

## Snow and Ice

John T. DeGraff

Follow this and additional works at: <http://scholarship.law.cornell.edu/clr>

 Part of the [Law Commons](#)

---

### Recommended Citation

John T. DeGraff, *Snow and Ice*, 21 Cornell L. Rev. 436 (1936)  
Available at: <http://scholarship.law.cornell.edu/clr/vol21/iss3/2>

This Article is brought to you for free and open access by the Journals at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Cornell Law Review by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact [jmp8@cornell.edu](mailto:jmp8@cornell.edu).

## SNOW AND ICE

### A Discussion of Liability Under the Laws of New York

JOHN T. DEGRAFF

Almost every lawyer is called upon at some time to determine the liability for an injury caused by a fall on an accumulation of snow or ice. In spite of the frequency of such accidents there are few fields in the law where the reported cases are more confusing and contradictory. There has been, strange to say, no comprehensive analysis of the law in the text books or law reviews.

The attorney who attempts to determine liability in any given case from a search of the reports is immediately confronted with a maze of apparent inconsistencies. Cases arising in Greater New York<sup>1</sup> cannot be relied upon as precedents in other sections of the State.<sup>2</sup> Some authorities indicate that there is no liability unless there are "mounds or ridges of unusual size",<sup>3</sup> while others impose liability though no mounds or ridges are present.<sup>4</sup> In one city an abutting property owner may be liable for injuries resulting from a fall on a sidewalk because of his failure to clean the sidewalk within the time required by a local ordinance,<sup>5</sup> while in another city failure to comply with a similar ordinance imposes no liability.<sup>6</sup> In some cases liability turns upon the question whether there has been an "interference with nature"<sup>7</sup> although in others this question is of no significance.<sup>8</sup>

Much of the confusion is caused by the tendency to consider all snow and ice cases in the same category and the failure to recognize

---

<sup>1</sup>Williams v. City of New York, 214 N. Y. 259, 108 N. E. 448 (1915).

<sup>2</sup>Mitchell v. Village of Dannemora, 178 App. Div. 239, 164 N. Y. Supp. 917 (3d Dept. 1917). VILLAGE LAW (1927) § 341-a; TOWN LAW (1934) § 130, subd. 4; SECOND CLASS CITIES LAW (1906) § 244.

<sup>3</sup>Dwyer v. Woollard, 205 App. Div. 546, 198 N. Y. Supp. 840 (3d Dept. 1923).

<sup>4</sup>Anthony v. Village of Glens Falls, 4 App. Div. 218, 41 N. Y. Supp. 1105 (3d Dept. 1896); Buck v. Village of Glens Falls, 4 App. Div. 323, 38 N. Y. Supp. 582 (3d Dept. 1896).

<sup>5</sup>City of Rochester v. Campbell, 123 N. Y. 405, 25 N. E. 937 (1890); Williams v. City of New York, 214 N. Y. 259, 108 N. E. 448 (1915); Jankowsky v. Brown, 177 App. Div. 602, 164 N. Y. Supp. 303 (1st Dept. 1917).

<sup>6</sup>Willis v. Parker, 225 N. Y. 159, 120 N. E. 810 (1919).

<sup>7</sup>City of Rochester v. Campbell, 123 N. Y. 405, 25 N. E. 937 (1890).

<sup>8</sup>Tremblay v. Harmony Mills, 171 N. Y. 598, 64 N. E. 501 (1902); Crounse v. Sager, 224 App. Div. 10 229 N. Y. Supp. 451 (3d Dept. 1928); Parsons v. Great Atlantic & Pacific Tea Co., 233 App. Div. 195, 251 N. Y. Supp. 360 (4th Dept. 1931).

<sup>9</sup>Gaffney v. City of New York, 218 N. Y. 225, 112 N. E. 725 (1916); Rankin v. Ittner Realty Co. Inc., 242 N. Y. 339, 151 N. E. 641 (1926).

that such cases are of at least three distinct types. They may be conveniently classified as follows:

- (1) Actions against municipalities for injuries on sidewalks.<sup>8a</sup>
- (2) Actions against abutting owners for injuries on sidewalks.
- (3) Actions against property owners for injuries on their premises.

Since actions in one of the above classes are frequently confused with precedents referring to a different class, it is essential to consider the fundamental principles of law underlying each type of action.

### I. ACTIONS AGAINST MUNICIPALITIES FOR INJURIES ON SIDEWALKS

The primary obligation to maintain sidewalks in a reasonably safe condition is upon the municipality. The measure of its duty is "reasonable care".<sup>9</sup> The nature of the duty is explained in *Taylor v. City of Yonkers*,<sup>9a</sup> where the Court said:

"It often happens that in a single day or night, every street and sidewalk in a city or village is covered with a heavy fall of snow. It is not expected and cannot be required that the corporation shall itself forthwith employ laborers to clean all the walks, and so accomplish the object by a slow and expensive process, when the result may be effected more swiftly and easily by imposing that

---

<sup>8a</sup>"Sidewalk", as used in the discussion, refers to walks used by the public as distinguished from walks on private property. Although the word "sidewalk" is often used loosely to refer to all walks, public as well as private, it is defined by Webster as "a walk for foot passengers at the side of a street or road".

<sup>9</sup>*Walsh v. City of Buffalo*, 17 App. Div., 112, 44 N. Y. Supp. 942 (4th Dept. 1897); *Van Dyne v. Village of Seneca Falls*, 227 App. Div. 140, 237 N. Y. Supp. 355 (4th Dept. 1929); *Collins v. City of New York*, 185 App. Div. 586, 173 N. Y. Supp. 451 (2d Dept. 1918); *Klaus v. City of Buffalo*, 86 App. Div. 221, 83 N. Y. Supp. 620 (4th Dept. 1903); *Penor v. City of Glens Falls*, 138 App. Div. 671, 22 N. Y. Supp. 1072 (3d Dept. 1910); *Mitton v. City of Syracuse*, 172 App. Div. 39, 158 N. Y. Supp. 470 (4th Dept. 1916); *Keane v. Waterford*, 130 N. Y. 188, 29 N. E. 130 (1891); *Bishop v. Goshen*, 120 N. Y. 337, 24 N. E. 720 (1890); *Powers v. Moravia*, 123 App. Div. 191, 108 N. Y. Supp. 159 (4th Dept. 1908); *Morris v. Saratoga Springs*, 55 App. Div. 263, 66 N. Y. Supp. 821 (3d Dept. 1900); *Thompson v. Saratoga Springs*, 22 App. Div. 186, 217 N. Y. Supp. 1032 (3d Dept. 1892); *Berger v. New York*, 65 App. Div. 394, 73 N. Y. Supp. 74 (1st Dept. 1901); *O'Hara v. Brooklyn*, 57 App. Div. 176, 68 N. Y. Supp. 210 (2d Dept. 1901); *Deufel v. Long Island City*, 19 App. Div. 620, 46 N. Y. Supp. 355 (2d Dept. 1897); *Stone v. Poughkeepsie*, 15 App. Div. 582, 44 N. Y. Supp. 609 (4th Dept. 1897); *Conklin v. Elmira*, 11 App. Div. 402, 42 N. Y. Supp. 518 (2d Dept. 1897); *Hawley v. Gloversville*, 4 App. Div. 343, 42 N. Y. Supp. 518 (3d Dept. 1896); *Stapleton v. Newburgh*, 9 App. Div. 39, 41 N. Y. Supp. 96 (2d Dept. 1896). This obligation, of course, includes the highway itself as well as the sidewalks. *RESTATEMENT, TORTS* (1934) §349. <sup>9a</sup>105 N. Y. 202 (1887).

