

From Q.B.]

[January 15.]

LUCAS V. CORPORATION OF MOORE.

Highway -- Want of repair—Misdirection.
36 Vict. c. 48, sec. 409.

The plaintiff's husband lost his life by falling with his horse and sleigh into a ditch or drain, which occupied part of an allowance for road in the township of Moore, along which deceased was driving at night. The ditch was about 12 feet deep and 32 feet wide, extending about half-way into the travelled road, which was 30 feet wide. The road had been in this state for some years, but it appeared to serve the purpose of the neighbourhood as a highway. There was no railing or other guard round the ditch, and nothing to indicate the situation on a dark night, such as the night in question was. It was alleged that the deceased was under the influence of liquor, but there was no direct evidence as to how he fell into the ditch.

The learned Judge, at the trial, told the jury that if the defendants were indicted for having the road in the position described they would be directed to find them guilty of having the road out of repair. He also told them that where a ditch became such a deep and dangerous place as this the Corporation were bound to put a guard on it, otherwise as a matter of law they were guilty of neglect in not guarding it; but he proceeded to say:—I declined to withdraw the case from you on the ground of there being no evidence to show a want of repair, not because I was going to rule to you that the road was out of repair, but because I thought there was ample evidence to go to you as twelve reasonable men that this road was out of repair. It is a matter entirely for you—was that road in such a reasonable state of repair that it was safe for persons passing and re-passing at all times night and day? If so you will find a verdict for the defendants.

Held, reversing the judgment of the Queen's Bench, that the remarks above referred to were more than a strong comment on the evidence, and that there was clearly misdirection, as it was impossible to say as a matter of law that the statutory

duty to keep the road in repair had been neglected by the existence and continuance of the ditch or by its being without a guard, that being a deduction of fact to be made by a jury upon a consideration of all the circumstances.

Held, that the obligation expressed by the words "keep in repair," as used in 36 Vic. c. 48, sec. 409, is satisfied by keeping the road in such a state of repair as is reasonably safe and sufficient for the requirements of the particular locality; and that there was non-direction in the attention of the jury not being called to the duty of modifying the force of the word "repair" by reference to surrounding conditions.

Robinson, Q. C., and Ferguson, Q. C., for the appellants.

Bethune, Q. C., for the respondents.

Appeal allowed.

From Q.B.]

[January 15.]

MCARTHUR V. EAGLESON.

Ejectment—Statute of Limitations—Estoppel.

The plaintiff left his wife and home more than thirty years ago, and went to the United States where he remained until a short time before this action. He held no communication with his wife or friends while absent, and was, until his return, believed to be dead. Seven years after his departure his wife acting on this belief married again, and lived with her new husband on plaintiff's farm. They both mortgaged the farm to a building society which sold it under a power of sale in the mortgage. On his return the plaintiff brought ejectment against the purchaser from the company.

Held, affirming the judgment of the Queen's Bench, that he was not estopped by his conduct from claiming the land, and that he was not barred by the Statute of Limitations, as the possession of his wife was his possession.

Robinson, Q. C., (G. McKenzie with him) for the appellants.

Rock, Q. C., and Ferguson, Q. C., for the respondent.

Appeal dismissed.