

Cases of this type may also be considered from another point of view which will often be assistance in determining the rights of the parties. According to a familiar principle of the law of negligence, one who is under a duty to keep some material substance, like the surface of a road, in good condition for the use of another person is entitled to the benefit of the assumption that such person will, in using it, exercise ordinary care in observing and avoiding dangers. It is true that, in practice, a jury is likely to solve the problem, whether road officers have provided a road reasonably safe for a prudent cyclist, considered in the abstract, by inquiring whether the concrete specimen of the cyclist, who may happen to be the plaintiff, was guilty of negligence at the time the injury in suit was received. But as the issue of contributory negligence is invariably raised, in some form or other, in actions where the defendant is charged with a want of care, it would seem that no great inconvenience, and certainly no injustice, can result from submitting the case under both aspects to the jury.

To cases in which the accident in suit would probably not have happened if the cyclist had not been travelling when the light was dim, the test of liability here suggested would seem to be specially appropriate. It is certainly open to serious doubt whether a cyclist is justified in expecting that he will be provided with a roadway so smooth that he can safely travel over it without a lamp, and in darkness so profound that a defect does not become visible until it is too late for him to take measures for his protection. Even the generality of such a practice in any given locality ought scarcely, it would seem, to negative the inference that, even if the want of a lamp was not contributory negligence on the part of a cyclist, he must be at least charged with the consequences of an election to take all the risks which he may incur from the want of the light.

jury to say whether the place alleged to have been out of order was dangerous, and, if so, from what cause, and, if from a natural cause or process, whether the persons liable to repair the road could reasonably and conveniently, as regarded expenditure and labour, have made it safe for use: *Caswell v. St. Marys' Road Co.*, 28 U.C.R. 247. A rule adopted as correct in *Walton v. Corporation of York* (1881), 6 Ont. App. 181, where it was held that it was an error to non-suit the plaintiff on an issue of negligence *vel non* in regard to maintaining a ditch four feet in depth with sides cut down perpendicularly and without any railing beside it. That the liability of the highway authorities is almost always a question for the jury, see also *Kelsey v. Glover* (1843) 15 Vt. 708.