

shied to the right, whereby he broke his leg and had to be destroyed; and the plaintiff seeks to recover from the township corporation damages for the loss of his horse.

The third party, Clark, without authority from the township corporation, the defendants, placed the stand where it was at the time of the accident; and the defendants, if responsible, claim indemnity over against him.

There is no evidence to shew that the horse touched the stand; and I accept the learned trial Judge's finding of fact that the accident was caused by the horse shying because of being frightened by the stand.

Mr. Robertson argued that the position of the stand in such close proximity to the travelled portion of the highway created a condition of nonrepair, and he cited *Rice v. Town of Whitby*, 25 A.R. 191, as supporting his contention that, in the case of an obstruction to the highway, actual contact with it is not necessary in order to render the corporation liable. . . . It was not necessary for the Court to decide, and it did not decide by that judgment, that such an obstruction where it merely frightens horses and thereby causes damage, creates a condition of nonrepair within the meaning of sec. 606 of the Consolidated Municipal Act. On this point we are bound by *Maxwell v. Township of Clarke*, 4 A.R. 460, followed by *O'Neil v. Township of Windham*, 24 A.R. 341; and, following those cases, I am of opinion that the existence of the milkstand, off but close to the travelled portion of the road in question, did not, in itself, constitute a breach of the municipality's statutory duty to keep the road "in repair." Still, what is at one time a lawful may grow into an unlawful obstruction of a highway; and perhaps be then properly construed as creating a condition of nonrepair; and, if it be shewn that the municipality consented to its continuance when it became such unlawful obstruction, although the municipality was no party to its being originally placed there, still it might be liable: *Barber v. Toronto R.W. Co.*, 17 P.R. 293; *Castor v. Town of Uxbridge*, 39 U.C.R. 113; *Howarth v. McGugan*, 23 O.R. 396; *Rice v. Town of Whitby*, supra.

In the present case the evidence shews that the milk-stand, at the time of the accident, was a dangerous obstruction to the highway; and the question is, whether the defendants can be held to have had such reasonable notice of its existence as to render them liable for not causing its removal. It was erected without the knowledge or consent of the defendants, and they were at no time aware of its existence. It had been in place two