circumstances of the particular case, keeping in view also the statutory provisions of the State, if there are any, relating to the subject.[1]

The *owner or occupant* of the building is not liable in such cases to the person injured on the sidewalk in front thereof from natural accumulations of snow or ice.[2]

§ 1007. **The Defect in Street must be the Proximate Cause of the Injury.** — The *defect in the highway or street,* whether it be snow and ice or whatever its nature, must be the *direct and proximate cause* of the special damage for which the corporation is sought to be made liable.[3] The ordinary rules as to contributory negligence

[1] Nebraska City *v.* Rathbone, 20 Neb. 288. "Several authorities treat the class of cases in question [for injuries caused by ice and snow] as involving want of repair and defects. But, in the absence of statutes which provide for them as such, it is not a natural construction, and the cases are more consistent which deal with these things as acts of negligence at common law. A great deal, however, may fairly depend on local usage in determining duties concerning highways in winter. Where it is customary to treat the removal of snow and ice as a regular part of highway management, the failure to look after it may be properly regarded as wrongful and negligent." *Per Campbell,* J., in McKellar *v.* Detroit, 57 Mich. 158. These observations of this distinguished judge place the subject in its just view.

[2] Kirby *v.* Boylston Market Assoc., 14 Gray (Mass.), 249 (1859); Jansen *v.* Atchison, 16 Kan. 358; Eustace *v.* Johns, 38 Cal. 3; Keokuk *v.* Keokuk Indep. Sch. Dist., 53 Iowa, 352; s. c. 5 N. W. R. 508; Heeney *v.* Sprague, 11 R. I. 502 (1877); s. c. 23 Am. Rep. 502; Vandyke *v.* Cincinnati, 1 Disney, 532; Flynn *v.* Canton Co., 40 Md. 312; s. c. 17 Am. Rep. 603, and note. But the *owner* is liable for an injury caused by *snow and ice falling from the roof.* Shipley *v.* Fifty Associates, 101 Mass. 251; Garland *v.* Towne, 55 N. H. 55 (1874); s. p. Hardy *v.* Keene, 52 N. H. 370; *post,* secs. 1006, 1013, note, 1033.

[3] Deverill *v.* Grand Tr. Ry. Co., 25 Up. Can. Q. B. 517; see also Cotton *v.* Wood, 8 C. B. N. S. 568; Toomey *v.* London, B. & S. C. Ry. Co., 3 C. B. N. S. 146; Cornman *v.* Eastern Counties Ry. Co., 4 H. & N. 781; Crafter *v.* Metrop. Ry. Co., L. R. 1 C. P. 300; Jackson *v.* Hyde, 28 Up. Can. Q. B. 294; Henderson *v.* Barnes, 32 Up. Can. Q. B. 176; Agnew *v.* Corunna, 55 Mich. 428; Bluffton *v.* Mathews, 92 Ind. 213; Aldrich *v.* Gorham, 77 Me. 287, where it was said that "in order to render a town or city liable on account of an accident happening on a highway, it must appear that the defect in the way was *the sole cause* of the injury." Flagg *v.* Hudson, 142 Mass. 280, holding that where a person is injured by collision with another vehicle while endeavoring to avoid a defect in the road, the defect is the *sole cause* of the injury and he may recover therefor. Where horses became *frightened at an ash heap* negligently left in the roadway, and ran upon and along a railroad track for a mile, where they were killed, it was held, that the facts being undisputed, the court should have instructed the jury that the negligent act of the township was the remote and not the proximate cause of the accident; and that where the facts are disputed the question is for the jury. West Mahanoy Tp. *v.* Watson, 116 Pa. St. 344; s. c. 112 Pa. St. 574. 2 Thomps. Neg. 765. The rule as to proximate and remote causes stated by *Paxson,* J., to be "that the injury must be the natural and probable consequence of the negligence, — such a consequence as, under the surrounding circumstances of the case, might and ought to have been foreseen by the wrong-doer as likely to flow from his act." Hoag *v.* Lake Shore & M. S. R. R. Co., 85 Pa. St. 293. West Mahanoy *v.* Watson, *supra.* Where, by reason of the want of ordinary care, there

and its effect upon the right of recovery, apply to cases such as we are now considering. Adverting in this place to the subject in a general way, it may be stated that if the person injured knew of the defect or obstruction, and ought reasonably to have avoided it by going outside or around it, and did not, he cannot recover.[1] It has

was a defective condition of guttering, curbing, and sidewalk, which, in conjunction with a heavy rainfall, became an active agent in producing damage to the foundation of a building on adjoining property, the city was held liable for the injury. Hanney *v.* Kansas City, 94 Mo. 334 (1887).

