

*LIABILITY OF MUNICIPALITY FOR FAILURE OF ITS OFFICERS TO ENFORCE ORDINANCES.*

"We have learned that, growing immediately out of the Iroquois theatre disaster, a large number of suits have been filed against the city of Chicago for the alleged failure of its officials to enforce the fire ordinances of the city. While it does not become us, at this stage of the proceedings, to express a personal opinion as to what the law ought to be, it certainly will not offend the proprieties of the case to give an intimation of the tendency of other courts on this question. Chief Justice Gray, in the case of *Hill v. City of Boston*, 122 Mass. 344, 23 Am. Rep. 332, held it to be a proposition well settled 'that no private action, unless authorized by express statute, can be maintained against a city for the neglect of a public duty imposed upon it by law for the benefit of the public, and from the performance of which the corporation receives no profit or advantage.' The case from which this quotation is taken should be carefully studied by attorneys about to engage in litigation involving questions of the character we have before us at the present time. Indeed, in a concise and condensed opinion, Chief Justice Gray traces the history and progress of the law on the question from the earliest period of the common law to the present time. From a careful reading of Justice Gray's opinion, it would seem that the only remedy in such cases is by indictment of the city officials guilty of neglect of duty. Thus, in the case of *State v. Corporation of Shelbyville*, 36 Tenn. (4 Sneed) 176, it was held that the mayor and aldermen of a town, whose charter empowered them to abate nuisances, were properly indicted for permitting a slaughter-house to be kept upon the private property of a citizen within the town, to the detriment of the public health and comfort. To same effect: *Cochrane v. Frostburg*, 81 Md. 54. While we believe that these authorities go a little too far, nevertheless the rule appears to be well settled and sustained by reason and authority that where a positive duty is imposed by ordinance on any city official, he is liable to indictment for non-feasance or misfeasance in office for failing, negligently or wilfully, to enforce such ordinance. Coming now to the exact question before us, i.e., the liability of municipal corporations for negligence in the enforcement of municipal ordinances, we find the law to be settled, though not without some dissent, against the imposition of such liability.