

Act for the Improvement of Public Highways, 7 Edw. VII. ch. 16, for the purpose of construction and rebuilding, and as the work had to be done according to the regulations of the Public Works Department, sec. 606 of the Municipal Act of 1903 did not apply. . . . In 1913 this section was re-drafted, and appears in the Municipal Act of that year as sec. 460, and is included in R.S.O. 1914 ch. 192, as sec. 460. . . .

I think it was the intention of the Legislature that, no matter what the work was that was undertaken and being done under the Act for the Improvement of Highways, 7 Edw. VII. ch. 16, the corporation were under an obligation, under sec. 606, and still are under the same obligation under sec. 460 of the present Act, to keep the road in "repair," that is, reasonably fit, suitable, and convenient for the travelling public. This duty and obligation is incumbent upon the corporation even while the work under 7 Edw. VII. ch. 16 is in progress. The word "repair," in the statutes that I have cited, is in full force and effect, and carries with it the same obligations and duties and gives the same rights of protection to the ratepayers that it always did, as has been expounded in a long line of decisions covering many years. No statute has been enacted which has changed the force or effect of the word "repair." Even after the completion of the work, though it may be done according to the regulations of the Public Works Department, the duty and liability of the corporation subsists. Repair is a question of fact. It is local; it is relative. What may be good repair in one locality may be positive nonrepair in another.

The accident by which the plaintiff received his injuries was caused by the defendants during the winter months placing in the centre of the road in question a large quantity of gravel in heaps or mounds about twelve or fifteen inches high, without levelling it down or rolling it, and leaving it in such a condition as to render the highway unsafe for traffic, in consequence of which people travelling in sleighs were forced to the side of the road, which was slippery and inclining to such an extent as to cause the vehicle to skid and in some cases upset. The gravel was placed on the road in defiance of sec. 558 of the Municipal Act of 1903. . . .

This section was re-drafted in 1913 and appears in R.S.O. 1914 ch. 192, as sec. 495. . . . It will be observed that the word "rebuilding" does not appear in sec. 558, which was in force when the accident happened, but does in sec. 495 of ch. 192 of R.S.O. 1914.