Currie vs. the Township of Dunwich.

This is an action recently tried before His Honor Judge Hughes, the senior judge of the county of Elgin. The plaintiff sustained personal injury by slipping and falling on some ice that had formed in a depression on the highway along which she was walking, caused by water flowing across it. She sought to recover $200 damages from the defendant municipality, and her costs of suit. The following is the judgment:

In considering all the facts and circumstances connected with this case and the application of the several decisions of the courts to those facts I find as follows:

1. That there was a pond of water gathered and standing on the land of D. McCallum which, in a wet time, overflowed into the ditch on the road running north of concession 5, north of concession A and thence to and across a low place in the middle of the road where the accident to the plaintiff occurred.

2. That that low place is just where the culvert ought to have been placed instead of or in addition to the culvert which stands inefficiently carrying the water away from the pond and ditch I have referred to further to the east of it.

3. That for want of that culvert on the proper place during wet seasons of the year the road at the point referred to was covered with water at that low place.

4. That the condition of the road was at that point made dangerous not only when the water flowed over or into that low place in mild weather, but also when by reason of frost ice was formed and made the road at that low place slippery, not only for horses and teams but for persons travelling along the highway on foot as well.

5. It is admitted that the road in question was and is a common highway and that the road work furnished by statute labor, instead of being expended in the construction of a culvert or in repairing the road at that point, was altogether withdrawn and laid out in gravelling the other part of the road more immediately connected with the general traffic of the neighborhood to and from the village resorted to by people living and having business to do, and for purposes of trading in that part of the township.

6. I do not know how the authorities of the t wnship may seek to justify this course of ordering or expending the statute labor of the township over which they have a discretion, but I have no hesitation in saying, that when it comes to the making and continuing a public nuisance, such as this was, which is alike dangerous to the ordinary traffic of teams, and was and had been for a long time unsafe to persons travelling either by carriages or horses, or teams, or by walking, it became a duty (in absence of a sidewalk for those travelling on foot) to have removed the nuisance, in so far as reasonable and proper repair required.

7. I find also that the condition of the road at that place was not only not sufficiently guarded from danger but that it was not guarded or kept in repair at all. It was a trap for teams and wagons and carriages when there was no frost to freeze up the water crossing the road, and was a slide for passers over it on foot when frost caused ice to cover it—so that no wonder the plaintiff fell there when the ice became covered with snow, and thereby caused her to fall and injure herself as she did.

8. As to the allegations of contributory negligence of the plaintiff—I find she was lawfully passing and walking on this public highway there—that there was no sidewalk or other place for her to do so, and that she used reasonable care when passing along the highway at the time of the accident.

9. This was not a public highway only used in winter time, but had been used by other travellers and their teams, one traveller travelling there had injured or bent the axle of his vehicle on this exact spot by reason of the slough existing there, so that I find it was a breach of obligation of the defendant municipality to have kept it in repair, and that the defendant corporation was in duty bound (outside of the statute labor) to keep it safe for ordinary travel.

10th. I find also that, having used reasonable care on the occasion of the accident (although she knew by having passed over it the previous day that there was ice at that spot) she is not chargeable with contributory negligence on the authorities of Wilson vs. City of Charleston J. Allen, 138, and Gordon vs. the City of Bellevile, 15 O. R. 26, and the cases cited in the judgment of the learned Chief Justice, in the latter case.

11th. I find it my duty to find for the plaintiff and to order judgment to be entered for her against the defendant corporation with costs for one hundred and fifty dollars ($150).

The long continuance of the condition of the road there and of the hole complained of, coupled with the fact that a previous accident had occurred there, affords sufficient evidence of constructive notice of the existence of the nuisance under the decisions upon the subject of notice to a municipal corporotion.

Brereton vs. Town of Rat Portage.

Judgment on appeal by plaintiff from order of District Court of Rainy River, setting aside the verdict and judgment entered thereon for plaintiff for $50, and dismissing the action with costs as against defendant McCarthy, and directing a new trial as against the other defendants. Action for damages for trespass to land in entering on lot 155, P. Coney Island, and removing the western boundary fence. The defendant McCarthy is the mayor, and the defendant Woods is the chief of police of the town of Rat Portage. The corporation allege that the fence in question, which was removed, stood upon Sixth street and was an obstruction. The court below dismissed the action against the defendant McCarthy on the ground that their was no evidence that the acts complained of were done maliciously and without probable cause, and not being satisfied upon the evidence as to title, and the actions of defendant Woods, and that the jury had given due consideration to the evidence directed in this trial. Held, after careful perusal of the evidence that the judge below was right. This court strongly advises a settlement without further costly litigation and adds that the evidence is cogent to show that plaintiff has taken in more land than he is aware of. Appeal dismissed with costs.

Town of Peterborough vs. G. T. R. Co.

Judgment in action tried without a jury at Peterborough. Action for a declaration that the defendants are liable to rebuild or repair a certain bridge in the town upon Smith street, where a small stream (as diverted by the Midland Railway Company, to whose liabilities the defendants have succeeded) cross the street, and for a mandamus to compel the defendants to rebuild it and to make good and restore the highway to its former state. Held, that the railway company had acted within their rights in diverting the stream, and if the municipality had sustained damage by reason of the exercise of those rights, they must proceed under the Railway Act to obtain compensation. Should the defendants refuse to proceed, the plaintiffs would have their remedy by mandamus upon motion. Such a mandamus should not be granted in the present action, a motion being the proper course. Action dismissed with costs.

Jamieson vs. City of Ottawa.

The defendants appealed from the judgement of Falconbridge, J., for $250, upon report of Master at Ottawa, finding that by reason of the acts of the defendants, their agents or servants, a drain known as the Jamieson drain, into which the plaintiff had the right to drain, was rendered useless, and that the plaintiff's property had suffered damage occasioned by extra flow of water in consequence. Defendants urged the same reasons against the judgment as those in Rochester vs. City of Ottawa. Appeal dismissed with costs.

Winterstein vs. Hood.

This was a case of damage done by a barbed wire fence, and was heard by Judge Morgan, at Markham Division Court, last Thursday. His Honor decided that barbed wire fences were a nuisance, and if placed in a line fence or road fence the party owning it is responsible for damages to cattle. In this case he assessed $30 and costs. All parties interested should paste this in their hats, and remove such wires if they desire to avoid litigation.