duty upon the citizens. Each can promptly and without unreasonable burden clean the snow from his own premises, and the authorities may justly and lawfully require that to be done under the jurisdiction conferred by their charters. But though the municipality makes the necessary regulation it is not thereby relieved from responsibility. The duty remains, and it must, therefore, see to it that its ordinance is obeyed. It is entitled, however, to a reasonable time within which to perform the duty in the manner permitted, and is not guilty of negligence, if, observing that the work is being generally done, it awaits for a reasonable period the action of the citizens. But when such reasonable time has been given, the corporation must compel the adjoining owners or occupants to act, or do the work itself, and if it suffers the obstruction to remain thereafter, with notice, actual or constructive, of its existence, it may become responsible for injuries resulting."

A concise summary of the principles of law applicable to actions against municipal corporations may be found in *City of Rochester v. Campbell*.<sup>10</sup> The obligation imposed at common law has also found expression in the statutes.<sup>11</sup>

---

<sup>10</sup>123 N. Y. 405, 410 (1890): "The principles governing actions of this general character have been the subject of frequent consideration in the courts of this and other states, as well as the federal tribunals; and certain propositions may safely be assumed, in the further consideration of the case, as being too well settled to require argument or citation to support them. Among these are the following: (1) That municipal corporations in this state are charged with the care, custody and control of the streets and highways within their limits, and the duty, primarily, rests upon them to keep such streets and highways in repair, so that they may be safely traveled upon by all having occasion to use them, and this duty is based upon the contract implied through the acceptance of a charter by such corporation from the state, devolving upon them the performance of its duties. (*Conrad v. Village of Ithaca*, 16 N. Y., 158; *Saulsbury v. Village of Ithaca*, 94 *id.* 27). (2) That such corporations are liable for damages arising from a neglect to perform this duty, in an action *ex delicto*, to persons lawfully using such streets and sidewalks, notwithstanding a duty to repair is also imposed upon the property owners in front of whose premises the injury occurred. (*Russell v. Village of Canastota*, 98 N. Y. 496; *State v. Gorham*, 37 Me. 457; *Gridley v. Bloomington*, 88 Ill. 554; *Robbins v. City of Chicago*, 4 Wall, 657; *Saulsbury v. Village of Ithaca*, 94 N. Y. 27). (3) If a municipal corporation has been compelled to pay a judgment for damages recovered by a traveler for injuries sustained from a defect or obstruction in one of its highways, which defect or obstruction was created by the wilful act or negligence of a third person, it may maintain an action against such third person for reimbursement, and the rule is the same when it has paid an undoubted liability without suit. THOMPSON, NEGLIGENCE, 789; *City of Rochester v. Montgomery*, 72 N. Y. 65; *Village of Fulton v. Tucker*, 3 Hun, 529. (4) So, also, if the municipality has provided by contract with third persons for keeping its street in repair, and has been, through a neglect by such party to perform his contract, subjected to damages at the suit of an injured party, it may recover from such party the sum which it has thus been compelled to pay. (5) The measure of damages in such cases is the loss sustained by the injured party, and paid by the municipality with such incidental expenses as may have been incurred in defending the action. THOMPSON, NEGLIGENCE, 791; *City of Brooklyn v. Brooklyn City R. R. Co.*, 47 N. Y. 476). (6) That no obligation to repair streets or sidewalks rests upon the lot owners at common law, but the duty to do so, if any arises out of the statutory obligations imposed by the state or municipality upon them. *Village of Fulton v.*

A municipality may require abutting owners to remove snow and ice from sidewalks within a reasonable time and it has been held that a village or city ordinance, making it unlawful for abutting owners to allow snow and ice to collect and remain on the sidewalk so as to impede and render dangerous public travel thereon, and prescribing a penalty therefor, is a proper exercise of the police power.<sup>12</sup> The following is typical of ordinances that have been enacted generally by cities and villages throughout the State:

*"It shall not be lawful for any owner, occupant, tenant, or any person having the charge or control of any premises, lot, tenement, or manufacturing establishment, situated within the village of Carthage, to suffer or permit any snow, ice, or other substance, to collect and remain on any sidewalk fronting on or belonging to said premises so as to impede, obstruct, or render dangerous, public travel upon such walks later than 10 o'clock in the forenoon of any day after the same shall have fallen or collected thereon, or for more than two hours after being notified by the president or any of the trustees of said village to remove the same. Any person or persons offending against the provisions of this act shall be liable to pay a fine of not less than one dollar and not to exceed*

---

Tucker, 3 Hun, 529; DILLON, MUNICIPAL CORPORATIONS, § 1012. (7) When a corporation is sued for damages arising out of defects and obstructions in its streets and highways, created and continued by third persons, against whom the corporation has a cause of action for reimbursement, it may impose the burden of defending such actions upon such persons by notice, and in case they do not defend successfully, or neglect to make any defense, they are bound by the result of such suit, and cannot in any subsequent litigation between themselves and the corporation successfully dispute the material facts on which the adjudication rests. City of Rochester v. Montgomery, 72 N. Y. 65; Village of Port Jervis v. First Nat. Bank of Port Jervis, 96 *id.* 550."

