

Q. B.]

MILLER V. THE TOWNSHIP OF NORTH FREDERICKSBURGH.

[Q. B.]

## LAW REPORTERS.

One of these was Sir Cresswell Cresswell, whose last judicial labours as Judge Ordinary of the newly-established Divorce and Probate Court were of signal service to the country, and who had previously, as a judge of the court of Common Pleas, commanded the respect and admiration of the public and the profession. Sir Edward Hall Alderson was also a Queen's Bench reporter from 1817 to 1822. On the Northern Circuit Alderson was one of the most esteemed and efficient juniors of his day; and who that remembers him on the bench will forget his ready wit, his apt illustrations, and profound knowledge? A judge who but the other day was followed to the grave by his brethren with unusual marks of respect, was also a distinguished reporter. Sir Charles Crompton—to whom we refer—was associated in the Exchequer reports, first with Mr. Meeson, and then with Mr. Meeson and Mr. Roscoe. Lord Chief Justice Fervis, one of the acutest lawyers of his day was also, when at the bar, for some time a reporter. Another Chief Justice, when "plain John Campbell," reported the *Nisi Prius* rulings of the great Ellenborough. In after years Campbell could, with pardonable vanity, refer to his reports as enhancing the reputation of Lord Ellenborough as well as his own. "When I was a *Nisi Prius* reporter," he writes, in the "Lives of the Lord Chancellors," "I had a drawer marked 'Bad law,' into which I threw all the cases which seemed to me improperly ruled. I was flattered to hear Sir James Mansfield, C. J., say, 'Whoever reads Campbell's Reports must be astonished to find how uniformly Lord Ellenborough's decisions were right.' My rejected cases, which I had kept as a curiosity, not maliciously, were all burnt in the great fire in the Temple, when I was Attorney-General."—*The Reader*.

## UPPER CANADA REPORTS.

## QUEEN'S BENCH.

(Reported by C. ROBINSON, Esq., Q. C., Reporter to the Court.)

## MILLER V. THE CORPORATION OF THE TOWNSHIP OF NORTH FREDERICKSBURGH.

C. C. C. ch. 51, sec. 37—Limitation of actions.

The Municipal Act, sec. 37, provides that actions against a municipal corporation for not repairing highways must be brought "within three months after the damages have been sustained."

The plaintiff's mare fell through a bridge, and died four months after from the injuries received. *Held*, that the statute began to run from the occurrence of the accident, not from the death.

[Q. B., M. T., 1866.]

Appeal from the County Court of Lennox and Addington.

This action was brought on the 6th of May, 1865, against the Municipality of North Fredericksburgh, for the loss of the plaintiff's mare,

which fell through a hole in a bridge on the Mohawk Bay road, on the 27th of November, 1864, and died on the 23rd of March, 1865, from the injuries received.

It was objected at the trial that the action was not brought within three months after the damages had been sustained, according to section 37 of the Municipal Act, Con. Stats. U. C. ch. 51.

The learned judge held at the trial, and afterwards in term, that the three months began to run from the death of the mare and not from the occurrence of the injury, and that her value was to be considered at the time of her death, horses having risen considerably in market value in the interval; and a rule *nisi* obtained to enter a nonsuit was discharged.

On these points the defendants appealed.

*Moss*, for the appellants, cited *Patterson v. The Great Western R. W. Co.* 8 U. C. C. P. 89; *Turner v. The Corporation of Brantford*, 13 U. C. C. P. 109; *Saure v. The Great Western R. W. Co.* 13 U. C. C. B. 376; *Moison v. The Great Western R. W. Co.* 14 U. C. C. B. 109; *Vanhorn v. The Grand Trunk R. W. Co.* 18 U. C. C. B. 356; *Brown v. The Brockville and Ottawa R. W. Co.* 20 U. C. C. B. 202; *Whitehouse v. Fellowes*, 10 C. B. N. S. 784; Con. Stats. C. ch. 66, sec. 83.

*Gwynne*, Q. C., contra.—The statute expressly makes defendants responsible for "all damages" sustained, and this is not carried into effect, if the action must be brought before the whole extent of the injury is known or has been suffered, as the appellants contend for. He cited *Roberts v. Read*, 16 East. 215; *Gillon v. Bodington*, Ry. & Moo. 161, S. C. 1 C. & P. 541; *Mayne on Damages*, 37.

HAGARTY, J., delivered the judgment of the court.

The words of the section are, "and the corporation shall be civilly responsible for all damages sustained by any person by reason of such default," (*i. e.*, default in repairing), "but the action must be brought within three months after the damages have been sustained."

The case of *Bonomi v. Backhouse*, E. B. & E. 622, relied on in the court below, established, in the words of the judgment of the Exchequer Chamber, that "no cause of action accrued from the mere excavation by the defendant in his own land, so long as it caused no damage to the plaintiff; and that the cause of action did accrue when the actual damage first occurred." E. B. & E. 659; and in the House of Lords, 1 B. & S. Am. Ed. 970, 9 H. L. Cas. 503.

In such a case we think the same rule would apply, whether the words creating the limitation were "from the accruing of the action," or, as in the case in appeal, "after the damages have been sustained." No wrongful act was in fact done till the damage accrued.

In the case before us, defendants were answerable in damages to parties injured by their neglect to perform a statutory duty, namely, the keeping in repair of a bridge. No cause of action vests in any person against them for damages till an injury is sustained by their default. As soon as the mare was injured by falling or stepping into the hole in the bridge, the plaintiff's cause of action was complete. His