municipal charters generally involve any rights of property whatever. They are all created for public uses and subject to public control.

We think that it will require legislative action to create any liability to private suit for non-repairs of public ways. Whether such responsibility should be created, and to what extent and under what circumstances it should be enforced, are legislative questions of importance and some nicety. They cannot be solved by courts.

Judgment reversed.

Cooley, J., dissented.

(Note by Editor of *American Law Review.*)

[The foregoing case is one that cannot fail to be of interest to the profession, inasmuch as it concerns an important question affecting a great number of our municipalities to a very large extent, and is, at the same time, a departure from the doctrines, which have been supposed to have been adopted by the English courts and those of some of the American States. The question is by no means free from difficulty; and we cannot fairly say that we have been able to devote sufficient time to an examination and analysis of the cases bearing upon the point, to enable us to speak confidently of the exact weight of authority against the decision here made. There seems to be no question, whatever, that the New York Courts have adopted a rule more in conformity with the dissenting opinion in this case than with that of the majority. In *Davenport* v. *Ruckman*, 37 N. Y., 568, the rule is thus stated: When the streets or sidewalks of the city of New York are out of repair through the neglect of the corporation, it is liable to an action for such neglect, at the suit of the person injured, whether the injury arises from some act done by the corporation, or from an omission of duty on their part. And the same doctrine is found in numerous earlier decisions in that state, most of which are referred to in the opinion in the case under review. The rule is thus stated in a late case in the Supreme Court of New York: "Whatever may be the case in regard to commissioners of highways in towns, a different and more stringent rule appears to have been applied to corporations and the trustees of a village:" *Hyatt* v. *The Trustees of the Village of Rondout*, 44 Barb., 385.

And in *Wendell* v. *The City of Troy*, 4 Keyes, N. Y. Court of Appeal, 261, the city was held responsible for an injury to the plaintiff, by means of the defective construction of a drain under the street, whereby it caved in, although built by a private person for his own convenience by permission of the city authorities. The New York cases seem to go the full length of making cities and villages responsible for all damage caused by any failure to perform the duties imposed by their charters, on the ground that having sought special acts of incorporation they are bound, as corporations, to the performance of all the duties imposed by such charters, as conditions voluntarily assumed by the corporations, impliedly at least, by reason of the acceptance of the charters containing such conditions. And the case of *Jones* v. *The City of New Haven*, 34 Conn. 1, seems to go much upon the same ground, except that there the matter came specially under one of their own by-laws, in regard to which there might seem to be less question than if the duty had been imposed by the legislature as a public duty or burden.

The general doctrine that a public officer is not responsible for the misconduct of his subordinates, although his appointees, has been recognized from an early day: *Lane* v. *Cotton*, 1 Ld. Ray. 646, where the action was against the postmaster general for the default of his deputies. The case of the *Mayor of Lime Regis* v. *Henley*, 3 B. & Ad. 77; S. C. 2 Cl. & Fin. 331, was an action for injury to the defendant's land by reason of the plaintiffs failing to repair certain sea walls appertaining to their municipality, and which the condition of their charter obliged them to maintain and keep in repair. The case was first decided by the Common Pleas, in favor of the present defendant, 5 Bing., 91, and came for hearing on writ of error in the King's Bench. Lord Tenterden, Ch. J., gave judgment for the defendant, upon the ground that the corporation by accepting its charter became bound to perform all its conditions, and whoever suffered damage through any default in that respect, may have an action and the public may have redress for such defaults by indictment.

The subject has been more or less considered by the English courts since that time; but the case of the *Mersey Docks* v. *Gibbs*, and the same v. *Penhallow*, 1 H. Lds. Cases, N. S. 93—128; S. C., 1 H & N. 439; 3 id. 164, seems to have put the question at rest there, so far as the points involved in the latter case are concerned. The injury complained of here occurred by reason of the docks being out of repair. The plaintiffs are a public corporation, created for the purpose of maintaining the harbor of Liverpool, and are required to maintain and keep in repair suitable docks and other harbor accommodations, for the use of which they are authorized to demand certain dues, which are intended to maintain the works, and are to be lessened whenever they produce more than is required for that purpose. The Court of Exchequer gave judgment in favor of the corporation, on the authority of *Metcalfe* v. *Hetherington*, 11 Exch. 258; but this judgment was reversed in the Exchequer Chamber; 3 H. & N. 164, and the judgment of the Exchequer Chamber affirmed in the House of Lords. The case of Gibbs was heard on demurrer to the declaration which contained the averment that the company knowing that the dock and its entrance was, by reason of accumulation of mud, unfit to be used by ships, did not take due and reasonable or any care to put it in a fit state, but negligently suffered the dock to remain in such unfit state, whilst, as they well knew, it was used by vessels, and that the damages arose in consequence.

The case in the Exchequer Chamber seems to have been decided upon the general ground that a corporation created for the purpose of maintaining public works, and receiving tolls or dues for the use of the same, is bound to see that such works are kept in a safe and fit condition for public use. This decision went upon the authority of *The Lancaster Canal Co.* v. *Parnaby*, 11 Ad. & El. 223, 242. And it was here considered that it made no difference whether the tolls were reserved for the benefit of the shareholders, as in the last case cited, or in a fiduciary capacity, as in the present case. And the House of Lords