<sup>12</sup>SECOND CLASS CITIES LAW (1906) §§ 91, 92. § 92 is typical:

"The commissioner of public works shall have full power and authority to require the owner of property abutting upon a street to repair any sidewalk in front thereof or bring the same to true grade, and to remove the snow and ice therefrom. \* \* \* or where the owner of any such premises shall fail or neglect to remove snow and ice from any such sidewalk after the same has remained thereon for more than twelve hours, and the commissioner shall have repaired such sidewalk or brought the same to grade or removed the ice or snow therefrom, a bill for the expenses incurred thereby shall be presented to the owner personally, or by leaving the same at his residence, or, if he be a non-resident, by mailing the same to him at his last known place of residence, or if the name of such owner or his place of residence can not be ascertained after due diligence, by posting the same in a conspicuous place on the premises; and, if he shall fail to pay the same within ten days thereafter, the commissioner shall file each year immediately preceding the time for making the annual assessment-roll his certificate of the actual cost of the work, together with a statement as to the property in front of which the repairing or grading or cleaning was done, with the assessors of the city, who shall, in the preparation of the next assessment-roll of general city taxes, assess such amount upon such property, and the same shall be levied, corrected, enforced and collected in the same manner, by the same proceedings, at the same time, under the same penalties and having the same lien upon the property assessed as the general city tax and as a part thereof."

See also VILLAGE LAW (1897) §§ 141, 163; TOWN LAW (1934) § 130, subd. 4.

<sup>13</sup>Village of Carthage v. Frederick, 122 N. Y. 268, 25 N. E. 480 (1890).

*ten dollars for each and every offense, to be sued for and collected the same as other penalties, with costs of suit.*"<sup>13</sup> [Italics the author's.]

The delegation of responsibility by ordinance does not however, relieve the city from its primary obligation. Although a municipality may await, for a reasonable period, the action of its citizens, it must see that the ordinance is obeyed within a reasonable time or do the work itself.<sup>14</sup> If the city has actual or constructive notice of the existence of a dangerous condition, and fails to remedy it within a reasonable time, the city is liable, in spite of the fact that it has imposed an ordinance requiring the abutting owner to correct the condition.<sup>15</sup>

The hardship in requiring a municipality, particularly small communities in the northern part of the state, to assume responsibility for the condition of several miles of sidewalks within its limits has long been recognized.<sup>16</sup> The onerous duty imposed upon smaller munici-

<sup>13</sup>The ordinance quoted is a municipal ordinance of the Village of Carthage, § 29. In upholding this ordinance, the court said in *Village of Carthage v. Fredrick*, 122 N. Y. 268, 277, 25 N. E. 480, 482 (1890) :

"In this latitude the accumulation of snow upon sidewalks in large quantities is a matter of course. Its presence retards travel, interrupts business and interferes with the safety and convenience of all classes. It is a frequent cause of accidents and thus affects the property of every person who is liable to assessment to pay the damages caused by a failure to remove it. But how is it possible for the authorities of a large city, with many hundred miles of streets, to remove the snow in time to prevent injury to those who have the right to travel upon the sidewalks unless they can require the owners and occupants of adjacent property to remove it? Every man can conveniently and promptly attend to that which is in front of his door, and it is both reasonable and necessary that he should be compelled to do so. We think that the ordinance under consideration is valid, that it conflicts with no provision of the Constitution, and that it is the duty of the courts to enforce it."

<sup>14</sup>*Taylor v. City of Yonkers*, 105 N. Y. 202, 11 N. E. 642 (1887) ; *Harrington v. City of Buffalo*, 121 N. Y. 147, 24 N. E. 186 (1890).

<sup>15</sup>*Taylor v. City of Yonkers*, 105 N. Y. 202, 11 N. E. 642 (1887) ; *Harrington v. City of Buffalo*, 121 N. Y. 147, 24 N. E. 186 (1890) ; *Gaffney v. City of New York*, 218 N. Y. 225, 112 N. E. 725 (1916) ; *Johnson v. City of Buffalo*, 178 App. Div. 295, 165 N. Y. Supp. 372 (4th Dept. 1917).

<sup>16</sup>In *Mitchell v. Village of Dannemora*, 178 App. Div. 239, 164 N. Y. Supp. 917 (3d Dept. 1917) the court said :

"The left-hand walk, upon which the accident occurred, had been shoveled after every storm ; it was a cement walk, about six feet wide, and was shoveled the width of the walk to the gutter, so that water could run off. During a snow-storm, or if it took place in the night, before the men could shovel it in the morning, the snow became packed down by travelers, with the result that when the men came to remove the snow with iron shovels, they could not remove it all down to the cement, but there was hard snow and ice accumulated upon the walk to a depth of from two to five inches, which snow and ice had been accumulating during the winter so the center of the walk was higher than at the edges, forming a ridge, the center being two to three inches higher than at the edges of the walk. On some streets in the village the walks were not shoveled at all, and apparently this walk was the best kept walk in the village, as it furnished the

palties by the common law rule has been removed by statute. The Second Class Cities Law, section 244, now provides:

"But no such action shall be maintained for damages or injuries to the person sustained solely in consequence of the existence of snow or ice upon any sidewalk, crosswalk or street, unless *written notice thereof*, relating to the *particular place*, was actually given to the commissioner of public works and there was a *failure or neglect to cause such snow or ice to be removed*, or the place otherwise made reasonably safe *within a reasonable time after the receipt of such notice*." (Italics the author's.)

In 1927, an identical provision was enacted in section 341-a of the Village Law.

The strict prohibition of these statutes has been, to some extent, liberalized by judicial construction. The courts have drawn a distinction between cases where the dangerous condition was *created by the municipality* and cases where the dangerous condition was caused by agencies for which the municipality was not responsible.<sup>17</sup> It has been

principal communication between the State buildings and the railroad.

"I think it is a recognized fact, in the northern part of the State, that during the winter a cement sidewalk is safer with the snow upon it than if kept clear of snow. It is also a known fact that it is difficult to prevent a ridge through the center of a cement walk, caused by the snow being packed down by travelers and the difficulty of removing the snow down to the cement. It is also a matter of common experience in the villages and the small cities in the northern part of the State, that many days during the winter pedestrians find it safer to walk in the center of the street than upon the sidewalks to avoid the icy conditions of the walk.

"This little village did not guarantee the safety of its walks or indemnify the people traveling upon them, and was not responsible for the severity of the winter or the climate. I think the evidence indicates that this street was as well kept as streets in villages of its size in the same general locality. The same rule of liability cannot be applied to a small municipality in the northern part of the State, during the severe winter weather, and to large cities in the southern part of the State. \* \* \*

"Undoubtedly the walk was more or less dangerous; but the village walks in the northeru part of the State are usually more or less dangerous in winter weather. We cannot say, however, that it was 'unusual or exceptional; that is to say, different in character from conditions ordinarily and generally brought about by the winter weather prevalent in the given locality.'"

