MUNICIPAL DEPARTMENT

LEGAL DECISIONS AFFECTING MUNICIPALITIES.

Minns v. village of Omemee. This case came up in the Trial Court, Toronto. Judgment in action tried at Lindsay brought by a husband and wife to recover damages. The plaintiffs live in the village. The defendant Graham is a hotel-keeper on the corner of King and George streets, and left open and unprotected a hole in the sidewalk on George street connecting with his cellar. The female plaintiff fell into the hole and injured herself. Held, that the driver Lamb and the Ostler Charlie were acting within the scope of their employment and for the benefit of their master, the defendant Graham, when engaged in unloading and storing the cask of beer by means of opening the trap door covering the hole, and that their negligence in leaving it unprotected and without a light is attributable to the master, who is liable. Whatman v. Pearson, L. R., 3 C. P. 422, see also Whitehead v. Reader, 1901, 2 Q, B. 48. Held, also, as to the corporation that no act of negligence had been proved against it—the opening was not proved to have been used from time to time in such a way as to be dangerous whereby notice might be attributed to the corporation; and as long as the trap door was kept closed the street was in good condition, and no possible danger existed. The construction of the area or opening in the sidewalk was an act legalized by the Legislature, R.S.O., ch. 223, sec. 639, and no fault is alleged in its construction and maintenance; Homewood v. City of Hamilton, 1 O. L. R. 266 distinguished, but assuming even that the case is conclusive against the corporation, it can only be so on the ground of omission, not commission. At the highest the blame is non-repair—an act of nonfeasance, not misfeasance, and thus regarded the action is one which should be brought within three months after the damages have been sustained; secs. 606, 608. Here 8 months have elapsed, and time is pleaded. Upon the question of misfeasance and nonfeasance see Lambert v. —— (1901), 1 K.B., 500, explaining dicta in Sydney v. —— (1895), A.C. 433. As to village action dismissed with such costs as would be taxable had the objection been raised as a question of law presented to the court before the trial under rule 373. Judgment against defendant Graham for $550 damages to female plaintiff, and $250 damages to male plaintiff.

THE VENTILATING AND FLUSHING OF SEWERS.*

By John Bryce, A. M. I. C. E., Burgh Engineer, Patrick.

It is impossible to give justice to this subject in a short introductory paper. To direct the discussion to the technical and working aspects of the subject, I have purposely left out all reference to the more scientific elements, such as the complex movements of sewer air, the composition of sewer gas, and the effects of temperature and wind on the ventilation of sewers. I am not aware that the subject has been discussed to any extent at any past congress of this association. In England, however, controversy and discussion on the subject has been raging more or less during the past 20 years, and it is admitted by the best judges that very little progress has been made. That a relation exists between sewer ventilation and the state of the public health is a matter on which there is considerable difference of opinion. The broad fact, however, that sewer gas is a strongly predisposing cause to outbreaks of zymotic diseases has never been denied, and must not be lost sight of. The improvement on the death-rate which certain patentees of sewer ventilators have been careful to trumpet forth as due to the adoption of their apparatus should, in fact, be attributed to a variety of causes. Sanitary reform is improving our streets, house drains, and internal fittings simultaneously with any improvement effected on the ventilation of sewers; and it is the combination of all these reforms put together that should be credited with any improvement of the public health. Local authorities are obliged, under the Burgh Police Act, 1892, and the Public Health Act, 1897, to provide proper ventilation for sewers, and to keep them clean and free from nuisance. The framers of the 1892 Act evidently anticipated that steps would be taken by burgh authorities to ventilate sewers in the erection of tall shafts against buildings, and the utilization of factory stalks, provision being made to carry through these arrangements by the aid of the Lands Clauses Act, and to recover all costs incurred in improving ventilation from the general sewer rates. In the interests of the public health, however, the statute makers should go a step further and provide that local authorities have the power to fix sewer ventilators (if found necessary) to the walls of houses on the street line without compensation, but giving to the owners the right of fixing the position of the shaft.

(To be continued.)

*Read at the Congress of the Sanitary Association of Scotland held at Paisley, Sept., 1901