LEGAL DEPARTMENT.

H. F. JELL, SOLICITOR,
EDITOR.

Municipal Councils.

THEIR POWERS AND JURISDICTION—HIGHWAYS.

Where an accident is occasioned by a defect in the highway, existing by reason of the necessary repair of such highway, the corporation may be held liable in damages to the party injured; for in such a case there should be a light or signal of some other kind to warn travellers of existing danger in the use of the way. The duty of maintaining the streets and roads in a proper condition for public travel being imposed on municipal corporations. This duty rests primarily, so far as the public is concerned, upon the corporation, and the obligation to discharge this duty cannot be evaded, suspended or cast upon others, by any act of such corporations. Where a dangerous excavation is made and negligently left open (without proper lights, guards or covering) in a travelled street, road or sidewalk, by a contractor under the corporation for building a sewer or other improvement, the corporation is liable to a person injured thereby, although it may have had no immediate control over the workmen. Even the obtaining by the corporation of a stipulation from the contractor that proper precautions shou'd be taken for the protection of the public, and making him liable for accidents occasioned by his neglect, will not absolve the corporation from such primary liability. If held liable, however, in any case, a stipulation of the kind mentioned will give the corporation a remedy over against the contractor. If a defect in a highway arise otherwise than from faulty structure, and from some act other than the direct conduct of the defendants (corporations) as their servants, and be a recent defect, it is generally necessary to show that the defendants or their servants had knowledge thereof, or were negligently ignorant of it. It behooves every officer or servant of a municipal corporation, if he is alive to the best interests of that corporation, to keep a watchful eye over its roads, in order that all defects therein may be noticed and promptly put in a proper state of repair. Notice to the corporation may be inferred from the notriety of the defect and from its continuance for such a length of time as to lead to the presumption that the proper officers of the municipality did, in fact, know, or with proper vigilance and care, might have known the fact. This latter is sufficient, because this degree of care and vigilance they are bound to exercise, and, therefore, if, as a matter of fact, they do not know of such defect, when, by ordinary and due vigilance and care, they would have known it, they must be responsible, as if they had actual notice. If the defect be palpable, dangerous, and has existed for a long time, it may very properly be inferred that there was either negligent supervision and ignorance, consequent upon and chargeable to neglect, or notice of the defect and a disregard of the duty to repair it, but where an injury has been caused or produced by some sudden and unexpected cause, it has been held that the corporation were not liable till they had a reasonable opportunity to repair.

Legal Decisions.

The Sheep-Worrying Case.

FOX VS. WILLIAMSON—DECISION REVERSED BY THE COURT OF APPEAL.

This was an appeal from the judgment of His Honor Judge Chadwick, referred to in the August number. The matter first came up at the last sessions of the county court. It was an action brought by Mr. J. J. Fox, of the township of Guelph, against Mr. J. B. Williamson, of this city, for damages arising from a number of thoroughbred ewes and some lambs having been killed by Mr. Williamson's dog. The action was brought under R.S. O. 215, section 15, which authorized anyone sustaining damages in this way from dogs to recover the amount from the owners of the dogs. The statute is somewhat obscure as to the mode of trial. The plaintiffs contended the whole case could be tried by a jury and duly gave the usual notice of a jury at the trial. The case was tried by a jury, subject to the objections of defendant that such was not the law. His Honor afterwards heard argument as to the construction of the statute, and decided the jury could not try the case. Accordingly he set aside the verdict of $125 which they had given the plaintiff at the trial. The defendant had paid into court the sum of $100, claiming that was his share of the damage sustained by Mr. Fox. Judge Chadwick held he had the sole right to try the case, and this sum was ample to satisfy the damage done by Mr. Williamson's dog, and he directed the $100 be paid out to Mr. Fox, and that Mr. Fox pay all the costs of the action. From this decision Mr. Fox appealed to the court of appeal for Ontario, claiming that on the construction of the act the plaintiff was entitled to a jury by the first sub-section of section 15, and that there was no provision anywhere depriving him of it in the subsequent sections; that these sections did not apply to a case like that of Mr. Fox, where all the known owners of the dogs were before the court, and consisted of one only, and on other grounds. A unanimous judgment was received, allowing the appeal with costs, in both courts, and restoring the verdict of the jury for $125. In the course of his judgment, Mr. Justice Osler stated that the Dog Act was quite inartistic, and required considerable amendment before it could be looked upon as a model piece of legislation.

IN RE OLVER AND THE CITY OF OTTAWA.

On page 147 of THE WORLD for 1892, November number, will be found the decision in this matter in the first instance. The city appealed to the Court of Appeal for Ontario, from the judgment of Mr. Justice Rose; given in this periodical as above, quashing certain resolutions passed by the council of the city on the 20th of June and 4th of July, 1891. The purpose of these resolutions was to accept certain tenders for the construction of a new bridge across the Rideau River between the City of Ottawa, and the County of Carleton, and to authorize the extension of the contracts for the carrying out and performance of the work. The bridge was a work within the joint jurisdiction of the two corporations, and it had become necessary to re-construct it, or to close it altogether in consequence of its being so much out of repair, as to be dangerous. The city's share of the cost of re-construction was estimated to be about $13,000 or $14,000. No provision had been made for this in the estimates for the ordinary expenditure for the year 1892; nor had any special by-law been passed for raising the money by rate in that year, or for incurring a debt by the issue of debentures in order to pay for the work. Contracts were entered into about the 9th August, 1891, between the two corporations, and the contractor for the execution of the works, which were to be completed on or before the 15th of November, 1892.

On the 25th of August, the applicant gave notice of motion to quash the above mentioned resolutions, on the following amongst other grounds:

That the municipal corporation of the city of Ottawa have no unappropriated money on hand to meet the expenditure necessitated by the construction of the bridge, and no provision by rate or otherwise, has been made to raise the amount.

That the expenditure authorized by such resolutions being beyond the ordinary and usual expenditure and not payable within the present municipal year, can only be legally authorized by by-law after receiving the assent of the electors.

At this time the only provision made by the council to meet the expenditure which might become necessary if the bridge should be re-built, was by a resolution said to have been passed on the 5th of March, 1892, which authorized a special appropriation of $15,000 to be granted to pay the city's share of rebuilding the bridge on the understanding that one half of this amount will be charged to the general expenditure account of this year, and the remainder to the appropriation for 1893.

The court of appeal held, that a municipal corporation has no power, without a by-law, assented to by the electors, to enter into contracts involving expenditure not payable out of the ordinary rates of the current financial year, and quashed the resolutions referred to above as being a controvention of sections 344, 357 and 359 of the Municipal Act.