seem to have decided the case upon this view. Lord Chanworth, Chancellor, said the destruction was one that could be held to affect the rights of those using the docks. Lord Wensleydale said, if the question were *res integra*, and not settled by authority, he would be inclined to hold that it came within the principle of the cases where public officers have been held not liable to a private action for neglect of duty by servants appointed by them. But upon the former decisions he held the judgment below must be affirmed. And Lord Westbury fully concurred with the Lord Chancellor.

And it seems to us that this case is in itself no sufficient authority for holding cities and villages any more responsible for their streets and sidewalks being out of repair than are towns or counties, upon whom the duty of keeping highways in repair is imposed, where it has been long settled there is no responsibility for injuries occurring by want of repairs, unless imposed by statute. But the earlier English cases held a more stringent rule of responsibility in regard to cities and villages having special acts of incorporation, and chiefly upon the ground that they had accepted them voluntarily, and thus assumed the duties imposed by the charters thus accepted. How far this distinction is well-founded, it will not be altogether decisive of the question to inquire. For, since it has been long settled that such corporations are so responsible, it might not be entirely just to the public to now declare their irresponsibility, when, but for the rule of responsibility already established, the legislature might have provided for such responsibility by special enactments, as in the case of towns. For while it may be reasoned with great plausibility that there is no good reason, aside from the former decisions, to hold cities and villages to any higher degree of responsibility in regard to damages occurring by reason of their highways being out of repair, than towns are held; it may at the same time be urged with great propriety that they should be held to the same responsibility. But under the decision here made they could not be so held in most of the States. Since the legislatures have omitted in most cases it is fair to presume, to impose the same duty by statutes upon cities and villages, which they do upon towns, on the ground that it is not required by reason of the general principles of the law having already imposed that duty upon them, this consideration will tend to show that the restoration of the law to symmetry in this particular will more conveniently come from the legislature than from the courts. Beyond this it does not occur to us that any very convincing argument can fairly be urged against the decision of the court in this case. It cannot, we think, as a general rule, be justly held that towns are any less responsible for the consequences of leaving the highway in an unsafe condition than cities and villages are. If it requires a special statutory enactment to impose any such responsibility upon towns, we do not, upon general principles, very well comprehend why it should not require the same in the case of cities and villages. Our only doubt would be whether the symmetry of the law upon this point might not better be restored by the legislature. I. F. R.

DIGEST.

DIGEST OF ENGLISH LAW REPORTS.

FOR MAY, JUNE AND JULY, 1870.

(Continued from page 279.)

Marriage Settlement.—*See* Confirmation, 2.

Married Woman.—*See* Husband and Wife.

Marshalling.—*See* Charge.

Master.—*See* Ship.

Misdescription.—*See* Codicil, 2; Construction, 5.

Money Had and Received.—*See* Action, 1.

Mortgage.—*See* Assignment; Charge; Notice, 2; Residuary Clause, 2.

Negligence.

1. The plaintiff was a gardener in the service of the defendant, and accompanied him in a buggy to do some work for him. While crossing a furrow, the kingbolt broke and the plaintiff was thrown out and injured. *Held*, that as the defendant was performing a gratuitous service for the plaintiff, the plaintiff could not recover in the absence of gross negligence, and that there was no evidence to establish gross negligence.—*Moffatt* v. *Bateman*, L. R. 3 C. P. 115.

2. The plaintiff, while attempting to cross the defendant's railway by a road which crossed it on a level, was knocked down and injured by an engine. Originally, gates were erected and a gate-keeper kept at the crossing, but for some years the defendants had ceased to employ a gate-keeper; there had been several accidents before, and attention called to the danger of the crossing. Three years before, the defendants obtained an act authorizing them to make a new road, and to discontinue so much of the old road as crossed their railway; five years were allowed for the exercise of the powers, but nothing was done until after the accident. *Held*, that there was no evidence of negligence on the part of the defendants, and that there was no obligation upon them to employ a gate-keeper or to divert the road.—*Cliff* v. *Midland Railway Co.*, L. R. 5 Q. B. 258.

See Proximate Cause; Towage.

Non-Access.—*See* Evidence, 4.

Non-User.—*See* Highway.

Notice.

1. By a settlement of a Baptist chapel it was provided that, when the church should have to consider the appointment or dismissa of a minister, a notice should be given of the meeting, publicly in the chapel on Sunday