The plaintiffs had passed the place, going to Watford, a few hours before the accident; but Richardson said that he did not then observe the break and had not known of it before. The plaintiffs on their homeward journey overtook a buggy which was proceeding quite slowly; they were anxious to pass, and Richardson turned a little to the north, in order to enable him to get his horse alongside of the buggy in front, that he might speak to the driver. He then asked to be allowed to pass, and was told that passing would be easier a little farther on, where the road was wider. At that minute the wheels on the left hand side of his buggy went into the hole, and his wife was thrown out and injured.

The only question seemed to be, whether the defendants were answerable for not having repaired the break.

The defendants should be assumed to have been without actual notice of the want of repair.

The plaintiffs' right of recovery did not depend upon any finding that, if the defendants had adopted such a system of inspection as they ought to have adopted, they would have learned of the want of repair at some time before the accident. The result of City of Vancouver v. Cummings (1912), 46 Can. S.C.R. 457, and Jamieson v. City of Edmonton (1916), 54 Can. S.C.R. 443, is that, upon proof of such facts as had been established in this case, the municipality must be held liable, as for a breach of a statutory duty, unless they are able to shew that they took all reasonable means of preventing the continued existence of such a dangerous state of nonrepair as had been described.

So far as appeared, the only provision made for the making of minor repairs to the roads in the neighbourhood of the place of the accident was the delegation, express or implied, to one Williamson, who represented that part of the township, of authority to order them as the necessity for them came to his knowledge. He said that this jurisdiction of his extended to some 35 miles of road; but it did not appear that he felt that he was charged with the duty of inspecting those 35 miles at stated intervals. Upon this evidence alone, there seemed to be no possibility of the making of any such exculpatory finding as seemed to be necessary if the defendants were to escape liability.

The plaintiffs must be held entitled to succeed.

The damages should be assessed at $2,350: $2,000 for the wife, who was injured, though no bones were broken, and was suffering from nervous shock; and $350 for Richardson, who was not injured, but was put to expense by reason of his wife's injury.

Judgment for the plaintiffs for $2,350 and costs.