

City of Providence Vs. Clapp

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SooperKanoon Citation : sooperkanoon.com/80506

Court : US Supreme Court

Decided On : 1854

Appeal No. : 58 U.S. 161

Appellant : City of Providence

Respondent : Clapp

Judgement :

City of Providence v. Clapp - 58 U.S. 161 (1854)

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City of Providence v. Clapp

58 U.S. (17 How.) 161

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF RHODE ISLAND

SYLLABUS

The statutes of Rhode Island require towns to keep the highways safe and convenient for travelers at all seasons of the year, and in case of neglect, "that they shall be liable to all persons, who may in anywise suffer injury to their persons

or property, by reason of any such neglect."

These statutes extend to cities as well as towns or townships, and also to sidewalks where they constitute a part of the public highways. The City of Providence was therefore bound to keep those sidewalks convenient and safe in a reasonable degree for pedestrians, and when a fall of snow took place, it was the duty of the city to use ordinary care and diligence to restore the sidewalk to a reasonably safe and convenient state.

It was for the jury to find whether or not this was accomplished by treading down the snow, and if not, whether the want of safety and convenience was owing to the want of ordinary care and diligence on the part of the city.

In considering whether due diligence required the city to remove the snow, the jury ought to take into consideration the ordinances enacted by the city not as prescribing a rule binding on the city, but as evidence of the fact that a removal, and not a treading down of the snow, was reasonably necessary.

This was a suit brought by Clapp against the City of Providence to recover damages for an injury occasioned by an obstruction on the sidewalk in one of its principal streets. The

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obstruction consisted of a ridge of hard-trodden snow and ice on the center of the sidewalk, along which the plaintiff was passing in the night time, and by means of which he fell across the ridge, breaking his thigh-bone in an oblique direction. The jury found a verdict for the plaintiff and assessed his damages at \$3,379.50.

The circumstances of the case, and the rulings of the court which gave rise to the bills of exceptions upon which the case came up, are stated in the opinion of the Court.

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MR. JUSTICE NELSON delivered the opinion of the Court.

The suit was brought in the court below against the City of Providence to recover damages for an injury occasioned by an obstruction on the sidewalk in one of its principal streets. The obstruction consisted of a ridge hard-trodden snow and ice on the center of the sidewalk along which the plaintiff was passing in the night time, and by means of which he fell across the ridge, breaking his thigh bone in an oblique direction.

After the evidence closed, the counsel for the defendants

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prayed the court to charge the jury that the statutes of Rhode Island, requiring highways to be kept in repair and amended from time to time, so that the same may be safe and convenient for travelers at all seasons of the year as far as respected obstructions from falls of snow, merely required that the snow should be trodden down or removed, so that the highways should not be blocked up or encumbered with snow, but did not require that said highways should be free from snow or ice so that the traveler should not be in danger of slipping thereon, and that the said snow being so trodden down and hardened into ice, and the sidewalk not blocked up or encumbered therewith, but open and passable in the sense of the statute, in this case the defendants were not liable.

The counsel for the defendants also, after referring to the statutes authorizing the City of Providence to build and repair sidewalks and also to the ordinances of the city passed in pursuance thereof, further prayed the court to charge that neither the said statutes nor the ordinances defined or enlarged the duty or liability of the city as to the removal of snow from the sidewalks beyond that under the general statute of the state, nor were they evidence of the degree of care required of the city by the general statute, but that notwithstanding the same, the city would not be liable under the general law if the snow on the sidewalk was trodden down so as to be open and passable.

