

LEGAL DEPARTMENT.

H. F. JELL, SOLICITOR,
EDITOR.

Municipal Councils.

THEIR POWERS AND JURISDICTION—
HIGHWAYS.

On the trial of action against municipal corporations for the recovery of damages for alleged defects in or non-repair of highways, the question very often arises as to whether the conduct of the plaintiff did not materially contribute to the happening of the accident, and the consequent sustaining of injury to him. This is an important point and well worthy of consideration. The obligation imposed on municipal corporations to keep highways in repair is only as against such accidents as are likely to and actually do occur in using a highway for the purposes of travel. It is shown that the plaintiff in any manner, by his own want of care, directly contributed to the happening of the accident, the corporation is not liable. There can be no recovery if the injury be attributable to any unskilfulness or want of care on the part of the driver, or if the accident was really and substantially caused by reason of some defect in the plaintiff's wagon, harness, etc. No person is in fault in neglecting to observe and avoid a defect not so plain and obvious as to be necessarily observable of ordinary faculties travelling at an extraordinary pace. It is not such negligence to prevent a recovery, that the traveller did not know the road, and yet travelled it on a dark night, and it has been held in American cases, that driving on the wrong side of the road does not constitute such negligence, nor driving in a violent storm through the streets of a city with which the driver was unacquainted, and persons who are blind, halt or deaf, have a right to act on the assumption that the highway is reasonably safe. Sometimes these accidents are occasioned by causes over which neither the plaintiff or defendant corporation have any control. The violence of a horse acting without guidance or discretion may be the immediate cause of the injury. The cases relating to this point are somewhat conflicting. However, the rule adopted in Ontario is that, where two sources contrive to produce the injury, both in their nature proximate, the one being the defect in the highway, and the other, some occurrence of which neither party is responsible, such as the accident of a horse running away beyond control, the corporation is liable, provided the injury would not have been sustained but for the defect in the highway. It is well to note that the provisions of sub-section 1 of section 531, of the Consolidated Municipal Act, 1892, are made out to apply to "any road, street, or bridge or highway laid out by any private person," and the corporation will not be liable to keep the same in repair, until

established by by-law of the corporation, or otherwise assumed by the corporation (Sub.-Sec. 2) this proviso does not apply to roads laid out by the Government and afterwards abandoned to the municipalities. The legislature meant by it that the mere laying out of a road or building of a bridge by a private owner shall not cast a criminal and civil responsibility on the municipality or upon the public represented by them. It has been held that if a municipal corporation have created a street as a public street, taking charge of it and regulating it as other streets in the municipality, they cannot be allowed when sued for an injury arising out of sheer negligence to repudiate their liability. Several American cases hold that work done by the proper authority on roads used as highways, although no evidence of their establishment under statute or other evidence of acceptance is shown, is sufficient to authorize the inference of acceptance by the constituted public authorities.

Legal Decisions.

MYLES VS. THE TOWNSHIPS OF ROCHESTER
AND MAIDSTONE.

This is an action brought by the plaintiff, who resides in the township of Rochester, to recover \$200 damages for injuries received by him in consequence of being thrown out of his sulky and injured on the 7th of August last, owing, as the plaintiff in his statement of claim alleged, to the negligence of the defendant corporation by allowing a pile of bricks to remain on the road in an unlawful manner. It appeared from the evidence that certain repairs were needed on the highway complained of and that the bricks referred to were deposited on the road for the purpose of filling up ruts. The question between the townships was as to whether, in the event of the plaintiff recovering damages, the townships should be held jointly liable. This was finally agreed to. The jury, after being out an hour, returned a verdict for the plaintiff for \$200, that being the full amount for which he sued.

YORK VS. TOWNSHIP OF OSGOODE ET AL.

This was an application by the plaintiffs to continue an interim injunction against the defendants, in an action brought by James York, the younger, and Isaac York against the municipal corporation of the township of Osgoode, John Bower Lewis and certain other persons, who were owners of lands in the 6th concession of that township, with respect to a certain ditch or drain proposed to be constructed, under the Ditches and Watercourses Act, through lands in the 6th and 7th concessions of the said township. The plaintiffs stated that they were owners of certain lands in the 6th concession; that the defendant corporation had jurisdiction over the highway between the 6th and 7th

concession; that the defendant Lewis was the township engineer; that the defendants, George Comrie and William Comrie, were not the owners of any lands in the township; and that the other defendants were the owners of certain lands in the 6th and 7th concessions. The plaintiffs further stated that the defendant George Comrie, on the 25th August, 1891, filed with the clerk of the township a requisition for the construction of a ditch or drain through certain specified lands, which requisition was signed by William McCrostie, George Comrie, Hugh McAlindon, George Popham, James McCurdy, and William Comrie, and designated as the lands through which it would be necessary to continue the ditch, the lands of the six persons signing the requisition, and the lands of the plaintiff James York, the elder, John Carson, Mrs. Peter McCrostie and the corporation as owners of the highway. The plaintiffs further stated that the defendant Lewis, as engineer, had made an award with respect to the proposed ditch, from which the plaintiff James York, the elder, had appealed to the county judge, who had confirmed it except as to the time of doing the work under it. The plaintiffs complained that their lands would not be benefited by the making of the proposed ditch; that the plaintiff, James York, the younger, and Isaac York were not mentioned in the award, nor were their lands or those of their co-plaintiffs declared to be benefited by the proposed drain, yet they were held liable to make part of the drain, and their lands were burdened therewith; that the defendant, George Comrie, never was the owner of any land in the 6th and 7th concessions, and had no authority to originate the requisition or to be a party to it as to the award; that the assent in writing of a majority of the owners affected or interested was never obtained to the construction of the ditch; and that the award was bad because it did not specify the locality, description, and course of the ditch or drain, nor the portion thereof to be done by the respective owners. The plaintiffs claimed: 1. A declaration that the defendant Lewis had no jurisdiction to make the award, and that the county judge had no jurisdiction to make any order in appeal, conferring the same, and that the award and order were null and void. 2. A declaration that the alleged award and judge's order were not binding on the plaintiffs, or on any or either of them, and that they or any of them were not bound to make any part of the drain. 3. A declaration that the alleged award was not binding on the lands of the plaintiff mentioned therein, or any of them. 4. A declaration that the defendant Lewis was not entitled to let the construction of the drain mentioned in the alleged award on the 28th of October, 1892. 5. An injunction restraining the defendants from letting or constructing the work at the expense of the plaintiffs, or entering upon the lands