<sup>17</sup>Root v. City of Saratoga Springs, 218 App. Div. 237, 218 N. Y. Supp. 204 (3d Dept. 1926) where the court said: "In the application of this statute a distinction exists between cases where the dangerous condition was created by the city and cases where the dangerous condition was caused by agencies for which the city was not originally responsible. This distinction was clearly pointed out by this court in Jones v. City of Binghamton (198 App. Div. 193). In the latter class of cases the statutory notice must be alleged and proved." Taylor v. City of Albany, 239 App. Div. 217, 267 N. Y. Supp. 903 (3d Dept. 1934), *aff'd*, 264 N. Y. 539, 191 N. E. 554 (1934), where the court said: "The city, jointly with the railroad company, created this dangerous condition, and is presumed to know of its own negligent acts. Written notice was unnecessary." See also: Twist v. City of Rochester, 37 App. Div. 307, 55 N. Y. Supp. 850 (4th Dept. 1899); Wrighter v. Adams Stores, Inc., 232 App. Div. 351, 250 N. Y. Supp. 98 (3d Dept. 1931); Khoury v. County of Saratoga, 267 N. Y. 384, 196 N. E. 299 (1935).

held that when the city or its agencies created the dangerous condition, liability may be imposed without serving the written notice required by the above statutes. In all other cases, however, the statute effectively relieves the municipality from liability, for rare is the person who serves upon the authorities a *written* notice of the particular place at which he expects to be injured.

There is, apparently, no similar statute affecting Greater New York where the common law rule still prevails. In Greater New York no written notice is required and liability is imposed if the city has actual or constructive notice of a dangerous condition of its sidewalks and fails to remedy it within a reasonable time.<sup>18</sup>

The leading case with reference to liability for snow and ice in Greater New York is *Williams v. City of New York*,<sup>18a</sup> where the court reviews a large number of reported cases and reconciles conflicting decisions in the First and Second Departments. In that case "the sidewalk was all covered with snow and hard ice, packed down and about two inches thick. The snow and ice had been there during five or six days before the accident. The last snow storm previous thereto occurred five or six days before and was quite a heavy one. None of the snow was removed after that snow storm and before the accident. The condition of the ice was rough where people had packed down the snow, and ice had formed on top of it. There had been flurries of snow and rain—little flurries—about two days before the accident." The court held that these facts showed *prima facie* (1) a dangerous and unusual condition of the street, and (2) the lapse of sufficient time to charge the city with constructive notice of that condition.

There are a number of old cases which have held that a municipality has no obligation to remove snow and ice unless ridges or mounds of unusual size are present.<sup>19</sup> This doctrine has found more recent expression,<sup>20</sup> although it is not supported by the weight of authority. In

<sup>18</sup>*Guttentag v. City of New York*, 154 Misc. 653, 278 N. Y. Supp. 652 (N. Y. City Ct. 1935); *Buttmi v. City of New York*, 141 Misc. 894, 254 N. Y. Supp. 282 (N. Y. City Ct. 1931). <sup>18a</sup>214 N. Y. 259 (1914).

<sup>19</sup>*Buck v. Village of Glens Falls*, 4 App. Div. 323, 38 N. Y. Supp. 582 (3d Dept. 1896); *Anthony v. Village of Glens Falls*, 4 App. Div. 218, 41 N. Y. Supp. 1105 (3d Dept. 1896). In the latter case the court said:

"We think the principle may be deemed established by the authorities that a municipal corporation is not liable for an injury resulting from a smooth coating of ice on its sidewalks during the winter season where there is no ridge, unevenness or unusual condition of the walk \* \* \* ." [Italics the author's]

<sup>20</sup>*Dwyer v. Woollard*, 205 App. Div. 546, 199 N. Y. Supp. 840 (3d Dept. 1923), where the court said:

"Municipalities are not required to remove ice which forms from melting snow, except where ridges or mounds of unusual size are found. (*Anthony v. Village of Glens Falls*, 4 App. Div. 218.) In our case it was not proven that the ice upon which the plaintiff slipped was other than a level sheet without bumps or ridges."



the cases where the absence of mounds or ridges has been held to be a controlling factor it will be observed that the plaintiff fell on a *thin coat of glare ice*. The sidewalk in each case had been *completely cleared of snow* and the ice was caused by rain or melting snow which, in freezing weather, had formed small patches of thin ice on the sidewalk. While such decisions are doubtless correct with reference to the final disposition of the cases before the court, it would seem that the reasoning is subject to criticism insofar as it states that there is no liability unless mounds or ridges of unusual size are present. Such a rule is devoid of relationship to normal standards of conduct and is too artificial to be perpetuated. Snow or ice of the condition described in the *Williams* case is as dangerous to the public as snow which has formed in mounds or ridges, and there is no practical basis in law or fact for any doctrine that snow and ice is dangerous only when it exists in the form of mounds or ridges.

A more plausible reason for denying liability under like circumstances is laid down by the court in *Taylor v. City of Yonkers*:<sup>20a</sup>

“When the streets have been wholly or partially cleaned it often happens that a fall of rain or the melting of adjoining snow is suddenly followed by severe cold, which covers everything with a film or layer of ice and makes the walks slippery and dangerous. This frozen surface it is practically impossible to remove until a thaw comes which remedies the evil. The municipality is not negligent for awaiting that result. It may and should require householders, when the danger is great, to sprinkle upon the surface ashes or sand or the like, as a measure of prudence and precaution, but is not responsible for their omission. It is no more bound to put upon the ice, which it cannot reasonably remove, such foreign material than to cover it with boards. The emergency is one which is common to every street in the village or city, and which the corporation is powerless to combat. Usually it lasts but a few days, and the corporate authorities may await without negligence a change of temperature which will remove the danger.”

The older cases referred to<sup>20b</sup> reach the same conclusion expressed by the court in the *Taylor* case, but the reasoning of the opinions is subject to misinterpretation insofar as it predicates liability upon the presence or absence of ridges or mounds of unusual size. It will be observed that liability was imposed in the *Williams* case<sup>21</sup> although no mounds or ridges were present, and later cases to the same effect indicate rather conclusively that the presence or absence of mounds or ridges is not a controlling factor on the question of liability.

---

<sup>20a</sup>105 N. Y. 202, 206 (1887).

<sup>20b</sup>*Supra* note 19.

<sup>21</sup>*Williams v. City of New York*, 214 N. Y. 259, 108 N. E. 448 (1915).