Negligence is want, under the circumstances of the particular case, of due care. Tuttle *v.* Holyoke, 6 Gray (Mass.), 447; May *v.* Princeton, 11 Met. 442; Marble *v.* Worcester, 4 Gray, 395; Adams *v.* Carlisle, 21 Pick. 146; Holman *v.* Townsend, 13 Met. 297, 299 (1847); Horton *v.* Ipswich, 12 Cush. 488 (1853); Lund *v.* Tyngsboro' (on leaping from carriage on near approach to defect), 11 Cush. 563 (1853); Tuttle *v.* Holyoke, 6 Gray, 447 (1856); Sears *v.* Dennis, 105 Mass. 310 (1870); Stickney *v.* Maidstone, 30 Vt. 738 (1858), and cases cited by *Pierpont,* J.; Manderschid *v.* Dubuque, 29 Iowa, 73 (1870). Ordinary *iron gas box* in sidewalk with projecting rim, uncovered, may be an actionable defect. Loan *v.* Boston, 106 Mass. 450; Ayer *v.* Norwich (tent on road), 39 Conn. 376 (1872); s. c. 12 Am. Rep. 396.

Defect causing Team to be frightened; Decisions construing New England Statutes (Ante, sec. 1000, note). Card *v.* Ellsworth, 65 Me. 547 (1876); s. c. 20 Am. Rep. 722, where the cases are cited and reviewed by *Peters,* J. Marble *v.* Worcester, 4 Gray (Mass.), 395 (1855); Cook *v.* Charlestown, 98 Mass. 80 (1867). Compare Morse *v.* Richmond, 41 Vt. 435; s. c. 8 Am. L. Reg. (N. S.) 81, and note of Judge *Redfield;* Clinton *v.* Howard, 42 Conn. 294 (1875); Bassett *v.* St. Joseph, 53 Mo. 290 (1873); s. c. 14 Am. Rep. 446; Brown *v.* Glasgow, 57 Mo. 156; Bennett *v.* Fifield, 13 R. I. 139; Smith *v.* Sherwood Township, 62 Mich. 159 (1886), (hole in bridge). *Fright of team by accident, and injury thereto by a defect in the highway.* Davis *v.* Dudley, 4 Allen (Mass.), 557 (1862). Distinguished from Palmer *v.* Andover, 2 Cush. (Mass.) 600; and Howard *v.* North Bridgewater, 16 Pick. 189. Explained. Fogg *v.* Nahant, 98 Mass. 578 (1868); Jackson *v.* Bellevieu, 30 Wis. 250 (1872). See Manderschid *v.* Dubuque, 25 Iowa, 108, disapproving Davis *v.* Dudley, *supra. Whether injury caused jointly by defective road and defect in plaintiff's wagon, horse, or harness is actionable,* see conflicting views in *Vermont* and *Massachusetts* on the one hand, and *Maine* on the other. Hunt *v.* Pownal, 9 Vt. 418; Rowell *v.* Lowell, *supra;* Howard *v.* North Bridgewater, 16 Pick. 189; Marble *v.* Worcester, 4 Gray, 395; Palmer *v.* Andover, 2 Cush (Mass.) 600 (1849); Shepherd *v.* Chelsea, 4 Allen, 113 (1862); Fogg *v.* Nahant, 106 Mass. 278; s. c. 98 Mass. 578; Moore *v.* Abbott, 32 Me. 46 (1850); Farrar *v.* Greene, 32 Me. 574; Moulton *v.* Sanford, 51 Me. 127 (1862). Followed. Perkins *v.* Fayette, 68 Me. 152; and Aldrich *v.* Gorham, 77 Me. 287; following Moore *v.* Abbott, *supra,* which is denied to be law in Winship *v.* Enfield, 42 N. H. 197 (1860); Hall *v.* Kansas City, 54 Mo. 598; Lacon *v.* Page, 48 Ill. 499; Joliet *v.* Verley, 35 Ill. 63; Aurora *v.* Pulfer, 56 Ill. 270 (1870); Baldwin *v.* Greenwood Turnp. Co., 40 Conn. 238 (1873); Cushing *v.* Bedford, 125 Mass. 526. See further cases cited, *infra;* also 2 Thomps. Neg. 778. *Burden of proof* to establish *contributory* negligence. See *infra,* sec. 1026.

