

manifestation of nonrepair. Such a break could have been discovered on inspection of a certain character, but there was no finding of negligence in the system of inspection actually in use.

From almost the beginning of municipal control of and responsibility for highways, it has in this Province been considered that an action of this kind is based upon negligence: there must be proved some original defect or some negligence in inspection or want of inspection or some knowledge of the defect or the lapse of such a length of time that knowledge will be implied. The authorities in this Province, at least until the decision of Rose, J., in *Richardson v. Township of Warwick* (1920), 18 O.W.N. 106, were uniform. That learned Judge, however, interprets the decisions of the Supreme Court of Canada (*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) as laying upon the municipality an onus not recognised by the Ontario cases; and, finding that that onus has not in this case been met, he gives judgment for the plaintiff.

The result of the decisions in the two cases mentioned is, that "in all cases where the accident has arisen from the . . . apparent wearing out or imperfect repair of the road, there arises upon evidence of accident caused thereby a presumption, without evidence of notice, that the duty relative to repair has been neglected."

The present is such a case; and a presumption has arisen that the duty of the defendants has been neglected. The presumption is not *juris et de jure*, but is rebuttable. The defendants did not meet the presumption by evidence shewing that they did all that could reasonably be done to prevent the want of repair occasioning the accident.

The appeal should be dismissed with costs.

MEREDITH, C.J.C.P., read a judgment in which he reviewed the facts and evidence at some length. He did not base his view of the case upon any question of onus, and did not express any opinion as to the effect of the decisions in the Supreme Court of Canada. His finding was that the plaintiff's injury was caused by the negligence of the defendants extending over a period of more than 7 years; and he was in favour of dismissing the appeal.

LATCHFORD, J., in a written judgment, said that the judgment should be supported on the ground stated by Anglin, J., in the *Edmonton* case, 54 Can. S.C.R. at p. 459, viz., that the obligation of keeping the highway in repair involves the duty of preventing, as far as reasonably possible, the continuance of known conditions which will bring about a state of disrepair.