## II. ACTIONS AGAINST ABUTTING OWNERS FOR INJURIES ON SIDEWALKS

At common law there was no duty on the part of an abutting owner to repair the sidewalk in front of his premises or to remove snow and ice therefrom.<sup>22</sup> In almost every town and municipality, however, the statute provides that abutting owners shall remove snow and ice from the sidewalks in front of their premises within a certain specified time.<sup>23</sup> Ordinances enacted by various cities, towns and villages throughout the state are in the nature of police regulations and provide a fine or penalty for violation thereof. A long line of cases has held that an abutting owner's neglect to remove snow and ice from the sidewalk as required by an ordinance does not render him liable to a party injured but simply subjects him to *the penalty provided for by the ordinance*.<sup>24</sup> The well-settled doctrine that liability for injuries resulting from a fall on a dangerous accumulation of snow and ice cannot be imposed on the abutting owner, who had violated an ordinance requiring him to remove the accumulation, seems somewhat at variance with the general rule that violation of an ordinance is "some evidence of negligence to be considered by the jury".<sup>25</sup> Nevertheless,

<sup>22</sup>*City of Rochester v. Campbell*, 123 N. Y. 405, 412, 414-416, 25 N. E. 937 (1890); *Krebs v. Heitmann*, 104 App. Div. 173, 189 N. Y. Supp. 954 (2d Dept. 1905).

<sup>23</sup>SECOND CLASS CITIES LAW (1906) § 92. TOWN LAW (1934 § 130, subd. 4. VILLAGE LAW (1897) § 163. See *supra* note 11.

<sup>24</sup>*Ryan v. City of Schenectady*, 91 Misc. 296, 154 N. Y. Supp. 890 (Sup. Ct. 1915); *Brotzman v. Lindenfeld*, 133 Misc. 832, 234 N. Y. Supp. 79 (1928); *Lee v. Ortiz*, 249 N. Y. 613, 164 N. E. 604 (1928); *DeCoursey v. Delapenha & Co.*, 169 App. Div. 551, 156 N. Y. Supp. 1120 (1st Dept. 1915).

In *City of Rochester v. Campbell*, 123 N. Y. 405, 25 N. E. 937 (1896), a person injured by falling on the sidewalk in front of the defendant's premises sought to recover damages from the abutting owner for his injuries. The court said:

"At the time of its passage [the ordinance] it was the duty of the city to remove snow and ice from the sidewalks of its streets, so as to render them safely passable. The city was then provided with the means and power to discharge that duty. In the exercise of that power it saw fit to provide by ordinance that the owners and occupants of premises abutting the sidewalks should either remove the snow and ice therefrom, or be charged with the cost of such removal if done by its own officers or employes, besides being subjected to a penalty for each neglect. The property owners were thereby made the agents of the city. \* \* \* Such being the nature of the duty required, and such being the character of the ordinance in question, we are of opinion the only liability resting upon the property owner is that which the ordinance itself imposes, viz., the prescribed fine or penalty for each neglect, and the cost of removal in every instance of his refusal or neglect. By enforcing these, every object the ordinance was intended to accomplish will be attained. The liability of the parties upon whom it operates extends no further, and against them an action like this cannot be maintained."

<sup>25</sup>*Carlock v. Westchester Lighting Co.*, 268 N. Y. 345, 197 N. E. 306 (1935). An interesting editorial entitled *Violation of Ordinance as Evidence of Negli-*

it is well established in snow and ice cases that violation of the usual type of ordinance does not give rise to liability on the part of the abutting owner.

An exception to this rule may be found in particular cities where the city charter imposes a duty on the abutting owner to remove snow and ice from the sidewalks and specifically provides that his failure to comply with this obligation *shall subject him to a suit for damages by any person injured thereby*. The charter of the City of Auburn for example, contains the following provision:

"The owner or occupant of lands fronting or abutting on any street, highway, traveled road, public lane, alley or square, shall make, maintain and repair the sidewalk adjoining his lands and shall keep such sidewalk and the gutter free and clear of and from snow, ice and all other obstructions. Such owner or occupant and each of them, *shall be liable for any injury or damage by reason of omission, failure or negligence to make, maintain or repair such sidewalk, or to remove snow, ice or other obstructions therefrom, or for a violation or non-observance of the ordinances relating to making, maintaining and repairing sidewalks and the removal of snow, ice and other obstructions from sidewalks, curbstones and gutters \* \* \**"<sup>25a</sup> [Italics the author's.]

A verdict against an abutting owner who had violated the foregoing provision of the Charter of the City of Auburn by failing to keep the sidewalk in front of his premises in repair was upheld.<sup>26</sup> The court distinguished the case from other cases in which the charter or ordinances imposed a duty to keep the sidewalk in good repair and to remove snow and ice therefrom, pointing out:

"The conclusion we have reached in this case is not in conflict with the decision made in the *Campbell* case.<sup>27</sup> The charter of the city of Rochester considered in the *Campbell* case imposed a duty upon the owner of a lot or piece of land in the city to keep the sidewalks in good repair and to remove and clear away snow and ice therefrom. While the duty was imposed as stated, the Rochester charter did not contain a provision like unto that contained in the charter of the city of Auburn, creating a liability upon the property owner for any injury or damage by reason of a failure to make such repairs and to maintain the sidewalk as therein provided."<sup>27a</sup>

The careful practitioner, therefore, must examine the provisions of the city charter before he can safely determine whether an action may

---

gence may be found in the N. Y. L. J. October 22, 23, 24, 1935. The subject is further discussed in the issues of Nov. 25 and Dec. 6, 1935.

<sup>25a</sup>L. 1879, c. 53, § 113, am. by L. 1897, c. 172.

<sup>26</sup>*Willis v. Parker*, 225 N. Y. 159, 121 N. E. 810 (1919).

<sup>27</sup>*City of Rochester v. Campbell*, 123 N. Y. 405, 25 N. E. 937 (1890).

<sup>27a</sup>225 N. Y. 159, 166, 121 N. E. 810, 816.

be maintained against an abutting owner for injuries resulting from a fall on an accumulation of snow and ice on a sidewalk in front of his premises. If the charter or the ordinance prescribes merely a fine there is no liability to the injured party; but if the charter should, as it does in some rare cases, contain a provision similar to the charter of the city of Auburn, liability may result.