[1] Schaefler *v.* Sandusky, 33 Ohio St. 246; Durkin *v.* Troy, 61 Barb. 437; Evans *v.* Utica, 69 N. Y. 166; Wilson *v.* Charlestown, 8 Allen, 137; Belton *v.* Baxter, 54 N. Y. 245; Pennsylvania Co. *v.* Rathgeb, 32 Ohio St. 66; Merrill *v.* Portland, 4 Cliff. C. C. 138. In a case where the allegations of the party injured while crossing a gully in a street, were, that he saw the gully but believed it was reasonably safe, that he used due and ordinary care, and that there was no other safe road,

been held that where two causes combine to produce the injury, both in their nature proximate, the one being the defect in the highway and the other some occurrence for which neither party is responsible, such as the accident of a horse running away beyond control, the corporation is liable, provided the injury would not have been sustained but for the defect in the highway.[1] There can be no recovery if the injury be caused by the unskilfulness or want of care on the part of the driver,[2] or if it can be shown that the plaintiff, by his own want of care, directly caused the accident.[3] The streets and sidewalks, it has been well remarked, are for the benefit of all conditions of people; and all have the right, in using them, to assume that they are in an ordinarily good condition, and to regulate their conduct upon that assumption. A person may walk or drive carefully in the darkness of the night, relying upon the belief that the corporation has performed its duty, and that the street or the walk is not in an unsafe condition. He walks, it has been said, by a faith justified by law, and if his faith is unfounded, and he suffers an injury, the party in fault must respond in damages. So, one

it was held that these facts did not show contributory negligence, and that the question as to such negligence was one of fact for the jury. Albion *v.* Hetrick, 90 Ind. 545.

[1] Toms *v.* Whitby, 37 Up. Can. Q. B. 100; Sherwood *v.* Hamilton, 37 Up. Can. Q. B. 410; Castor *v.* Uxbridge, 39 Up. Can. Q. B. 113; Merrill *v.* Portland, 4 Cliff. C. C. 138; Moulton *v.* Sanford, 51 Me. 127; Perkins *v.* Fayette, 68 Me. 152; Ring *v.* Cohoes, 77 N. Y. 83; Ehrgott *v.* New York, 96 N. Y. 264; Hampson *v.* Taylor, 15 R. I. 83, approving text. But see conflicting decisions on the point, *supra*. Shearm. & Red. Neg. (4th ed.) sec. 346, and cases, and chap. on Proximate Cause.

[2] Flower *v.* Adams, 2 Taunt. 314; Cassedy *v.* Stockbridge, 21 Vt. 391; Peoria Br. Assoc. *v.* Loomis, 20 Ill. 235; Alger *v.* Lowell, 3 Allen (Mass.), 402; Stuart *v.* Machiasport, 48 Me. 477; Cobb *v.* Standish, 14 Me. 198; Marriott *v.* Stanley, 1 M. & G. 568. So if the accident really and substantially arose by reason of some defect in the plaintiff's wagon, harness, &c. Jenks *v.* Wilbraham, 11 Gray, 142; Noyes *v.* Morristown, 1 Vt. 357; Allen *v.* Hancock, 16 Vt. 230; Bigelow *v.* Rutland, 4 Cush. (Mass.) 247; Moore *v.* Abbott, 32 Me. 46; Farrar *v.* Greene, *Ib.* 574; see also Clark *v.* Barrington, 41 N. H. 44; Tucker *v.* Hennecker, *Ib.* 317; Winship *v.* Enfield, 42 N. H. 197; Palmer *v.* Andover, 2 Cush. (Mass.) 600; Hunt *v.* Pownal, 9 Vt. 411. A city held not liable for the death of a *runaway horse*, though it had neglected to erect barriers about the defect in the street which caused the accident. Moss *v.* Burlington, 60 Iowa, 438.

