office for the performance of which there is no compensation given to the city. Whatever liability exists to perform this service to the public, and to respond for any failure to perform it, must arise, if at all, from the implication that is claimed to exist in the nature of such a municipality.

There is a vague impression that municipalities are bound in all cases to answer in damages for all private injuries from defects in the public ways. But the law in this state and in most parts of the country, rejects this as a general proposition, and confines the recovery to cases of grievances arising under peculiar circumstances. If there is any ground for recovery here, it is because Detroit is incorporated, and it depends therefore on the consideration whether there is anything in the nature of incorporated municipalities like this which should subject them to liabilities not enforced against towns and counties. The cases which recognise the distinction apply it to villages and cities alike.

It has never been claimed that the violation of duty to the public was any more reprehensible in these corporations than outside of them; nor that there was any more justice in giving damages for an injury sustained in a city or village street, than for one sustained outside of the corporate bounds. The private suffering is the same and the official negligence may be the same. The reason, if it exists, is to be found in some other direction, and can only be tried by a comparison of some of the classes of authorities which have dealt with the subject in hand.

It has been held that corporations may be liable to suit for positive mischief produced by their active misconduct, and not by mere errors of judgment, and while the application of this rule may have been of doubtful correctness in some cases, the rule itself is at least intelligible and will cover many decisions. It was substantially upon this principle that the case of *Detroit* v. *Corey* was rested by the judges who concurred in the conclusion. *Thayer* v. *Boston*, 19 Pick., 511, was a case of this kind, involving a direct encroachment on private property. *Rochester White Lead Company* v. *City of Rochester*, 3 N. Y., 465, where a natural water course was narrowed and obstructed by a culvert entirely unfit for its purpose and not planned by a competent engineer, is put upon this ground in the decision of *Hickox* v. *Plattsburg*, cited 16 N. Y., 161; *Lee* v. *Village of Sandy Hill*, 40 N. Y., 422, involved a direct trespass.

The injuries involved in these New York and Massachusetts cases referred to, were not the result of public nuisances, but were purely private grievances. And in several cases cited on the argument, the mischiefs complained of were altogether private. The distinction between these and public nuisances or neglects, has not always been observed, and has led to some of the confusion which is found in the authorities. In all the cases involving injuries from obstructions to drainage, the grievance was a private nuisance. In case of *Mayor* v. *Furge*, 3 Hill, 612, which has been generally treated as a leading case, the damage was caused by water backing up from sewers not kept cleaned out as they should have been: *Barton* v. *Syracuse*, 36 N. Y., 54, involved similar questions, as did also *Childs* v. *Boston*, 4 Allen, 41. These cases do not harmonise with *Dermont* v. *Detroit*, 4 Mich, 135; but they rest on the assumption, that having constructed the sewers voluntarily for private purposes, and not as a public duty, the obligation was complete to keep them from doing any mischief, as it would be in private persons. And in *Bailey* v. *Mayor*, 3 Hill, 538; S. C., 2 Denio, 433, the mischief was caused by the breaking away of a dam connected with the Croton water works, whereby the property of the plaintiff was destroyed. In this latter case the judgment rested entirely upon the theory that the city held the water works as a private franchise and possession, and subject to all the responsibilities of private ownership. The judges who regarded it as a public work, held there was no liability. In *Conrad* v. *Trustees of Ithaca*, 16 N. Y., 159, the facts were substantially like those in *Rochester White Lead Co.* v. *Rochester*, and the decision was rested on the principles of that case. Denio, C. J., who delivered the opinion of the court, stated his own opinion to be, that there was no liability, but that he regarded the recent decision in another case referred to as establishing it, and in *Livermore* v. *Freeholders of Camden*, 29 N. J., 245 (and on Error, 2 Vroom, 507), under a statute like that which was considered by this court in *Township of Leoni* v. *Taylor*, it was decided that while a passenger over a bridge could sue for injuries, yet where property adjacent was injured by the bridge, there was no remedy. Upon anything which sustains the liability for such grievances however, it is manifest that the injury is not a public grievance in any sense, and does not involve a special private damage, from an act that at the same time affects injuriously the whole people.

Another class of injuries involves a public grievance specially injuring an individual, arising out of some neglect or misconduct in the management of some of those works which are held in New York, to concern the municipality in its private interests, and to be in the law the same as private enterprises. It is held, that in constructing sewers and similar works, which can only be built by city direction, if the streets are broken up and injuries happen because no adequate precautions are taken, the liability shall be enforced as springing from that carelessness, and not on the ground of non-repairs of highways. *Lloyd* v. *Mayor*, 5 N. Y., 369, and *Storrs* v. *Utica*, 17 N. Y. 104, were cases of this kind. In these cases, as in the case of *Detroit* v. *Corey*, the streets were held to have been broken up by the direct agency of the city authorities, and the negligence which caused the injury, was held to be negligence in doing a work requiring special care, or in other words, the wrong complained of was a misfeasance and not a mere omission. The case of *Weet* v. *Brockport*, 16 N. Y., 161, was also a case where Selden, J., who reviewed and discussed all the decisions, said it was not necessary to consider the wrong complained of as a mere neglect of duty, because it was in itself a dangerous public nuisance, created by the corporation, and not in any sense a non-feasance. In *Delmonico* v. *Mayor*, 1 Sand. 226, the injuries, though in a highway, consisted in crushing in a vault under the street, by improperly piling earth upon it while exca-