

that they running away, the injury was caused by their running the vehicle against the stump in the highway, the plaintiffs could not recover, because, notwithstanding the stump, the road was in a reasonable state of repair for ordinary travel.

Appeal dismissed with costs.

Lynch-Staunton, for plaintiffs. *W. T. Evans*, for defendants.

Armour, C.J., Street, J.] FITZGERALD *v.* MOLSONS BANK. [Jan. 29.

Municipal corporation—Borrowing powers—Current expenditure—Inquiry by lenders—Repayment of money lent—Action to restrain.

An appeal by the plaintiffs from the judgment of Rose, J., at the trial at Ottawa, dismissing the action, which was brought by certain ratepayers of the Village of Hintonburgh against the bank, the village corporation, and the sheriff of the county of Carleton, to restrain the collection and enforcement of a judgment for \$6,000 recovered by the bank against the village corporation, upon the ground that the corporation had no power to borrow from the bank the money for which judgment was recovered. The borrowing of \$7,000 from the bank was authorized by by-laws of the village corporation passed in 1895. The amount borrowed was expended in the repair and alteration of certain roads, and in diverting the course of a certain stream within the village limits. These works were within the general powers of the corporation, but no provision had been made for the outlay in the estimates. The by-laws authorized the borrowing of not more than \$7,000 to meet current expenditure until the taxes could be collected. The by-law which authorized the levying of the rates for 1895 specified the amounts to be levied for each separate purpose, and these works were not specified. The whole amount authorized to be levied was only \$5,179.45. In 1897, after this action had been begun, a by-law was approved by the vote of the ratepayers, and passed, which authorized the issue of debentures for \$8,000, reciting the expenditure upon the works referred to.

Held, that, upon the proper construction of s. 413 of the Municipal Act of 1892, as amended by the Act of 1893, s. 10, a bank or individual lending is bound to inquire into the amount of the taxes authorized to be levied to meet, the then current expenditure, and cannot lawfully lend more than that sum, although not bound to inquire into the existence of an alleged necessity for borrowing. It was admitted, however, that the money borrowed from the bank was expended by the council upon works within its jurisdiction upon which money lawfully obtained for the purposes of the council might have lawfully been expended; the by-law of 1897 was also admitted, and that the council had issued debentures and raised money upon them, and were willing to pay back to the bank the money borrowed, and were only restrained from doing so by the proceedings in this action. If the plaintiffs, upon the passing of this by-law, had withdrawn their opposition to the payment of the bank's claim, they would have been entitled to their costs, because they were right up to that point; but they insisted that the council had no right to use the money raised upon these debentures in