[3] Butterfield *v.* Forrester, 11 East, 60; Woolf *v.* Beard, 8 C. & P. 373; Smith *v.* Smith, 2 Pick. (Mass.) 621; Bridge *v.* Grand Junc. Ry. Co., 3 M. & W. 244; Waite *v.* N. E. Ry. Co., E. B. & E. 719; Baker *v.* Portland, 58 Me. 199; s. c. 4 Am. Rep. 274; Tuff *v.* Warman, 2 C. B. N. S. 740; s. c. 5 C. B. N. S. 573; Witherley *v.* Regent's Canal Co., 12 C. B. N. S. 2; Bradley *v.* Brown, 32 Up. Can. Q. B. 463. The rule operates also in the case of children of tender age. Mangan *v.* Atterton, L. R. 1 Ex. 239; Singleton *v.* Eastern Counties Ry. Co., 7 C. B. N. S. 287. The question of contributory negligence arises when both parties are substantially at fault, and when the fault of each contributes to the disaster. *Per Cleasby*, B., in Gee *v.* Metrop. Ry. Co., L. R. 8 Q. B. 177.

whose sight is dimmed by age, or a near-sighted person whose range of vision was always imperfect, or one whose sight has been injured by disease, may act on the assumption that the streets and ways are in a reasonably safe condition. Each, however, is bound to know that prudence and care are in turn required of him, and that if he fails in this respect any injury he may suffer is without redress.[1] Each case depends upon its own circumstances and each is a law unto itself.

§ 1008. **Liability for Injuries outside the Travelled Highway; Width to be kept in Repair; Right to go extra viam.** — "Although the highway be of varying and unequal width between fences, on each side, the right of passage or way, *prima facie* and unless there be evidence to the contrary, extends to the whole space between the fences, and the public are entitled to the use of the entire of it as the highway, and are not confined to the parts which may be metalled or kept in repair for the more convenient use of carriages or foot-passengers."[2] In general, however, the duty to keep in repair only extends to the road actually used for travel, provided it is wide enough to be safe, and is, in its actual condition, reasonably safe for travellers who use due care.[3] The duty of municipal cor-

[1] Davenport *v.* Ruckman, 37 N. Y. 568 573, *per Hunt*, C. J., whose language slightly altered is given in the text; Weed *v.* Ballston, 76 N. Y. 329. It is not, however, too much to ask of persons of defective sight greater care than is required of persons free from such infirmity. Winn *v.* Lowell, 1 Allen (Mass.), 177; Smith *v.* Wildes, 143 Mass. 556; Sleeper *v.* Sandown, 52 N. H. 244; see also Bridges *v.* No. London Ry. Co., L. R. 6 Q. B. 377, 397; Hutton *v.* Windsor, 34 Up. Can. Q. B. 487. No person is required to have perfect vision, or to be vigilant in the discovery of defects which ought not to exist. Thompson *v.* Bridgewater, 7 Pick. (Mass.) 188. No person is in fault in neglecting to observe and avoid a defect not so plain and obvious as to be necessarily observable by one in the possession of ordinary faculties, travelling at an ordinary pace. Cox *v.* Westchester Turnp. Co., 33 Barb. 414; Frost *v.* Waltham, 12 Allen, 85. Further as to elements of actionable defect in the highway or street, see Vicksburg *v.* Hennessy, 54 Miss. 363; s. p. Lane *v.* Crombie, 12 Pick. 177; Moore *v.* Abbott, 32 Me. 46; Rusch *v.* Davenport, 6 Iowa, 443.

[2] The Queen *v.* United Kingdom Tel. Co., 3 F. & F. 74, *per Martin*, B.; Tutill *v.* West Ham L. Bd. of H., L. R. 8 C. P. 447; The Queen *v.* Fitzgerald, 39 Up. Can. Q. B. 297; Harrison Munic. Man. (5th ed.) 488–497, and cases.

