

Several serious objections are urged to the validity of the by-law. I do not need to consider all, as I think it is plain that the municipality having failed to accept the proper dedication of the street as a highway cannot assume to close and sell it and keep the proceeds. Section 632 of the Municipal Act of 1903 relates to original road allowances and other public highways, roads, streets or lanes.

A road allowance shewn upon a plan which has not been assumed by the municipal corporation for public use does not fall within this designation. For some purposes the street is a highway; but, subject to the rights of the public, it remains to be governed by the Surveys Act, 1 Geo. V. ch. 42, sec. 44. Such a road may be closed under the provisions of the Registry Act, 10 Edw. VII. ch. 60; and by sub-sec. 6 of sec. 44 the allowance, upon the road being closed, and the public rights extinguished, belongs to the owners of the land abutting thereon, and not to the municipality. The Surveys Act gives the fee to the adjoining lot owner in place of the original owner.

The by-law is therefore bad, and should be quashed. Costs should follow the event.

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SUPREME COURT OF ONTARIO.

FIRST APPELLATE DIVISION.

JANUARY 26TH, 1914.

MCINTOSH v. COUNTY OF SIMCOE.

5 O. W. N. 793.

*Negligence—Independent Contractor—Municipal Corporation—Cement Mixer on Highway—Frightening of Horse—Dangerous Object—Knowledge of Corporation—Liability of.*

SUP. CT. ONT. (1st App. Div.) *held*, that "an employer cannot divest himself of liability in an action for negligence by reason of having employed an independent contractor, where the work contracted to be done is necessarily dangerous, or is, from its nature likely to cause danger to others, unless precautions are taken to prevent such danger" and consequently a municipality was liable for damages caused by the frightening of a horse by the operation of a cement mixer being operated by an independent contractor.

*Halliday v. National Telephone Co.*, [1892] Q. B. D. 392, referred to. Judgment of Jun. J. Co. Simcoe, reversed.

Appeal by the plaintiff from a judgment of the County Court of the county of Simcoe, dated 30th September, 1913, which was directed to be entered by the Junior