LEGAL DEPARTMENT.

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Snow and Ice on Streets.

Stewart vs. Woodstock & Huron Plank and Gravel Road Co. was an action brought in 1858 by the lessee of a toll-gate against the Woodstock & Huron Plank and Gravel Road Co., to recover damages for neglect of duty on the part of the company in allowing the road near the gate to be encumbered and blocked up with snow so that it became impassable, and the plaintiff thereby lost the profits from the tolls for two months. The Court of Queen's Bench held that he could not recover. Robinson, C. J., who delivered the judgment of the court, said: "Letting snow lie on a macadamized road does not, in our opinion, come under the notion of suffering the road to go out of repair." If it was intended by the court to lay down the doctrine that the existence of snow or ice upon a highway in such quantities or condition as to render it dangerous to travellers does not constitute want of repair, it has not been followed in subsequent cases. But when the language used by the learned judge is considered in connection with the facts of the case and the nature of the action, we do not think it is an authority that municipalities cannot render themselves liable for allowing highways to remain unsafe for public travel by reason of an accumulation of snow or ice. In Caswell vs. St. Marys, etc., Road Co., a similar case, the defendants were held liable. The law is laid down thus:

"If snow collects at a spot, and by the thawing and freezing the travel upon it becomes specially dangerous, and if this special difficulty can be conveniently corrected by removing the snow or ice, or by other reasonable means, there must be the duty on the person or body on whom the care of reparation rests to make such place fit and safe for travel. * * * It must be a question of fact altogether for the jury to say whether the place alleged to have been out of order was dangerous, and if so, from what cause? and if from natural cause or process whether the persons liable to repair the road could reasonably and conveniently, as regarded expenditure and labor, have made it safe for use. If the obstruction or danger could properly and reasonably have been removed, then the persons on whom the burden lay to keep the road in order should be held to the fulfilment of their duty to make it safe and useful for the public at whatever season of the year or from whatever cause the impediment or difficulty may have happened."

Again, in Ringland vs. Toronto, Gwynne, J., says:

"It is obvious that what is 'repair' and 'want of repair' must depend on various considerations — the nature of the obstruction causing the alleged disrepairs, whether it be caused by the elements or by the wrongful act of some individual, the season of the year, the severity and inclemency of the weather at the time, if it be severe and inclement for the season. And with reference to these and such like surrounding circumstances the question must be, whether or not the road or sidewalk was in reasonable repair for the use to which it applied. The question must be one having relation to what is reasonable, having regard to the surrounding circumstances.

In a recent case, Dreman vs. Kingston, the evidence was that snow had accumulated on a certain street crossing in the city of Kingston, partly from being shoveled there from the sidewalks and partly from the action of passing sleighs, so that there was a descent of some inches from the crossing to the sidewalk, and the plaintiff slipped on this descent and was injured. The case was tried before Meredith, C. J., and a jury, and the jury found that the defendants had been negligent and gave the plaintiff $1,500. On appeal the Common Pleas Divisional Court affirmed the verdict, and on an appeal to the Court of Appeal, the judges, being equally divided, the appeal was dismissed. The chief justice distinguished the case of Derochie vs. Cornwall from this case upon the ground that the sidewalk there, from bad construction or age, had sunk down so as to allow water to accumulate, and in consequence ice formed and caused the accident. Upon reference to the judgment of the Supreme Court, we do not find that the decision of that court is put upon the ground of improper construction alone. Taschereau, J., cites Caswell vs. St. Marys Road Co., with approval. It is a statutory duty cast upon municipalities to keep the highways reasonably safe for public travel, and we cannot see how it can make any difference whether a highway is dangerous by reason of some structural defect, the accumulation of ice, the formation of a hole or gutter, or an obstruction, which renders it unsafe for public travel. In an English case, McGriffin vs. Palmer's Shipbuilding, etc, Co., says: "The case has been put of a way perfectly well constructed, but upon which on a frosty morning water falls, so that it gets into a dangerous state. I cannot help thinking that that would be a defect in the condition of the way, because the way is the thing which the people walk upon, and the thing itself is altered." That a municipality may be liable for any injury caused by the accumulation of ice or snow appears to have been recognized by the Legislature in the Act of 1894 (section 13, chapter 50), which reduces their liability by declaring them liable only for gross negligence for accidents arising from persons falling owing to snow or ice upon the sidewalks. The Act of 1894 gave further protection to municipalities by providing that no action should be brought to enforce a claim for damages under subsection 1 of section 531, Consolidated Municipal Act, 1892, unless notice in writing of the accident and the cause thereof has been served upon or mailed through the post office to the head of the corporation or to the clerk of the municipality within thirty days after the happening of the accident. By section 20, chapter 51, 1896, the notice must be given in cities, towns or villages within 7 days, and the judge has now no discretion. Under the Act of 1894 the trial judge might allow the trial to proceed if there was reasonable excuse for the want of the notice and the defendants were not prejudiced by its not having been given. It was held in Dreman vs. Kingston that a street crossing in the line of and joining parts of a sidewalk was not a sidewalk within the meaning of the amendment of 1894, so that it was not necessary in that case to consider the meaning of "gross negligence" in reference to the conduct of the corporation or its officers. We are not to be understood by anything which we have stated that the mere accumulation of ice or snow on a highway, rendering it dangerous, is sufficient to make the corporation liable. Where the accumulation of ice or snow takes place without any fault of the corporation or its officers, it is necessary to prove negligence on the part of the corporation in not repairing the highway, as Patterson, J. A., puts it in Lucas vs. Moore: "The corporation is liable not merely because the road is impassable or dangerous, for that state of things may exist without blame to the corporation, but because there has been neglect of the duty to keep the road in such a state of repair as is reasonably safe and sufficient for the ordinary travel of the locality."

A Township Clerk's Vote.

ARMSTRONG VS. PEARSON.

Stratford Herald.

An interesting case was tried before Robertson, J., at Perth Assizes, in Stratford, a few days ago. Mr. Osler, plaintiff's solicitor, in opening the case, stated that at the last municipal election the plaintiff, Armstrong, was a candidate for reeve of the township, and was defeated by about 100 majority. The defendant, John Pearson, was clerk of the township, and at the last election spoke and worked against Armstrong. Perhaps it was on this account that Armstrong was defeated. As township clerk, Mr. Pearson was returning officer, and the law says he has no right to vote, excepting in the case of a tie, and the law also provides that when a man wilfully contravenes the act the aggrieved person may sue for a penalty of $400 imposed for such offences. He must do such act wilfully to be responsible, and he expected to be able to show that the defendant did wilfully vote. Mr. Osler then asked for the facilitation of business that the defence admit that the defendant was