must respond in damages. So one whose sight is dimmed by age or a near-sighted person is entitled to the same rights: Davenport vs. Ruckman, 37 N. Y., 568; Smith vs. Wildes, 143 Mass., 556. The proximate cause of the injury here was the leaving of the area without sufficient protection, and if, instead of stubbing his toe, plaintiff had slipped on a banana peel or been jostled, the result, owing to the insufficient protection, would have been the same. The plaintiff was in the constant habit of walking through the streets of Hamilton; he knew the locality in question well, and having regard to the fact that, although he would have fallen from stubbing his toe, he would not have fallen into the opening, but for the negligence in leaving the area without a guard, it is impossible to conceive how contributory negligence can be imputed to him. As there is a natural presumption that everyone will act with due care, it cannot be imputed to plaintiff as negligence that he did not contemplate culpable negligence on the part of defendant. Appeal allowed, and, pursuant to agreement between the parties as to amount, judgment is to be entered for plaintiff for $250 with costs against defendant corporation, who are to have judgment for the total amount together with that of their own costs occasioned by defending the action, over against the third party, Hughes.

Town of Whitby v. G. T. R. Company.

Judgment on appeal by defendants from judgment of Boyd, C., in favor of plaintiff in action for damages upon a bond in breach of an alleged agreement entered into between the Whitby & Port Perry R. W. Co. and plaintiffs, whereby the company agreed that certain of their work-shops should be maintained at Whitby. The action is upon a bond given by the directors against a breach of the agreement The Whitby & Port Perry Railway Co. was consolidated as the Midland Railway Company of Canada, by 45 Vict., ch. 67, and defendants have since acquired the consolidated company. Held, that the Whitby, Etc., R. W. Co. had no express or implied power under its act of incorporation, 31 Vict., chap. 42, to make the agreement sought to be enforced, and that it was not validated or confirmed by section 37 of 45 Vict., ch. 67, providing that "the workshops now existing at the Town of Whitby on the Whitby section, shall not be removed by the consolidated company without the cons nt of the council of the corporation of the town of Whitby," but that this provision must be looked at as an independent statutory provision; the plaintiffs' claim therefore, to recover upon the agreement, must fail; but as it may turn out that they have a right to a remedy in damages, upon the prohibition contained in section 37, final judgment should be reserved to enable plaintiffs to apply on notice to defendants, for leave to amend by claiming a remedy against them by virtue of such prohibition, and to argue the question of liability under it, and the question of damages. Order accordingly.

Township of Beckwith v. McNeeley.

Judgment in action tried without a jury at Perth. Action to recover possession of such parts of lot 14, in the 11th concession of the township of Beck with, as formed part of the travelled road leading from the village of Franktown to the town of Carleton Place, and to compel the defendant to remove therefrom the fences causing an obstruction to the highway. The defendant denied that the lands described formed any part of a public highway, and pleaded the statute of limitations. Held, that there was sufficient evidence of dedication and acceptance by the township, of a road about forty feet in width, and no action was taken to increase the width until 1887 and 1888, when, upon petitions, by-laws were passed by the township council for widening the road from the defendant's land, but no petition had been presented asking that the highway through lot 14 should be widened, and no steps had been taken by the council for expropriating the defendant's land to increase the width of the highway beyond what it had been for more than 60 years. The claim for possession is not maintainable, and the obstructions were removed by the defendant before action. Action dismissed with costs.

Rex., ex rel: Walton vs. Freeborn.

Judgment on appeal by defendants from order of district judge of District of Parry Sound, setting aside the election of and unseating defendants Jenkins and Harrison as municipal councillors and defendant Freeborn as a reeve of the township of Chapman, and directing a new election. When the application was made to institute proceedings there was laid before the judge not only the affidavit of the relator setting forth the ground of objection, but the recognizance, with affidavits of justification and two sureties. These were filed 9th February, 1901, and the judge granted the fiat permitting notice to be served under section 220, R. S. O., chapter 223, but he did not mark the recognizance or fiat with the words "recognizance allowed" until the 28th February, on which day the motion was hea d. Held, that there is nothing in the statute leading to the conclusion that his so doing is ultra vires. On the contrary when the recognizance has been entered into by the relator and his bail or sureties with statutory affidavit of justification, the security is completed, and it is his duty to allow it as sufficient; section 220, Reg. vs. Farmer, 14 P. R.; 463. The security, therefore, in this case was sufficient when the fiat was given, and the declaration in writing that it was so may be made at any time objection is raised. This whole interlocutory procedure is within the discretionary jurisdiction of the judge, and is not a subject of appeal. Held, also upon the merits after a full analysis of the evidence as to all that took place, that the decision below is unimpeachable, and the judgment directing an election to be held should be and is affirmed with costs.

Township of Elizabethtown v. Township of Augusta.

Judgment on appeal by plaintiffs from judgment of Street, J., in action brought to recover a proportionate part of the costs of the removal, in the year 1887, of an obstruction to Mud Creek (which runs through both townships), known as Bellamy's mill dam. The trial Judge held that all that was done by plaintiffs was the purchase and removal of the dam, which was situate wholly within the limits of the township of Augusta, and this being so he was bound by West Nissouri v. Dorchester, 14 O.R. at p. 298, to hold that a scheme of that kind was not within the provisions of section 570, of the Municipal Act of 1893, as amended by 49 Vict. (O.) ch. 37, sec. 20, and 50 Vict. (O.) ch. 29, sec. 54; that to hold otherwise would empower one inhabitant of Elizabethtown to have petitioned and procured the draining of the whole township of Augusta; that what the act intended was that where the lands to be drained were in one township the work might be done and the lands in an adjoining township, incidentally benefitted, charged with part of the cost. The court divided in its opinion. Per Lister, J. A., Osler, J. A., concurring:—The right to recover depends upon whether there was a proper assessment within the meaning of the Consolidated Municipal Act, 1883, in force at the time. There was no assessment by the engineer within the meaning of section 570, whose duties are correctly defined by Street, J., in Robertson v. Easthope, 15 O. R. at p. 431, and sec. 580 does not give validity to the so-called assessment. In the result, appeal dismissed with costs.

Luton vs. Township of Yarmouth.

Judgment in action tried at St. Thomas brought to recover damages for injuries sustained by plaintiff, who, when driving a team of horses down "Luton Hill," on the Edgeware road, was thrown out owing to the highway being, as alleged, out of repair. The wagon struck a stone, which caused the left wheels to slide into a wash-out, and the horses ran away, causing the injury. Held, distinguishing Atkinson vs. Chatham, 29 O. R., 518, sub nom., Bell Telephone Co. vs. Chatham, 31 S. C. R. 61, that the causa causans was not the running away of the horses, but the inefficient state of highway. See Hill vs. New River Co., 9 B. & S. 303; Sherwood vs. Hamilton, 37 U. C. R. 410; Towns vs. Whitby, 35 U. C. R. 195. Judgment for plaintiff for $1,750 and costs.