

United-States, 1847.—Court of common pleas, ELISHA H
HALL vs. CITY OF BOSTON.

Municipal authorities liable by a statute of the State of Massachusetts to pay damages for injury received by reason of any defect or want of repair in any highway, &c.

This was an action on the case, in which it was alleged, that on the 24th October, 1846. and for more than 24 hours previous, the City of Boston permitted a certain defect to exist in Pearl street, a highway which the city were bound to repair, by leaving open an area or deep hole in the sidewalk ; and that the plaintiff, in the night time of that day, was passing on the sidewalk, and fell into the hole, whereby his head and limbs were much bruised and wounded, and in consequence he had suffered great injury and pain, and been put to great expense.—Another count in the writ averred that the city had notice of the defect in the street. The action was founded upon the Revised Statutes, chap. 25, sec. 22, which is as follows :—

“ If any person shall receive any injury in his person or property, by reason of any defect or want of repair, which has existed for the space of twenty-four hours, in any highway, town way, causeway or bridge, he may recover, in an action on the case, of the county, town or person, respectively, that is by law obliged to repair the same, the amount of damage sustained thereby ; and if the said county, town, or person, respectively, had reasonable notice of any defect or want of repair, in such highway, townway, causeway or bridge, the person so injured may recover *double* the damages so sustained.”

Mellen, J. charged the jury, as matter of law, that if they believed there was a defect, in the street, which had existed twenty-four hours, the defendants were liable for any injury sustained by the plaintiff ; and if the jury thought that, from the notoriety of the defect and its grave character