# LEGAL NOTES.

[**This department will appear in the third issue of every month. Should there be any particular case you wish reported we would be pleased to give it special attention, providing it is a case that will be of special interest to engineers or contractors.—Ed.**]

## DAMAGE TO SHADE TREES.

Sir,—A property owner has a row of shade trees on the front of his lot. An electric railway secures a charter and the privilege of running their car line on the highway. Their pole line and wires are fifteen feet from the front of the said lot, and the limbs of the trees extend over the road to within eight feet of the railway company's wires. The company undertakes to trim these overhanging limbs back to the lot line. Have they a legal right to do this, which is damaging private property?

Yours, Councillor.

## OVERHANGING BRANCHES—RIGHT TO REMOVE.

If trees overhang the public highway they are a nuisance, and may be removed by the public, but not by any private person who happens to object. This case is to be distinguished from that in which branches overhang a neighbor's land, in which case there is one person and only one aggrieved, and he may lop off such overhanging branches, for they constitute an interference with his personal rights—a trespass to his lands. But in case of the highway there is no one person especially aggrieved, but all to some extent, no trespass to the lands of any particular individual, consequently it is not every person who can remove the obstruction, but only such as are inconvenienced thereby. All persons have a right to the use of the public highway for legitimate purposes, and to every part thereof. Now, when a charter was granted to the Electric Railway it was granted for the purpose of running cars; and they, of course, must have all powers incidental to, or necessary for, the running of cars, for without such the charter would be meaningless. No action will lie for doing that which the Legislature has authorized if it be done without negligence, and even though it occasion damage. There may in such a case be some question of damage, just as a statutory right to expropriate lands does not entitle the taker to acquire such lands without compensating the owner, but the fact of legislative power having been given to the Company shields the Company from any charge of wrong-doing.

But in carrying out the work the Company must have due regard for the rights of others; in other words, they must exercise a reasonable degree of prudence, considering all circumstances, and if they fail to do so, and to the extent to which they fail, they will be liable. They are authorized to carry on a work, but are not authorized to interfere with the rights or property of others, and consequently they must conduct their work so as to interfere with others to the least possible extent. They will be liable for all avoidable damages they occasion.

Now, coming to the case in hand, it is difficult to give an opinion without knowing all circumstances in that particular locality, but it is also difficult to see the necessity of cutting branches back to the distance of fifteen feet. Indeed, it seems that eight feet clear space should be sufficient, and in that case the Company will be liable for going beyond necessary bounds. The burden will be upon the Company to show that the trees were interfering with the working of their plant, or that their charter authorizes them to cut trees to that extent.

A learned text writer discusses the point as follows:—

**Reasonable Prudence Required.**

If an authorized railway comes near my house and disturbs me by the noise and vibration of the trains, it may be a hardship to me, but it is not a wrong, for the railway was authorized and made in order that trains might be run upon it, and without noise and vibration trains cannot be run at all. But if the Company makes a cutting, for example, so as to put my house in danger of falling, I shall have my action; for they need not bring down my house in order to run their trains or to make their cutting. They can provide support for the house or otherwise conduct their works more carefully. Pollock on Torts, 5 Ed., 124.

Hodgins vs. City of Toronto and Bell Telephone Co. 19 A. C., 537.—The plaintiff was the owner of lands in the city of Toronto fronting on Bloor Street, an original road allowance.

The defendants, without any notice or compensation to the plaintiff cut off branches overhanging the street from trees growing within the plaintiff's ground, alleging that the branches interfered with the use of the wires of the telephone system for police purposes, which the Company and city had agreed mutually to maintain.

Held, that as overhanging branches of the trees were not a nuisance, and in no way interfered with the highway, the defendants had no right to cut them, and must compensate the owner, Hodgins.

## LIABILITY OF CONTRACTORS—EXTENDS TO ALL ACTS DONE IN THE COURSE OF THEIR EMPLOYMENT.

**Malcolm vs. McNichol and the Standard Plumbing** Company.—McNichol was the owner of a certain shop in Winnipeg which he let to the plaintiff, McNichol agreeing to heat said premises. Complaints were made as to the heating, and finally the landlord engaged the defendant Company to make alterations. Before the work was completed and during the absence of the tenant the plumber's men, who were at work in another part of the same building, with steam cut off for that purpose, were requested by the landlord's caretaker to turn the steam on again, and they did so. The steam passed through unfinished pipes, escaped from an open valve, and ruined the plaintiff's valuable stock of millinery.

The plaintiff then brought action against her landlord, McNichol, and also against the contracting plumbers. The Court of Appeal for Manitoba gave her judgment against the landlord, holding that the act of the caretaker in carelessly requesting the steam to be turned on without ascertaining that everything was in proper order above, was really the act of his master, the landlord; but refused her judgment against the plumbing contractors, who acted by request.

The Supreme Court of Canada upheld the judgment against the landlord, but gave her judgment against the contractors as well, holding that the plumbers' men were acting in the execution and discharge of their employment. Their acts were, therefore, for the benefit of the contracting firm, although done by request of the landlord, and the contracting firm is jointly liable. 39 S.C.R., 265.

## PATENTS—FAILURE TO MANUFACTURE.

**Hildreth vs. The McCormick Manufacturing Company.**—The plaintiff applied for, and on February 17th, 1908, obtained letters patent for a candy-pulling machine, char-