

LEGAL DEPARTMENT.

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Municipal Corporations.

THEIR POWERS AND JURISDICTION.—
HIGHWAY.

By section 282, of the Consolidated Municipal Act, 1892, it is provided that the jurisdiction of every council shall be confined to the municipality the council represents, except where the authority beyond the same is expressly given.

The municipality is a locality whose limits are defined and determined by statute, and the council has no general authority beyond those limits. It cannot, in general, benefit another municipality at the expense of its own; but as roads, streets, bridges and other like public communications may extend from one adjoining municipality into another so as to be partly in each, power is given by section 554, of the said Act, to the council of any municipality to pass by laws for granting aid to any adjoining municipality, in making, opening, maintaining, widening, raising, lowering or otherwise improving any highway, road, street, bridge, or communication passing from or through an adjoining municipality.

Sub-section 1, of section 555, of the said Act, authorizes the council of every township, city, town or incorporated village to pass by-laws for granting to the county or united counties, in which such municipality lies, aid by loan or otherwise, towards opening or making any new road or bridge on the bounds of such municipality.

Section 556, of said Act, makes provision for the enforcement of the repair of township boundary lines not assumed by the county in the same way as other township roads, when the township councils interested, fail to agree mutually to the share of such maintenance to be borne by each. In such case it shall be competent for one or more of such councils to apply to the county council to enforce joint action on all township councils interested. Apparently the intention of this section is to embrace roads dividing townships, otherwise there would be no necessity for a provision as to the share to be borne by each in respect to the obligation to open, repair and improve. It is true that in cases of townships adjacent to an unsurveyed tract, the provision would be in terms applicable, whether the townships were divided or not by the boundary line. The probability is, however, that the legislature meant the section to have a more extended operation. This supposition is confirmed by a reference to section 557 of said Act, which gives a majority of the ratepayers, resident on the lots bordering on either or both sides of such line of road, authority to petition the county council to enforce the opening up or repair of such lines of road by the township councils interested, in the case where all the township councils interested

neglect or refuse to open up or repair such lines of road in a manner similar to other local roads. The last mentioned section supposes that at least one of the townships interested is disposed to do what is required of it. But if all interested fail to perform the duty cast upon them, the majority of the ratepayers, resident on the lots bordering on either or both sides of such line may petition the County Council to enforce the opening up or repair of such line. On receiving such petition either from the township council or from rate-payers as mentioned in sections 556 and 557, the council may consider and act on the same at the session at which the petition is presented and the action taken by them may be either by directing the expenditure of money or the doing of statute labor or both, as may seem necessary to make the said lines of road equal to other roads. The word "may" in this section and the succeeding one is permissible.

The original section provided that "It shall be the duty" of a county council receiving, &c. The change in language is designed to remove the duty and leave the power to act as one of simple discretion. It is the duty of the county council, under these circumstances to appoint a commissioner or commissioners to execute and enforce their orders or by-laws relative to such roads. The mere order or direction of the county council, without power to enforce it against the townships interested, would be of little avail.

Legal Decisions.

M'DONALD V. DICKENSON, ET AL.

The cause of action, as stated in the claim, was that on or about the 18th of June, 1892, the plaintiff was lawfully driving along Talbot road in the township of Yarmouth, and when about four miles west of Aylmer, and while driving westward to St. Thomas, owing to obstructions placed and excavations made in the road unlawfully by the defendants, the plaintiff's horse became frightened and ran away, the conveyance in which the plaintiff was driving was upset, she was thrown out and seriously injured, and the vehicle and other property were damaged.

On Talbot road, there was a fill between the hills of a depth variously estimated at from 14 to 17 feet, and a railing extended along each side of the fill, and in this fill there was a culvert which required renewing, and on the 4th of April, 1892, a resolution was passed by the Council of Yarmouth that the reeve and Mr. Luton be a committee to rebuild this culvert.

The defendant, Brower, was the reeve and the defendant, Luton, was the first deputy reeve of the township, and they superintended the work and appeared to have been paid by the township for such superintendence. The defendant, Luton, brought tiles for the culvert and had them shipped to New Sarum, and employed the de-

fendants, the Tisdales, to draw the tiles to the culvert. The defendant, Dickenson, was employed to work by the day at putting in the culvert, and he happened to be at the same time the pathmaster for the beat in which the culvert was situated. The tiles were large, two and one-half feet long and 40 inches outside, and 31 inches inside diameter, and some of them were placed on the north side of the fill at the end of the railing, and as the plaintiff was driving along the road to St. Thomas her horse shied at these tiles and upset the conveyance and she was injured.

The defendants raised the objection that they were fulfilling a public duty, and the placing of the tiles on the side of the road was done by them in the performance of such public duty, and that they were, therefore, entitled to the protection of the Act R. S. O. ch. 73, and were entitled to notice of action, and the learned Judge, being of this opinion, dismissed the action at the trial.

On appeal to the Queen's bench divisional court it was held that the defendants were not fulfilling a public duty, and were not entitled to notice of action under R. S. O. ch. 73.

It was held, also, that that statute is applicable only to officers and persons fulfilling a public duty for anything done by them in the performance of it, when it may be properly averred that the act was done maliciously and without reasonable and probable cause, and therefore not to actions for negligence in the doing of the act.

It was held, lastly, that one of the defendants, who was pathmaster for the beat in which the culvert was situated, did not come within the protection of the statute as pathmaster, because he was not employed as in doing this work, but as a day laborer.

This case at present is in the Court of Appeal and a judgement of personal interest to municipal councillors and officers is looked for.

JOHNSON VS THE CITY OF TORONTO.

These are two actions which are consolidated, and were brought by owners of adjoining houses on the north side of King street west to recover damage alleged to have been occasioned by the negligence or improper of the defendants in respect to the sewer in that street and the drainage of the said houses.

It appeared that the sewer had been properly constructed and maintained by the defendants, according to a plan of drainage adopted by them, and the houses in question were erected after the construction of the sewer, the owner having first sought and obtained leave to drain and discharge his sewerage from the houses into it. He, however, made the cellars of the houses too deep to be drained by the sewer, though otherwise the houses were situated in the proper and appropriate location for draining them thereby.

It was held, affirming the decision of Street, J., at the trial, that the plaintiff's action must be dismissed with costs.