[3] Tisdale *v.* Norton, 8 Met. (Mass.) 388; Smith *v.* Wendell, 7 Cush. (Mass.) 498; Shepardson *v.* Colerain, 13 Met. 55; Kellogg *v.* Northampton, 4 Gray (Mass.), 65; s. c. 8 Gray, 504; Howard *v.* No. Bridgewater, 16 Pick. 189; Hayden *v.* Attleborough, 7 Gray, 338; Coggswell *v.* Lexington, 4 Cush. (Mass.) 307; Sparhawk *v.* Salem, 1 Allen, 30; Richards *v.* Enfield, 13 Gray, 344; Rowell *v.* Lowell, 7 Gray, 100; Keith *v.* Easton, 2 Allen, 552; Campbell *v.* Race, 7 Cush. (Mass.) 408, and authorities cited; Morse *v.* Belfast, 77 Me. 44; Kelley *v.* Columbus, 41 Ohio St. 263; Fitzgerald *v.* Berlin, 64 Wis. 203. "Where there is no visible boundary to the line of the street, and a portion of the roadway travelled on is so near the actual line (although really outside thereof) as to induce the belief in any one exercising reasonable care that he is within such line, if such portion is for

porations to keep the roads and streets in repair extends as much to sidewalks for the use of pedestrians as to the travelled way for the use of carriages.[1] Where an ordinary public highway is out of repair, the public have a temporary right to go on the adjoining land for the purpose of travel.[2] So sidewalks and street-crossings are constructed for the use of foot-passengers; but if these happen to be obstructed, or to be in such a dangerous condition as to deter an ordinarily prudent man from using them, then one may walk elsewhere. If he does so however without sufficient reason, and is injured, his injury cannot be imputed to the negligence of the city.[1]

any reason rendered dangerous for travel, and the city has notice thereof in due time, and such danger can be remedied by the exercise of reasonable care, . . . and the city neglects to guard it, we see no reason why it should not be held liable to one who is injured outside of such limits under such circumstances, he being himself free from any neglect contributing to the injury." *Peckham*, J., in Jewhurst *v.* Syracuse, 108 N. Y. 303 (1888). Further, as to width to be kept in repair. 2 Thomps. Neg. 766. *Post*, sec. 1016.

[1] Burns *v.* Toronto, 42 Up. Can. Q. B. 560; Hutton *v.* Windsor, 34 Up. Can. Q. B. 487; Ray *v.* Petrolia, 24 Up. Can. C. P. 73; Boyle *v.* Dundas, 25 Up. Can. C. P. 420; Bacon *v.* Boston, 3 Cush. (Mass.) 174; Lowell *v.* Spaulding, 4 Cush. (Mass.) 277; Drake *v.* Lowell, 13 Met. 292; Hart *v.* Brooklyn, 36 Barb. (N. Y.) 226; Kirby *v.* Boylston Market Assoc., 14 Gray, 249; Manchester *v.* Hartford, 30 Conn. 118; Hubbard *v.* Concord, 35 N. H. 54. So to street crossings. Raymond *v.* Lowell, 6 Cush. (Mass.) 524; Coombs *v.* Purrington, 42 Me. 332; Barker *v.* Savage, 45 N. Y. 191. But it is not a duty to plank from each man's house across a ditch to the street, and keep such planks in repair. McCarthy *v.* Oshawa, 19 Up. Can. Q. B. 245. *Post*, sec. 1012 as to *sidewalks*.

Under the statute of *Michigan*, cities are responsible for injuries caused by defects in the carriage-ways or streets proper and cross-walks, but not for those caused by defects in side-walks. O'Neil *v.* Detroit, 50 Mich. 133; Detroit *v.* Putnam, 45 Mich. 263.

