responsibility for the removal of ice and snow. There can be no argument that it would be too great a burden to expect anyone, municipality or landowner, to be absolutely liable for injuries occurring because of the climatic conditions in Pennsylvania. Even in those cases where statutes have been passed requiring the removal of ice and snow it has been held[18] that such an ordinance was "obviously a penal ordinance enacted under the police power, and not one attempting to create a civil liability."

There can, however, be an argument with the manner in which the courts have limited the liability of landowners and municipalities. It is suggested that a more reasonable and logical solution to the problem could be developed. If the policy is to restrict liability because of the impossibility of maintaining icy sidewalks in a reasonably safe condition in the wintertime, a more realistic rule of law would be that there is no duty on a possessor of land to remove ice and snow. Or if the courts decide that there is a duty to keep ice and snow cleaned from a sidewalk so they are in a reasonably safe condition, the question should be submitted to the jury, whether reasonable care and diligence was used under all the circumstances considering the climatic conditions; not the test for liability that the law demands today: "Did the Plaintiff *trip* on a hill, or ridge of ice?"

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17 150 Pa. Super. 338, 28 A2d 359 (1942). This case has been cited with approval in the case of Miller v. City Ice & Fuel Co. 69 A.2d 140, — Pa. — (1949).

18 93 Pa. Super. 533 (1928).