While it is well settled that an abutting owner is generally free from liability for the *natural accumulation* of snow and ice on the *sidewalk* abutting his premises, he is liable for an accumulation of snow and ice caused by his "interference with nature". If the abutting owner, by his own wrongful act, causes an accumulation of snow or ice upon the sidewalk abutting his premises which renders the sidewalk more dangerous, he may be held liable for negligence. Under this principle, liability has been imposed on the abutting owner:

1. When a leader from the roof of his premises discharges water on the sidewalk causing ice to accumulate thereon;<sup>28</sup>

2. When the absence of a gutter or pipe permits water to flow from the roof of the abutting premises causing ice to form on the sidewalk;<sup>29</sup>

3. When a roof overhanging the sidewalk causes snow to be precipitated on the sidewalk;<sup>30</sup>

4. When a sign or a railing on the abutting premises causes snow to accumulate thereon and, in melting, form ice upon the sidewalk;<sup>31</sup>

5. When the roof of a baywindow collects and discharges snow and water on the sidewalk;<sup>32</sup>

6. When an awning or projection of any type can be said to create a condition which renders the sidewalk more dangerous.<sup>33</sup>

The above examples are by no means complete and are cited to show the type of interference which may render an abutting owner liable in negligence. Whenever it can be shown that the abutting owner made the sidewalk more dangerous by reason of any interference with natural conditions a jury question is presented. Such cases are readily

<sup>28</sup>Tremblay v. Harmony Mills, 171 N. Y. 598, 64 N. E. 501 (1902).

<sup>29</sup>Crounse v. Sager, 224 App. Div. 10, 229 N. Y. Supp. 451 (3d Dept. 1928).

<sup>30</sup>Klepper v. Seymour, 246 N. Y. 85, 158 N. E. 29 (1927).

<sup>31</sup>Venable v. Consolidated Drygoods Co., 225 App. Div. 202, 232 N. Y. Supp. 404 (2d Dept. 1929).

<sup>32</sup>Parsons v. Great Atlantic & Pacific Tea Co., 233 App. Div. 195, 251 N. Y. Supp. 360 (4th Dept. 1931).

<sup>33</sup>McCConnell v. Bostelman, 72 Hun 238 (Sup. Ct. 1893); RESTATEMENT, TORTS, § 350. There have been innumerable cases of pedestrians who have sustained injuries from falling on snow and ice, but apparently few have been injured by snow and ice falling on them. An interesting editorial entitled *Injuries from snow and ice falling from roofs* will be found in the N. Y. L. J. Feb. 10, 1936. The leading case in this state on this subject is Klepper v. Seymour, 246 N. Y. 85, 158 N. E. 29 (1927).

distinguishable in principle from those cases which seek to hold the abutting owner liable for a *natural accumulation* of snow and ice on a sidewalk. The sidewalk is owned by the city and, as we have observed above, the primary obligation of maintaining the sidewalk in a safe and passable condition is upon the city. This primary obligation cannot be delegated to the abutting property owner who is relieved from liability unless, by his own neglect, he does something which makes the sidewalk more dangerous.

### III. ACTIONS AGAINST PROPERTY OWNERS FOR INJURIES ON THEIR PREMISES

The superficial similarity between snow and ice on a public sidewalk, and snow and ice on the walk, approach or steps on private property resulted in a number of decisions which held that the property owner is not liable for injuries caused by a natural accumulation of snow and ice on his premises. In *Little v. Wirth*<sup>34</sup> the court unequivocally states:

"The authorities are uniform that there is no duty on the part of an owner to a tenant, or the public, to remove from the steps or walk the ice and snow which naturally accumulates thereon."

The court cites several New York cases<sup>35</sup> to substantiate this statement but an inspection of the cases cited reveals that every one of them involves an action against an abutting owner for injuries on a *public* sidewalk.<sup>36</sup> *Corpus Juris* makes a similar assertion, supported only by sidewalk cases.<sup>37</sup> An examination of the cases cited in support of this doctrine<sup>38</sup> will show that all of them are actions against abutting owners for injuries on sidewalks or cases based on such decisions. This

<sup>34</sup>6 Misc. 301, 268 N. Y. Supp. 1110 (Super. Ct. 1894).

<sup>35</sup>*Fuchs v. Schmidt*, 8 Daly 317 (Comm. Pleas 1879); *Moore v. Gadsden*, 93 N. Y. 12 (1883); *Wenzlick v. McCotter*, 87 N. Y. 122 (1881); *City v. Campbell*, 123 N. Y. 405, 25 N. E. 937 (1890).

<sup>36</sup>Two of the cases cited, viz. *Moore v. Gadsden*, 93 N. Y. 12 (1883); and *Wenzlick v. McCotter*, 87 N. Y. 122 (1881), were distinguished in *Tremblay v. Harmony Mills*, 171 N. Y. 508, 64 N. E. 501 (1902).

<sup>37</sup>In 36 C. J. (1924), § 903, p. 220, it is said:

"According to the weight of authority, there is no duty on the part of the landlord to his tenant to remove from the roof, steps or walk snow or ice which naturally accumulates thereon and he is not liable for injuries caused thereby. The rule applies also to such natural accumulations upon sidewalks adjacent to houses rented to several tenants."

<sup>38</sup>*Rochester v. Campbell*, 123 N. Y. 405, 25 N. E. 937 (1890); *Moore v. Gadsden*, 93 N. Y. 12 (1883); *Wenzlick v. McCotter*, 87 N. Y. 122 (1881); *Fuchs v. Schmidt*, 8 Daly 317 (Comm. Pleas, 1879); *Little v. Wirth*, 6 Misc. 301, 268 N. Y. Supp. 1110 (Super. Ct. 1894); *Gianpaola v. Paoli*, 129 N. Y. Supp. 180 (App. Term, 1911).

doctrine has also found expression in later cases,<sup>39</sup> but when such cases are run back to their source it will be observed that all of them are based upon a misconception of the rule stated in sidewalk cases. Such authorities fail to recognize that the fundamental reasons which underly the exemption of abutting owners have no application to injuries on private property.

The abutting owner, it will be recalled, is relieved from liability for injuries sustained on a sidewalk because the primary obligation to maintain the sidewalk is upon the municipality. This reasoning has no application to injuries which occur on his own premises, where the owner himself has the primary obligation to maintain his property in a reasonably safe condition. To subject a property owner to liability to every stranger passing his premises on the public sidewalk would be unduly harsh and burdensome. The sidewalks are used by the public generally, while the owner is obligated to keep his own premises in a reasonably safe condition for the benefit of only a limited number of individuals, to wit, "invitees".

To "trespassers" the owner owes the limited obligation to refrain from "wilfully or wantonly" injuring them.<sup>40</sup>

The owner's obligation to a "licensee" is substantially the same as to a "trespasser", *i. e.*, to refrain from inflicting wilful or wanton injury. A "licensee" takes the property on which he enters "as he finds it" and assumes all the ordinary risks incident to its condition. At the most, the owner owes the duty to warn of defects which are known to him and unlikely to be discovered by the "licensee".<sup>41</sup> Only to "invitees" does the owner owe the obligation to maintain his premises in a reasonably safe condition.<sup>42</sup>

It is evident, therefore, that neither a "trespasser" nor a "licensee" can maintain an action against the property owner for injuries caused by snow and ice. Whether the injury was caused by a natural accumulation or by some act of the owner constituting an interference with nature is immaterial so long as there is no wilful or wanton injury.

