

prohibiting the running at large of animals of various kinds at any time and of certain animals from sunset to sunrise the next morning from June 1st to October 15th, but there was no express permission for the running at large of any animals at any time. The trial judge found that the plaintiff had suffered damages to the extent of \$50; but, holding the by-law referred to valid, decided that it precluded the plaintiff from recovering and entered a verdict for defendant. At the hearing of the appeal it was argued that cl. 7 of the by-law was authorized by s. 644(d) of the Municipal Act, R.S.M., 1902, c. 116, which says that the council of every municipality may pass by-laws "for limiting the right to recover damages for any injury done to any cattle, horses or sheep trespassing upon land . . . to cases in which the land is enclosed by a fence of the nature, kind and height required by the by-law," but that sub-section did not become law until after the date of the passing of the by-law.

Held, that the subsequent legislation did not ratify or legalize the previously existing by-law, that there was no legislative authority for the enactment of clause 7 at the time the by-law was passed, and that there was nothing to prevent the plaintiff from recovering the damages sued for. *King v. Nunn*, 15 M.R. 288, followed.

Appeal allowed with costs and verdict entered for plaintiff for \$50 and costs.

Haggart, K.C., for plaintiff. *Mulock*, K.C., for defendant.

KING'S BENCH.

Richards, J.A.]

MITCHELL v. WINNIPEG.

[May 29.]

Municipality—Negligence—Contributory negligence—Notice of action—Winnipeg charter—Remedy over against third party.

The plaintiff's claim was for damages caused by falling from his bicycle into a deep unguarded excavation in a lot owned by the defendant Luce on the corner of a public street and a lane in the City of Winnipeg. He was riding down an inclined part of the highway towards and close to a portion of it which was only about 30 feet wide and which was obstructed for half the width by a pile of building materials and, observing that the