

defendants were liable for the damages sustained by the plaintiff. *Caswell v. St. Mary's Road Co.*, 28 U.C.R., 247 and *Walker v. City of Halifax*, 16 N.S.R. 371, Cas. Dig. 175, followed.

The liability of the municipality for non-repair being limited to that portion of a road on which work has been performed or public improvements made by the municipality or which has been in some way assumed by it. Objection was taken on the hearing of the appeal that there was no direct evidence that such had been done, but the County Court Judge stated that it was not disputed before him that the municipality was bound to keep the road in repair, and he found that it was a road of very considerable importance leading into the town of Portage la Prairie, and at all times much used. The evidence also showed that from seventy-five to eighty teams passed over the portion of the road in question each way daily about the time of the injury to the plaintiff's horse.

*Held*, following *Proctor v. Parker*, 12 M.R. 529, that, by not raising the objection at the trial, the defence had waived strict proof of the circumstances rendering the municipality liable to keep the road in repair.

Appeal dismissed with costs, Bain, J., dissenting.

*Anderson*, for plaintiff. *James and Perdue*, for defendants.

Full Court.] RE ROCKWOOD AGRICULTURAL SOCIETY. [Dec. 22, 1899.

*Corporation—Power to mortgage real estate of corporation—Power to borrow—Ultra vires—Construction of statutes.*

This was an appeal from the refusal of the District Registrar to register a mortgage given by the Agricultural Society on land subject to The Real Property Act.

*Held*, that, having regard to the purposes and objects of the society as set forth in section 6 of The Agricultural Societies Act, 55 Vict., c. 2 (M. 1892), under which it had been incorporated, there was no implied power to borrow money or to mortgage real estate belonging to the corporation as the exercise of such power would not be necessary to enable it to carry out its purposes, and it was not in any sense a trading corporation; and, there being no express power given by the statute, the District Registrar was right in refusing to register the mortgage, notwithstanding the provisions of section 9 of the Act prohibiting a sale, mortgage, lease or other disposition of any real property of the society unless authorized at a general meeting of the society. *Brice on Ultra Vires*, p. 222; *Fisher on Mortgages*, p. 136; *The Queen v. Sir Chas. Reed*, 5 Q.B.D. 483, and *Blackburn Building Society v. Cunliffe*, 22 Ch.D. 1, followed; *Bickford v. The Grand Junction Railway Co.*, 1 S.C.R. 7, distinguished.

*Held*, further, that a subsequent statute empowering a certain municipality to guarantee a loan to the society, "to be effected or procured for the purpose of erecting buildings and the improvement of the grounds of the said society," could not be construed as giving the society any power which it had not before, for a misapprehension of the law by the legislature