

In consequence of this bye-law, the plaintiff lost the wharfage of a vessel which otherwise would have discharged her cargo at his wharf.

Held—per Allen and Fisher JJ., in an action on the case for depriving the plaintiff of the wharfage, that the defendants had no right to limit by contract their power to make by-laws relative to matters within their control under the charter, and that the grant must be taken subject to their right to make such bye-laws from time to time as they should deem necessary for the anchorage, &c., of vessels.

Henderson vs. The Mayor of St. John.—Defendants having authority by law to lay out and open streets in the city, laid out a street through an unenclosed and hilly piece of ground. Several houses were built on the line of this street, but the land in the vicinity remained unenclosed, and people were accustomed to pass over it in various directions as they pleased, though there was no right of way except by the street. Defendants having determined to level and improve the street, made cuttings through the hill in order to level the road, several feet deep in some places. The plaintiff had formerly lived in the neighbourhood of the street, and had been in the habit of crossing the open space. After the street was levelled, the plaintiff was crossing the open space in the night, and not being aware of the cutting, fell into the street, and was injured.

Held (per Allen J., Fisher J. *contra*): That there was no legal obligation on the defendants to light the street, or to fence the sides of it against persons using the adjoining lands, and therefore they were not liable for the plaintiff's injury.

ON REVIEW FROM MAGISTRATES' COURT.

Knapp vs. Trites.—A student in office of the plaintiff, and boarding with him, presented a family railway ticket of the latter, which contained a printed proviso that it should be used by the plaintiff or some "member of his family residing with him." The conductor—Trites—forfeited the ticket, as being improperly used. In an action of trespass, a verdict was given for plaintiff. At the trial before the Magistrate, it was objected: 1st. That the action should have been *trove* and not *trespass*; 2nd. That the ticket was forfeited as being improperly used by one *not* a member of plaintiff's family. On review the learned judge over-ruled the first point under 1 Rev. Stat. cap. 37: and held that the student was a member of the "family" of plaintiff, and that the term "family" even includes *lodgers* or *boarders*. Judgment of Justices' Court confirmed with costs. Allen J.

LA RÉDACTION,