

1902, c. 116, the liability of a municipality for damages sustained by any person, by reason of default in keeping a public road in repair, is "limited to that portion of the road on which work has been performed or public improvements made by the municipality."

The defendants made public improvements on the road allowance in question to the east of a deep ravine which crossed it, and the owner of the land at that point permitted travellers to go on his land around the ravine to or from that portion of the road allowance to the west of the ravine from which access was had to an intersecting highway farther west.

The obstruction which caused to the plaintiff the damages sued for was a barbed wire fence which had been placed by a private individual on the road allowance at a point a considerable distance west of the ravine, and the municipality had performed no work nor made any improvements upon that portion of the road. The work done on the east of the ravine, however, together with the detour around the ravine, enabled the public to make use of the whole road, and so to travel between that part of the country east of the ravine and a market town situated to the west of the point where the accident took place, and it was for that purpose that the improvements to the east of the ravine had been made.

*Held*, HOWELL, C.J.A., dissenting, that the road allowance at the point where the accident occurred was, within the meaning of the statute, a portion of the public highway on which work had been performed by the municipality and therefore it was liable, as the obstruction had been allowed to remain on the road for more than three months, and notice of its existence there should be imputed to the defendants notwithstanding the absence of direct evidence of knowledge of it. The result would be different in the case of a partially completed work looking to the ultimate opening up of an extension of the road, the accident happening beyond where the work had been done.

Appeal from verdict of County Court judge in favor of the plaintiff, dismissed with costs.

*McLeod*, for plaintiff. *Hough*, K.C., for defendants.