

is a dangerous object or place so near to the line of travel as to make the use of the highway itself unsafe in the absence of a railing. If there is such an object or place so located, the municipality is bound to maintain sufficient guards to protect travellers from the dangers incident to it: see Williams on Municipal Liability, pp. 190-194. In other words, a corporation is bound to erect barriers or railings where a dangerous place is in such close proximity to the travelled part of the highway as to make travelling upon it unsafe, whether by day or by night, in sunshine or storm.

It is not possible to define at what distance in feet or inches a dangerous place must be from the travelled part in order that it should be held to be in such close proximity that it must be guarded. It is in every case a practical question, to be determined by the good sense of the trial Court, in the light of the evidence and of the principles of law applicable, whether the highway is or is not reasonably safe for public travel.

Not only what the safety of travellers requires, but what, having regard to the situation, the amount of travel, the cost of the proposed improvement, and the ability of the corporation to meet it, would be reasonable to require of the municipality, has to be considered.

With a quiet horse and in daylight, a traveller using ordinary care would not be in any peril from the unguarded embankment in question; but at night-time, with a storm raging, the ground covered with snow, and the tracks obliterated, as they were on this occasion, I think a traveller would be in serious danger of driving over the embankment.

If the highway is dangerous under the above conditions, which are to be expected in this country—and I think it is, although it may be free from danger in broad daylight, the corporation has failed in its duty.

The question of the necessity for guard-rails at dangerous places along township roads has been the subject of many decisions, both in the United States and in this country. The leading authorities are collected by Mr. Denton in his valuable book on Municipal Negligence, pp. 113-120.

I am of opinion that the evidence in this case establishes that the defendants were negligent in allowing the embankment to remain unguarded, and that such negligence was the cause of the plaintiff's loss.

I am unable to find, in view of the darkness, the weather, and other conditions stated above, that the deceased was guilty of any contributory negligence.