

horses to get out of the snow-drift was stepped upon and thrown down and his knee seriously injured.

T. G. Meredith, K.C., for plaintiff.

G. F. Shepley, K.C., for defendants.

MEREDITH, C.J.—It is unnecessary to determine whether or not defendants would have been chargeable with actionable negligence for not removing the snow from the highway so as to make the usually travelled part of it fit for travel. Not only did defendants fail to remove the snow from the travelled part of the highway, but, having in effect provided and invited the public to use as a substitute for it a way on the side of the road which they knew would become dangerous to those using it for the purpose of driving over with wheeled vehicles, as soon as the thaw set in, permitted it to remain for three days in a condition dangerous to persons so travelling, a thaw having set in making it dangerous for three days before the accident to plaintiff. In these circumstances, it was the duty of defendants to have made the highway reasonably fit for travel either upon the usually travelled part of it or upon the substituted way, which could have been accomplished at a trifling expense, or, failing that, have stopped the use of the road or given warning against the danger to those travelling upon it, and in omitting to do this they made default in keeping the highway in repair within the meaning of sec. 606 of the Municipal Act and are answerable to plaintiff in damages.

MACMAHON, J., gave a written opinion reviewing the facts and coming to the same conclusion. He referred to *Boswell v. Yarmouth*, 4 A. R. 353; *Savage v. Bangor*, 40 Me. 176; *Stickney v. Maidstone*, 30 Vt. 738; *Page v. Bucksport*, 64 Me. 51; *McKelvin v. London*, 22 O. R. 70; and *LaDuke v. Exeter*, 97 Mich. 450.

Appeal allowed with costs, and judgment to be entered for plaintiff for \$600 and costs of action.

FEBRUARY 16TH, 1903.

DIVISIONAL COURT.

GREAR v. MAYHEW.

Vendor and Purchaser—Action for Purchase Money—Evidence—Trespass to Goods.

Appeal by plaintiff from judgment of FALCONBRIDGE, C.J. (1 O. W. R. 529), dismissing without costs an action to recover \$400, the price of certain land which, as plaintiff