Width to be kept in repair under the New England Statutes (*ante*, sec. 1000, note) as construed by the Courts. *Infra*, secs. 1011, 1016; Howard *v.* No. Bridgewater, 16 Pick. 189 (1834) recognized in Shepardson *v.* Colerain, 13 Met. (Mass.) 55, 59 (1847); Bacon *v.* Boston, 3 Cush. (Mass.) 174 (1849), relating to width of sidewalk, and distinguished from Howard *v.* No. Bridgewater, *supra*; Smith *v.* Wendell, 7 Cush. (Mass.) 498; Kellogg *v.* Northampton, 4 Gray (Mass.), 65, 7 Gray, 338; Mochler *v.* Shaftsbury, 46 Vt. 580 (1874); s. c. 14 Am. Rep. 634. Whether *wide* enough to be *safe* is for the jury; so, whether it should be made safe and convenient its whole width. Johnson *v.* Whitefield, 18 Me. 286; Aldrich *v.* Pelham, 1 Gray, 510; Savage *v.* Bangor, 40 Me. 176; Craig *v.* Sedalia, 63 Mo. 417 (1876); Perkins *v.* Fayette, 60 Me. 152; Dickey *v.* Maine Tel. Co., 46 Me. 483; Morse *v.* Belfast, 77 Me. 44; see also Brown *v.* Glasgow, 57 Mo. 157 (1874); Monongahela City *v.* Fischer, 111 Pa. St. 9; Scranton *v.* Hill, 102 Pa. St. 378; Keyes *v.* Marcellas, 50 Mich. 378; Durant *v.* Palmer, 29 N. J. L. 544. If a street is opened for travel throughout its entire width, it is the duty of the city to keep the entire width in a reasonably safe condition. Stafford *v.* Oskaloosa, 57 Iowa, 748. Compare Fulliam *v.* Muscatine, 30 N. W. Rep. 861; Crystal *v.* Des Moines, 65 Iowa, 502. *Infra*, sec. 1016, note. Shearm. & Red. Neg. (4th ed.) secs. 351, 352 and cases; 2 Thomps. Neg. 766, and cases. *Infra*, sec. 1011. The obligation to keep in repair is only as "against such accidents as are likely to, and actually do" occur in using a highway for the purpose of travel. Sykes *v.* Pawlet, 43 Vt. 446; s. c. 5 Am. Rep. 295 (1871).

Liability for Latent Defects. Prindle *v.* Fletcher, 39 Vt. 257. Cited with approval, 24 Wis. 342 (1869). See 26 Wis. 56.

[2] Carrick *v.* Johnston, 26 Up. Can. Q. B. 65. But see Arnold *v.* Holbrook, L. R. 8 Q. B. 96. Right to go *extra viam*, Campbell *v.* Race, 7 Cush. 408, 410, and cases.

§ 1009. **Defective Streets; User of Land as Street; Estoppel.** — There have been many cases where the injury has occurred *upon property used as a highway or street which has never been legally laid out or dedicated as such*, and the municipality has sought to defend upon this ground. But where the corporation has treated a piece of land within the limits of the municipality as a public street, taking charge of it, as such, it is chargeable with the same duties as though it were legally laid out; and it is liable for damages by reason of neglect to keep the same in safe condition for travel. It is, under such circumstances, estopped to claim that it is not a legal highway; and it is affected with the consequences of the knowledge and acts of its officers and agents.[2]

[1] O'Laughlin *v.* Dubuque, 42 Iowa, 539 (1876); Scranton *v.* Hill, 102 Pa. St. 378; Zettler *v.* Atlanta, 66 Ga. 195; Alline *v.* Le Mars, 71 Iowa, 654. A city is not bound to provide approaches from private property to its streets, nor liable for injuries caused by its failure to guard such approaches. Goodin *v.* Des Moines, 55 Iowa, 67, where plaintiff fell from private property into a street which had been recently excavated. Where a street was fenced up by the city after over twenty years' use, and the plaintiff was compelled to go round by reason of the fence, it was held that he was specially damaged and the city liable to him in damages. Beaudean *v.* Cape Girardeau, 71 Mo. 392. In *Massachusetts* an injury received by traveller *outside of the road*, though the road itself was dangerous, is not within the statute, of which the words are "injury *by reason* of any defect" in the highway. (*Ante*, sec. 1000, note.) Tisdale *v.* Norton, 8 Met. 388 (1844). Nor ordinarily actionable. Sparhawk *v.* Salem, 1 Allen, 30 (1861). The doctrine in *Massachusetts* is, that the damage, in order to be actionable, must be occasioned by causes entirely within the highway. Richards *v.* Enfield, 13 Gray, 344, 346, *per Bigelow*, J., citing and following Rowell *v.* Lowell, 7 Gray, 100 (1856). See, also, Keith *v.* Easton, 2 Allen, 552 (1861); Baltimore *v.* Branman, 14 Md. 227 (1859); Bassett *v.* St. Joseph, 53 Mo. 290, 301 (1873), a well-considered case; s. c. 14 Am. Rep. 446; Stone *v.* Attleborough, 140 Mass. 328; Stockwell *v.* Fitchburg, 110 Mass. 305; Sullivan *v.* Boston, 126 Mass. 540; Lowe *v.* Clinton, 136 Mass. 24; Aston *v.* Newton, 134 Mass. 507.

