of the wall in the first case was similar to that of the milk-stand in the other. The distinction, no doubt, is in the person who erected the respective obstructions or nuisances.

The present case, I think, comes within sec. 104, as contended by defendants, and they are entitled to have the case tried without a jury. This would not improbably be the course adopted even if the jury notice was technically regular. If the principle laid down by Lister, J.A., in Huffman v. Township of Bayham, supra, is correct, it would seem clear that this is "non-repair," as the statement of claim alleges negligent construction of the pavement as being on an incline, and made with an exceedingly smooth surface, which is especially dangerous in moist weather, and this was not guarded against by having the ordinary rough finish, which is at once usual and prudent to adopt in such cases.

The allegations here are very similar to those in the case of Ince v. City of Toronto, 27 A. R. 410, 31 S. C. R. 323, which was tried without a jury . . .

Costs to defendants in any event.

"Non-repair" seems to mean any omission of duty on the part of the municipality which makes the highway unsafe. Making a new road or walk defectively and leaving it in such unsafe condition would seem to be "non-repair" within the words of the statute as interpreted by the cases.

CARTWRIGHT, MASTER. APRIL 19TH, 1905.

CHAMBERS.

CLARK v. LEE.

Summary Judgment — Action on Bill of Costs — Defence — Agreement of Solicitor to Conduct Action without Remuneration—Champerty and Maintenance—Cross-action—Consolidation.

Motion by plaintiff to consolidate this action (in the High Court) with an action brought against plaintiff by defendant in a County Court, and for summary judgment in this action, with a reference for taxation of the bill of costs to recover the amount of which this action was brought.

C. A. Moss, for plaintiff.

J. E. Cook, for defendant.