While the principles of law applicable to "licensees" and "invitees" are well settled, it is no easy matter to ascertain to which class an individual belongs. The line of demarcation is shadowy and indistinct, and the courts have indulged in a veritable maze of finespun and often contradictory distinctions between a "mere licensee", a "bare licensee", a "passive licensee", a "licensee by invitation" and a "licen-

---

<sup>39</sup>Dwyer v. Woollard, 205 App. Div. 546, 199 N. Y. Supp. 840 (3d Dept. 1923).

<sup>40</sup>RESTATEMENT, TORTS, § 333.

<sup>41</sup>RESTATEMENT, TORTS, §§ 331, 332, 342.

<sup>42</sup>RESTATEMENT, TORTS, § 343.

see with an interest".<sup>43</sup> A social guest *invited* to a private home is not an "invitee" as might be supposed, but a "licensee".<sup>44</sup> A person who visits a tenant in an apartment house is a "licensee" with respect to the tenant but an "invitee" with respect to the landlord.<sup>45</sup>

Much of this confusion in terminology is clarified by the new classification in the American Law Institute's Restatement, Law of Torts. The classical grouping of "licensee" and "invitee" is abandoned in favor of a new classification of "gratuitous licensees" and "business visitors".<sup>46</sup> The new terminology seems to be a definite improvement, for, although the rules of liability are essentially the same, the phrase "business visitors" is a more appropriate description of persons commonly classified as "invitees".<sup>47</sup>

There seems to be no sound reason for relieving a property owner from the obligation of keeping his premises in a reasonably safe condition for the protection of persons who can be classified as "invitees" or "business visitors". The courts have repeatedly said:

"The general rule applicable to persons occupying real property for business purposes is that they must use reasonable prudence and care to keep their property in such condition that those who go there shall not be unreasonably and unnecessarily exposed to danger. The measure of their duty is reasonable prudence and care."<sup>48</sup>

It would seem that the owner's obligation to exercise "reasonable or ordinary care" should require him to remove snow and ice within a reasonable time, just as it requires him to see that the steps shall not become loose and rotten;<sup>49</sup> that a defective carpet on a stairway shall be repaired,<sup>50</sup> and that any dangerous condition should be remedied.<sup>51</sup>

<sup>43</sup>Heskill v. Auburn Light Co., 209 N. Y. 86, 102 N. E. 540 (1913); 45 C. J. § 194, pp. 789-93.

<sup>44</sup>45 C. J. § 197, p. 794.

<sup>45</sup>Harris v. Parry, 89 N. Y. 308 (1882); 45 C. J. § 220, p. 810.

<sup>46</sup>RESTATEMENT, TORTS, §§ 331, 333, 342, 343.

<sup>47</sup>In the RESTATEMENT, a social guest of a tenant in an apartment house is a "gratuitous licensee" with respect to the tenant, but a "business visitor" with respect to the landlord. RESTATEMENT, TORTS, § 332-h. The New York annotations of the Restatement have not yet been published.

<sup>48</sup>Flynn v. C. R. R. Co., 142 N. Y. 439, 37 N. E. 514 (1894); Larkin v. O'Neill, 119 N. Y. 225, 23 N. E. 878 (1890); Newell v. Bartlett, 114 N. Y. 399, 21 N. E. 990 (1889); Hart v. Grennell, 122 N. Y. 37, 25 N. E. 354 (1891); Ackert v. Lansing, 59 N. Y. 646 (1874).

<sup>49</sup>Brady v. Valentine, 3 Misc. 20, 21 N. Y. Supp. 776 (1893).

<sup>50</sup>Piehl v. Reinhart, 127 N. Y. 381, 27 N. E. 1077 (1891).

<sup>51</sup>Pitman v. City of New York, 141 App. Div. 670, 125 N. Y. Supp. 941 (2d Dept. 1910); Goodman v. Silverman, 231 App. Div. 84, 246 N. Y. Supp. 319 (1st Dept. 1930).

Many later authorities have, under similar circumstances, ignored the decisions which declare that there is no liability for a natural accumulation of snow and ice on private premises and have declared that the owner's obligation is to exercise reasonable care. In what is perhaps a typical case,<sup>52</sup> plaintiff, a tenant, sued the landlord for personal injuries sustained by falling on the front steps of the premises. He testified that while he was descending the front steps at about twelve thirty in the afternoon, he slipped on the ice thereon. The step on which he slipped was covered with ice. The other steps were about the same. It had stopped snowing at seven in the morning. The trial court, at the close of plaintiff's case, granted the defendant's motion for a directed verdict. In reversing the judgment of the trial court, the appellate court said:

"having possession and control of the stoop of his tenement house, it was the duty of the owner to use reasonable care so as to keep it in a safe condition, and upon the record presented in this case it was a question for the jury whether he had performed that duty."<sup>52a</sup>

A number of other cases have expressed the same principle.<sup>53</sup>

Of course, the duty to exercise reasonable care does not mean that the premises must under all circumstances be kept free from any accumulation of snow or ice. Many claims have been dismissed on the ground that the property owner had insufficient notice of the slippery condition or had insufficient time to remedy it. In a recent case decided by the Court of Appeals,<sup>54</sup> the plaintiff, a tenant, slipped on the steps while leaving the apartment house in which she lived. She left the house about three in the afternoon. According to her testimony, it had been raining and freezing on the morning of the accident but the ice had been on the steps only four or five hours prior to the time she fell. The records of the Weather Bureau showed that there had been no rain in the morning but that the rain began about noon. A verdict was rendered for the plaintiff but the Court of Appeals reversed the judgment on the ground that the defendant had no notice that the steps were icy, that the condition had not continued long enough to charge him with notice and he had insufficient time to remedy the condition. The

---

<sup>52</sup>Albert v. Wachsmann, *et al.*, 169 N. Y. Supp. 138 (App. Term, 1918).

<sup>52a</sup>169 N. Y. Supp. 138.

<sup>53</sup>Weston v. New York Elevated R. R. Co., 73 N. Y. 595 (1878); McGuire v. Interborough Rapid Transit Co., 104 App. Div. 105, 93 N. Y. Supp. 316 (2d Dept. 1905); Olopp v. Interborough Rapid Transit Co., 69 Misc. 595, 126 N. Y. Supp. 184 (App. Term, 1910); Harkin v. Crumbie, 20 Misc. 568, 46 N. Y. Supp. 453 (App. Term, 1897).

