

SELECTIONS.

B. D. 118, 52 L. J. Q. B. 77), an important case which we believe to be rather better known than might be supposed from the fact that it appears to have escaped the notice of numerous text-writers whose works, dealing with such questions, we have incidentally examined. Moore brought his action for damages incurred by him through falling over a plug belonging to the defendants, the Lambeth Waterworks Co., which they had placed in a certain public footway. The plug projected three-eighths of an inch above the asphalt with which the footway was covered, by reason of the asphalt wearing away, and without any defect in the plug itself, which was correctly laid, and in perfect order. The defendants were a company incorporated by Act of Parliament, with power to put plugs in the highway, and with a liability to provide fire-plugs; and the plug in question was described in the evidence as both a fire plug and an end-plug, in which latter character it was used to flush the pipes. Day, J., gave judgment for the plaintiff; and the defendants, who were amerced in £600 damages, appealed. The facts, indeed, were very similar to those in *Kent v. The Worthing Local Board* (*ubi supra*), where it was held that under such circumstances the plaintiff had a good cause of action. But there, said Lord Esher, M.R., in the present case, "both the water-plug and the road were in the hands of the defendants, and if the plug was not out of order the road was. If the case cannot be upheld on the ground that there was only one authority, I do not see how it can be upheld. It may be that it can be upheld on that ground, but if not, it is not of any authority." And he added that, although it was not necessary to say absolutely that they disagreed with that case, yet, unless it could be supported on the ground of common ownership, he was not prepared to follow it. Lindley, L. J., distinguished that case on the same ground. But Lopes, L. J., boldly avowed that he could see nothing in the distinction; observing that the decision was not put on the ground of the union of liabilities, and that the cases there relied on were not authorities for the proposition asserted; and accordingly, maintaining that the decision in that case should be overruled. Merely adding that

in the present case the distinction, if any, applied because the water company and the road authority were two distinct authorities, let us now proceed to examine the effect of the decision arrived at by the Court of Appeal independently of *Kent v. The Worthing Local Board*.

It was said for the plaintiff that when anyone puts anything in the highway and it becomes dangerous, he is liable for it. But that principle only applies when the thing is put there without authority, when something is left in the highway as a nuisance or an obstruction, the person so acting doing wrong from the very first. Here, however, the company were authorized or obliged by their Act of Parliament to put the plug in the highway; and the Act only imposed on them the obligation of keeping the plug in repair. But it was in repair, and the company had done all they were bound to do. "I can find no duty cast on the defendants, and they have been guilty of no fault, either of omission or commission," said Lindley, L. J. "If either be wrong," said Lord Esher, "it is the road authority." Was it then merely a case in which the plaintiff, having a remedy, failed to obtain redress by reason of proceeding against the wrong party? Not so. "I do not think, indeed, that an action would lie against the road authority," avowed the Master of the Rolls. "This decision is rather hard on the plaintiff if *Gibson v. The Mayor of Preston* (L. R. 5 Q. B. 218) be right, and he cannot sue the road authority," said Lord Justice Lindley. That, indeed, was held too in *Kent v. The Worthing Local Board*, but the reason was that the parish could not be sued, although it might be indicted; but, in *Gibson v. The Mayor of Preston*, we find the rule applied even though the road authority was incorporated. So that unless indeed the principle does not apply when both plug and road are in the same hands, there must be very many equally hard cases. But, of course, the result would be otherwise, at all events, if the thing causing the injury were itself defective, like the valve in *Bathurst v. Macpherson* (L. R. 4 App. Cas. 256), the grating in *White v. The Hindley Board of Health* (L. R. 10 Q. B. 219), and the plug in *Blackmore v. Mile End Old Town* (9