The court refused so to charge, but charged that by the statute law of the state, the city was obliged to keep this street conveniently and safely passable at all seasons of the year; that by a special act, the legislature having authorized the city to have sidewalks designed for foot passengers, it was bound to keep those sidewalks convenient and safe for pedestrians; that the law did not require absolute convenience or safety, but safety and convenience in a reasonable degree, having reference to the uses of the way and frequency of its uses; that when a fall of snow takes place, so as to render a sidewalk not conveniently and safely passable, it was the duty of the city to use ordinary care and diligence to restore it to a reasonably safe and convenient state. That the law does not prescribe how this shall be done, whether by treading down or removing the snow, and that it was for the jury to find as matter of fact whether the sidewalk, at the time in question, was in a reasonably safe and convenient state, having reference to its uses, and if it was not so, whether its want of safety and convenience was owing to the want of ordinary care and diligence on the part of the city, and in considering whether due diligence required the city to remove the snow, the jury ought to take into consideration the ordinances, not as prescribing a rule binding on the city, but as

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evidence of the fact that a removal, and not a treading down of the snow, was reasonably necessary.

The 1st section of the statute of Rhode Island concerning highways and bridges provides

"That all highways, townways, and causeways &c.;, lying and being within the bounds of any town shall be kept in repair and amended from time to time so that the same may be safe and convenient for travelers with their teams &c.;,"

at all seasons of the year at the proper charge and expense of such town, under the care and direction of the surveyor or surveyors of highways appointed by law. The surveyors are then authorized to remove all sorts of obstructions or things that

shall in any way straiten, hinder, or incommode any highway or townway, and when blocked up or encumbered with snow, they shall cause so much thereof to be removed or trod down as will render the road passable.

Among other provisions conferring upon the towns power to repair and amend the public highways, the 4th section enacts that

"Each town, at some public meeting of the electors, shall vote and raise such sum of money, to be expended in labor and materials on the highways, as they may deem necessary for that purpose, and either the assessors or the town council, as the town may direct, shall assess the same on the ratable estate of the inhabitants, and all others owning ratable property therein, as other town taxes are by law assessed."

And the 13th section provides that if the town shall neglect to keep in good repair its highways and bridges, she shall be liable to indictment, and "shall also be liable to all persons who may in anywise suffer injury to their persons or property by reason of any such neglect."

It is admitted that the defendants are not liable for the injury complained of at common law, but that the plaintiff must bring the case within the above statute to sustain the action. It must also be admitted that the act applies to cities as well as towns, and also to sidewalks where they constitute a part of the public highway. This has been repeatedly held by the state courts in several states, under statutes substantially like the one under consideration. 13 Pick. 343; 13 Met. 297; 3 Cush. 121, 174; 4 *id.* 247; 6 *id.* 141, 524; 7 Greenl. 442; 15 Verm. 708; 19 *id.* 470; 21 *id.* 391; 2 N.H. 392; 35 Me. 100; *ib.*, 242.

The counsel for the defendants, conceding this view of the statute and of the liability of the city generally, contends that as it respects obstructions or impediments occasioned by the fall of snow and accumulations of ice, the liability is qualified, and exists only in case of neglect to tread down or remove the snow so that the track be not blocked up and encumbered thereby, and that if the street or sidewalk is passable by not being

blocked up and encumbered with snow as it respects this kind of obstruction, it is made safe and convenient within the meaning of the statute. And the latter clause of the 1st section of the act which directs that when the highways are blocked up or encumbered with snow, the surveyor shall cause so much thereof to be removed or trod down as will render the road passable; and also the 13th and 14th sections, which authorize the towns to impose penalties for the removal of snow from highways and subjects the town to an indictment for neglect therein, are referred to as countenancing this modified liability.

But it will be found, on looking into the several decisions under a similar act in Massachusetts, that no distinction exists between obstructions of a public highway by falls of snow and those of any other description. In the case of *Loker v. Brookline*, 13 Pick. 346, 347, Morton, J., speaking of the 1st section of the statute, observes that language so general and explicit cannot be misunderstood or restrained. It must extend to all kinds of defects, as well as to all seasons of the year, and an obstruction caused by snow is as clearly included as one caused by flood or tempest or any other source of injury. See also 13 Met. 297; 6 Cush. 141.