[2] Coates *v.* Canaan, 51 Vt. 131; James *v.* Portage City, 5 N. W. Rep. 31; Kittredge *v.* Milwaukee, 26 Wis. 46; Weisenberg *v.* Appleton, 26 Wis. 56; Harper *v.* Milwaukee, 30 Wis. 365; Colby *v.* Beaver Dam, 34 Wis. 285; Prideaux *v.* Mineral Point, 43 Wis. 513; Sewell *v.* Cohoes, 75 N. Y. 45; Todd *v.* Troy, 61 N. Y. 506; Conrad *v.* Ithaca, 16 N. Y. 158; Weet *v.* Brockport, 16 N. Y. 161; Hyatt *v.* Rondout Trs., 44 Barb. 385; Houfe *v.* Fulton, 34 Wis. 608; Stark *v.* Lancaster, 57 N. H. 88; Aurora *v.* Colshire, 55 Ind. 484; Phelps *v.* Mankato, 23 Minn. 277; Manderschid *v.* Dubuque, 25 Iowa, 108; Matthews *v.* Baraboo, 39 Wis. 674; Johnson *v.* Milwaukee, 46 Wis. 568; Kelley *v.* Fond du Lac, 31 Wis. 179; Seward *v.* Milford, 21 Wis. 485; Gallagher *v.* St. Paul, 28 Fed. Rep. 305; Potter *v.* Castleton, 53 Vt. 435; Cart-

§ 1010. **Lighting Streets, as connected with Defects therein.** — A corporation which by its charter has the power to lay out, improve, *light, and keep its streets in order*, is liable in damages at the suit of an individual who sustains injuries by reason of the neglect of such corporation to keep its streets in a safe condition.[1] The grant of power in the charter of a city to the council to lay out streets, is a grant to the corporation, and is of such a character as to prevent its exercise by any other person or body.[2] A city is under no obligation to light its streets with lamps, and simply neglecting to light the streets is not a ground of liability.[3] But where it assumes to light a street, and does it so negligently that a person is injured in consequence by falling into an excavation in the night-time, the character of the light may be shown as a circumstance to establish negligence.[4] A person employed and paid by one who has contracted to light and take care of street-lamps is not a servant or agent of the corporation, and if, while engaged in his work, he

wright *v.* Belmont, 58 Wis. 370 ; Davis *v.* Fulton, 52 Wis. 657 ; Cronin *v.* Delavan, 50 Wis. 375 ; Estelle *v.* Lake Crystal, 27 Minn. 243 (a platform, erected by a private person, used by the public as a part of the street with the knowledge of the municipal authorities). By merely *permitting* the public to use a sidewalk which is not within the limits of a recognized street, a city will not render itself liable for injuries sustained by reason of its defective condition. Bishop *v.* Centralia, 49 Wis. 669. Where a city in enclosing a common placed the fence so that a strip remained along a public street, such strip being afterwards paved and used as a sidewalk for more than twenty years, it was held, in an action for an injury caused by a defect in it, that it had become by prescription a part of the street, for defects in which the city was liable. Veale *v.* Boston, 135 Mass. 187. A village in Illinois was held liable for injuries sustained on a sidewalk built and maintained by it upon *private property* within its limits. *Magruder*, J. : "Having assumed to perform the same duty in regard to it as though it was a part of one of the streets, they were bound to use the same degree of vigilance as they exercised in reference to other sidewalks within the limits of the corporation," citing text. Village of Mansfield *v.* Moore, 124 Ill. 133 (1888). The use of a road for many years for public travel and its recognition by town officers as a highway were held sufficient to make the town liable, under a statute, for injuries sustained by reason of its negligence in failing to keep the road in proper repair. Ivory *v.* Deerpark, 116 N. Y. 476 (1889) ; *infra*, sec. 1012, note.