<sup>54</sup>Rankin v. Ittner Realty Company, Inc., 242 N. Y. 339, 151 N. E. 641 (1926).



inference from the opinion is, that if the landlord had notice of the icy condition, or if it had existed for sufficient time to offer opportunity to remedy it, a case would have been presented for the jury. Similar decisions have been made in a number of other cases.<sup>55</sup>

The doctrine that the owner of property is required to use reasonable care in its maintenance has been of almost universal application. The courts have held that a question for a jury is presented when granite steps have, from long use, been worn very smooth and slippery;<sup>56</sup> when a hallway was slippery after having been cleaned with hot soapy water;<sup>57</sup> and when the janitor of a tenement house washed slush off the steps in freezing weather, causing the steps to be covered with a

---

<sup>55</sup>In *McAuley v. United Cigar Stores Co.*, 204 App. Div. 356, 198 N. Y. Supp. 154 (1st Dept. 1923), *aff'd*, 236 N. Y. 633, 142 N. E. 313 (1923), the plaintiff fell at the entrance of defendant's cigar store by reason of an accumulation of snow and ice at the entrance. The evidence showed that plaintiff fell at about eleven o'clock in the evening. According to the records of the Weather Bureau it had been snowing all day and up until 10:50 P. M. and continued sleeting thereafter, with a high wind blowing all the time. The court held that the defendant had insufficient time before the accident in which to remove the ice and snow.

In *Kelly v. Manhattan Ry. Co.*, 112 N. Y. 443, 20 N. E. 383 (1889), plaintiff fell on a stairway between 5:30 and 6:00 o'clock in the evening. The storm had ceased at three or four o'clock on the same day. The court held that the defendant was not required to throw ashes or sawdust upon the steps *while the storm continued* because the continuance of the storm would soon render the steps as slippery as before. The storm had ceased only an hour and a half before the accident and the court said:

"So brief a period as that, at such a time in the night, cannot, we think, be regarded as any evidence of a lack of that reasonable care which the defendant was bound to exercise."

In *Goodman v. Silverman*, 231 App. Div. 84, 246 N. Y. Supp. 319 (1st Dept. 1930), the slippery condition of the steps had existed for about an hour. The court held that it would be unreasonable to hold the defendant liable for failure to inspect within so short a period of time.

In *Gianpaola v. Paoli*, 129 N. Y. Supp. 180 (App. Term, 1911) the plaintiff fell on the icy steps of a tenement house. There was no proof as to how long the ice was permitted to remain on the steps. The weather reports showed that sleet and rain had been falling and freezing on the ground constantly for a period of two days prior to the accident. A judgment for the plaintiff was reversed and a new trial ordered because there was insufficient proof that the landlord had sufficient time to remedy the condition.

To the same effect see: *Rusk v. Manhattan Ry. Co.*, 46 App. Div. 100, 61 N. Y. Supp. 384 (1st Dept. 1899); *Venable v. Consolidated Dry Goods Co.*, 225 App. Div. 202, 232 N. Y. Supp. 404 (2d Dept. 1929); *Palmer v. Pennsylvania Co.*, 111 N. Y. 488, 18 N. E. 859 (1889); *Laufers Weiler v. Borchardt*, 88 N. Y. Supp. 985 (App. Term, 1904).

<sup>56</sup>*Pitman v. City of New York*, 141 App. Div. 670, 125 N. Y. Supp. 941 (2d Dept. 1910).

<sup>57</sup>*Beech v. Weber*, 123 Misc. 926, 206 N. Y. Supp. 718 (App. Term, 1924).

thin glaze of smooth slippery ice.<sup>58</sup> It would seem that ordinary prudence and a proper regard for persons lawfully on the property would require the property owner to take reasonable precautions to remove snow and ice from his walk or steps or to cover the ice with sand or ashes. To hold that the owner of a large store, hotel, theatre or any other building used by the public, owes no duty whatever to remove a natural accumulation of snow and ice from its approaches, would encourage a disregard for public safety. The standard of care required will necessarily vary with the nature of the use of the premises. One entering a store, theatre, office building or hotel is entitled to expect that greater precautions to secure his safety will be made than when entering a private dwelling.<sup>59</sup>

As Mr. Justice Cardozo has said in one of his essays, the law, in charging one with a duty, should 'shape its rules in the light of "the common standards of conduct, the every-day beliefs and practices, of

<sup>58</sup>Jankowsky v. Brown, 177 App. Div. 602, 164 N. Y. Supp. 303 (1st Dept. 1917).

<sup>59</sup>Greene v. Sibley, Lindsay & Curr Co., 232 App. Div. 53, 248 N. Y. Supp. 491 (4th Dept. 1931). In the RESTATEMENT, TORTS, § 343-e, it is said: "In determining the extent of preparation which a business visitor is entitled to expect to be made for his protection, the nature of the land and the purposes for which it is used are of great importance. One who enters a private residence even for purposes connected with the owner's business, is entitled to expect only such preparation as a reasonably prudent householder makes for the reception of such visitors. On the other hand, one entering a store, theatre, office building or hotel, is entitled to expect that his host will make far greater preparations to secure the safety of his patrons than a householder will make for his social or even his business visitors."

There is no satisfactory discussion in the reported cases in this state with reference to the obligation of the owner of a private dwelling to remove snow and ice for the protection of "social guests". Apparently the only recent reported case is *Greene v. Greene*, 212 App. Div. 381, 208 N. Y. Supp. 689 (1st Dept. 1925), in which the plaintiff was invited to attend a party at the defendant's residence. While walking up the porch steps she slipped and fell. The accident happened at 7:30 in the evening and there was some snow and ice on the steps, but the evidence indicated that it had stopped snowing only a short time before the accident. The court did not attempt to define the liability of the householder, but stated only that he was not required to use greater care than a storekeeper, and upheld the dismissal of the complaint on the ground that the condition of the steps had not existed for sufficient time to impose upon the property owner an obligation to remove it.

The dearth of reported cases on this subject is undoubtedly due to the fact that, unless the defendant is insured, few persons are inclined to sue a private householder for failure to clean his walks, and few juries would impose liability on a property owner for an injury under such circumstances. On principle, it would seem that there is no obligation to a "social guest" or "licensee" who must take the premises "as he finds them", although a jury question might be presented in the case of a person who could be classified as a "business visitor".

the average man or woman whose behavior it assumes to regulate." In the days of kerosene lamps and the horse and cutter, the removal of snow was something of a novelty. Decisions made in the light of that background cannot safely be relied on to measure present-day standards of conduct. It is common practice today for the owners of public buildings promptly to remove snow and ice from the approaches and the decisions which require such property owners to make reasonable effort to remove snow and ice from their premises do no more than impose a duty commensurate with existing standards of conduct.