The foundation of the action rests mainly on the 1st and 13th sections of the statute. The 1st imposes upon the town the duty of keeping in repair and amending the highways within its limits so that the same may be safe and convenient for travelers at all seasons of the year, and the 13th declares that if the towns shall neglect to keep in good repair its highways and bridges, it shall be liable to indictment and shall also "be liable to all persons who may in anywise suffer injury to their persons or property by reason of any such neglect."

The other provisions, and among them those referred to by the counsel, relate to the powers conferred upon the towns to enable them to fulfill the obligations enjoined and to the powers and duties of the several officers having charge of the repairs of the highways. Ample means are furnished the several towns to discharge their obligations under the statute.

The act of 1821, amended by the act of 1841, confers powers upon the City of Providence to build and keep in repair their sidewalks at the expense of the owners of the adjoining lots, and as may be seen from the several ordinances of the city given in evidence, these powers have been liberally exercised for the purpose.

The powers of the towns and of the city are as ample for the purpose of removing obstructions from the highways, streets, and sidewalks, arising from falls of snow and accumulations of ice, as those arising from any other cause; and the reason for

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the removal, so that they may be safe and convenient for travelers, is the same in the one case as in the others. The 13th section of the act which gives the personal remedy, makes no distinction in the two cases, and in the absence of some plain distinction pointed out by the statute, it would be exceedingly difficult, if not impossible, to state one. It is conceded that an obstruction from falls of snow or accumulations of ice must be removed by the towns and cities so as to make the highways and streets passable, and that this is a duty expressly enjoined upon them. The question is what sort of removal will satisfy the requirement of the statute? It is admitted that as it respects every other species of obstruction, the repairs must be such that the highways and streets may be safe and convenient for travelers, and that this is a question of fact to be determined by the jury. Is an obstruction by snow or ice to be determined by any other rule, or by any other tribunal? The counsel for the defendants suggests that as it respects such safety and convenience of travelers in case of falls of snow, the statute should be construed as meaning merely that the snow should be trodden down or removed, as that the highways and streets should not be so blocked up or encumbered as not to be safely and conveniently open and passable. But it is quite clear that this would be a very indefinite and uncertain rule to guide either the officers, whose duty it is to remove these obstructions, or the jury in passing upon them when the subject of legal proceedings. The suggestion may be very well as an argument to the jury for the purpose of satisfying them that the repairs in the manner

mentioned were such as to fulfill the requirement of the statute, but to lay it down as a rule of law in the terms stated, might in many cases, and under the circumstances, fall far short of it.

The treading down of snow when it falls in great depth or in case of drifts, so that the highway or street shall not be blocked up or encumbered, may in some sense and for the time being have the effect to remove the obstruction, but as it respects the sidewalks and their uses, this remedy would be, at best, temporary, and in case of rains or extreme changes of weather would have the effect to increase rather than remove it. It is but common observation and knowledge of those familiar with the climate of our northern latitudes that not unfrequently the most serious obstructions arise from the great depth of snow and changes in the temperature of the weather, and that simply treading down the snow and leaving it in that condition without further attention would have the effect to render the highways and sidewalks utterly impassable.

In the case also of obstructions from snow, the sidewalks may

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frequently require its removal so as to make a safe and convenient passage for the pedestrian when, at the same time, the treading of it down in the street would answer the purpose for the traveler with his team. The nature and extent of the repairs must necessarily depend upon their location and uses; those thronged with travelers may require much greater attention than others less frequented.

The just rule of responsibility, and the one we think prescribed by the statute, whether the obstruction be by snow or by any other material, is the removal or abatement so as to render the highway, street, or sidewalk at all times safe and convenient, regard being had to its locality and uses.

We are satisfied the ruling of the court below was correct, and that the judgment should be

Affirmed.

MR. JUSTICE DANIEL dissented.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Rhode Island, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby affirmed, with costs and interest until paid, at the same rate per annum that similar judgments bear in the courts of the State of Rhode Island.

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