repair and keep in repair the public highway, is, if good law here, conclusively against plaintiff. See also Little v. Brockton, 123 Mass. 511. The fact that defendants in doing what they did were acting in the line of their duty, distinguishes this from many cases referred to or that might profitably be looked at under slightly different facts.

The reasoning of the Chancellor in the case of Minns v. Village of Omemee, 2 O. L. R. at p. 581, as far as it goes, applies to this phase of the case in hand.

It may be, however, said that defendants in neglecting when about the business to erect an adequate barrier that was suitable for all possible emergencies, failed to become entitled to claim that they acted within the law.

It does not so strike me, and if this barrier had been four or five feet high, and thus probably complete for all reasonable requirements, I do not think it would have served to help plaintiff under the circumstances he was placed in.

It was urged that there should have been a warning put up along the road. That might have been a praiseworthy thing to do, but I cannot find in any place law binding them to adopt that particular course. It would not have helped the stranger in the dark.

It was also urged that there should have been a railing along the embankment in question. It would hardly do to lay it down that every bank 3 feet 8 inches high, sloping gently down, must be protected by a railing.

The case may go further, and should my finding on the law and facts be reversed, I assess provisionally the damages plaintiff would be entitled to at $400. . . .

I think defendants' failure to complete a proper barrier serviceable for all purposes and at all times by night and by day invited litigation such as this. I therefore refuse them costs. . . .

Action dismissed without costs.