Civil Liability of Municipal Corporations

Amendment Proposed to Section 606.

The executive of the Ontario Municipal Association waited upon the Honorable Mr HANNA, Chairman of the Municipal Committee, and other members of the government on Wednesday the 20th February, and submitted for their consideration the proposed amendments to The Municipal Laws as passed at the last meeting of the association.

The most important change asked for is that relating to section 606, which imposes a civil liability on municipal corporations for damages sustained through accidents caused by defective highways. The municipalities of the province generally favor the repeal of the section, and the general opinion is that something should be done to modify the present state of affairs.

At the request of the Provincial Secretary, the Executive drafted an amendment to section 606 in the following form :

" Insert after sub-section 1 of section 606 the following proviso :

Provided that the corporation shall not be civilly responsible for such damages unless actual notice of the default causing such damages has been given in writing to the mayor, warden, reeve or other head of the corporation or to the clerk thereof before such damages were sustained."

This would leave section 606 as it is, and limit the liability of municipal corporations. City Solicitor MCINTYRE, of Kingston, who has taken an active interest in the matter, on behalf of the executive has submitted the following memo in reference to the amendment submitted, which will reduce within reasonable limit the liability of the municipalities.

In the charters of some cities of the United States there is such a provision and in the law of the State of Maine there is a requirement of twenty-four hours actual notice to the commissioners of the county or the municipal officers, highway surveyors or road commissioners of the town etc.

Such an amendment limiting municipal liability for non-repair, may be advocated on such reasonable grounds as these :

(1) It is conceded that municipal corporations should be held liable for mis-feasance that is, non-repair with intent being the only rational basis of liability for crimes or torts, public or private wrongs.

(2) It is fair to concede that municipal corporations should be held liable for non-feasance, coupled with intent since non-feasance coupled with intent is equivalent to misfeasance.

(3) The ingredient of intent is important because intent implies and presupposes knowledge.

Up to this point the friends of municipalities will be quite prepared to go, provided any liability by statute is to be retained. The hardship to municipalities has arisen in imputing to them a knowledge that they did not possess and this has been done by evolving the doctrine of constructive notice. Once bring home to a municipal corporation a real knowledge of the non-repair, rendering the highway unsafe, and making that real knowledge the basis of liability and you take away this hardship based on a legal figment, for you have placed non-feasance and misfeasance in precisely the same category. From this it follows that as no one complains of liability for mis-feasance, no one could justly complain of a liability for non-feasance coupled with a real knowledge.

How this real knowledge may be brought home is the next question. The draft provides that it may be done by actual notice, in writing, to those persons to whom notice must be given, under sub-section 3 of section 606, to preserve the right of action after the injury has been sustained. Other modes of giving actual notice might be suggested but that is a detail once it is adopted as a principle that to impose liability for non-feasance there must be a real knowledge arising from actual notice.

This proposed amendment has many advantages to recommend it :

(1) It does not repeal section 606.

(2) It leaves unimpaired the liability of municipal corporations for non-feasance once a real knowledge of the non-repair is established.

(3) It insures that municipal corporations shall be liable not for trifling, obscure, unobserved instances of non-repair, but only such non-repair as will attract attention and probably induce persons to notify the corporation.

(4) It enlists the co-operation of the whole people to advise the municipal authorities of defects in the highways. To ask such co-operation is not unreasonable since a municipal corporation is defined by the act to be "the inhabitants" of the municipality, so that in helping the corporation, the inhabitants are only helping themselves.

CUDDAHEE v. TOWNSHIP OF MARA.

Ditches and Watercourses Act—Award—Reconsideration—Construction of Ditch—Charge for Engineer's Services—Letting Work—Breach of Contract—Beletting.

By virtue of sec. 36 of The Ditches and Watercourses Act, the township engineer, on the reconsideration of an award, may make any award which might have been made in the first instance.

In accordance with the provisions of sub-sec. 2 of sec. 4 of the same act, the council by by-law fixed the charges to be made by the engineer for his services at the rate of $5 a day, and under section 29 the engineer certified to the clerk that he was entited to $45 for fees and charges for his services :

Held, that his certificate established *prima facie* the validity of his claim for $45, and the onus was on the plaintiff, objecting to the award, to shew its incorrectness which she had not done.

Held, also, that under sub-section 4 of section 28 work under an award not performed as vontracted for, may be relet.

Judgment of county court of Ontario revived.

McGREGOR v. THE MUNICIPAL CORPORATION OF THE VILLAGE OF WATFORD et al.

Highway—Dedication—Plan—Registration Before Incorporation—R. S. O. 1887, Section 152, Sub-Section 6a.

A plan showing the *locus in quo* as a street was made and filed before, but practically contemporaneously with, the locality being set apart as an incorporated village, the former being on June 3rd, 1873, the latter on June 25th, 1873. The lots were first sold under the plan in 1876. Subsequent legislation, which was retroactive, declared that allowances for roads laid out in cities, towns and villages, fronting upon which lots had been sold, should be public highways :

Held, that the road in question was a public highway and subject to the jurisdiction of the municipality.