But the principle stated in the text does not apply where a bridge and its approaches belong to the State as part of its public works, for in such case the city has no right to enter upon or repair the same, and hence it is not liable for an injury caused thereby to a traveller, although used by the public as a highway, with the acquiescence of the State. Where there is no duty and no power there can be no liability. Carpenter *v.* Cohoes, 81 N. Y. 21 ; Veeder *v.* Little Falls, 100 N. Y. 343 ; Brusso *v.* Buffalo, 90 N. Y. 679.

[1] Noble *v.* Richmond, 31 Gratt. 271 ; followed, Clark *v.* Richmond, 83 Va. 355 (1887) ; Gordon *v.* Richmond, 83 Va. 436 ; Barnes *v.* District of Columbia, 91 U. S. 540 (1875). See cases cited *infra*.

[2] *Ib.*, cases *supra*.

[3] Randall *v.* Eastern R. R., 106 Mass. 276 (1871) ; s. c. 8 Am. Rep. 327 ; Gaskins *v.* Atlanta, 73 Ga. 746 ; Lyon *v.* Cambridge, 136 Mass. 419.

[4] Freeport *v.* Isbell, 83 Ill. 440 (1876) ; s. c. 25 Am. Rep. 407. See, also, Butler *v.* Bangor, 67 Me. 388.

suffers an injury from an actionable defect in a highway, he can maintain an action therefor against the corporation, if free from contributory negligence.[1]

§ 1011. **Defects and Obstructions calculated to frighten Animals.** — For an object in a public street calculated to frighten horses ordinarily gentle, and which causes an accident resulting in an injury, municipal corporations have been held liable, if they have been guilty of negligence in allowing it to remain for an unreasonable time. The decisions to this effect generally rest upon statutory provisions and involve a construction thereof. But such objects may come within the notion of a public nuisance, which it is the duty of the municipality to remove *as incident to its duty to keep its streets in a safe condition*, for failure to discharge which it may be liable to any one specially injured thereby.[2] Where there is a defect or object in a street which is calculated to frighten horses and an injury occurs by reason thereof without the fault of the driver, the corporation, if it has been negligent in respect thereof, is liable ;[3] but objects outside the travelled way, and not near enough

[1] Eaton *v.* Woburn, 127 Mass. 270 ; s. p. Kimball *v.* Cushman, 103 Mass. 194 ; Johnson *v.* Boston, 118 Mass. 44.

[2] Chicago *v.* Hoy, 75 Ill. 530 (1874) ; McKee *v.* Bidwell, 74 Pa. St. 218 ; Crissey *v.* Hestonville M. & F. Pass. Ry. Co., 75 Pa. St. 83 ; Fritsch *v.* Allegheny, 91 Pa. St. 226 (1879) ; s. c. 20 Alb. L. J. 373 ; Rushville *v.* Adams, 107 Ind. 475 ; Crawfordsville *v.* Smith, 79 Ind. 308 ; Bennett *v.* Fifield, 13 R. I. 139. *Infra*, sec. 1013.

[3] Cushing *v.* Bedford (bright red-colored drinking-troughs), 125 Mass. 526. A city held not to be liable for damages resulting from a horse becoming frightened at an implement run by steam, to repair a street, and without negligence. Sparr *v.* St. Louis, 4 Mo. App. 572. In the absence of express legislative authority a city cannot lawfully grant to a street *railway company the right to operate a "steam" motor along its streets*, and if it does so it may be liable for injuries sustained by a traveller on the street whose team is frightened by the steam motor. Stanley *v.* Davenport, 54 Iowa, 463 (1879) ; s. c. 9 Cent. L. J. 392, citing text. *Ante*, sec. 722, note. Turner *v.* Buchanan, 82 Ind. 147. See *supra*, sec. 953, and note ; 2 Thomps. Neg. 778 ; Cooley, Torts, 617.

The following may be mentioned as a few from the many cases mostly but not wholly arising under the New England statutes (*ante*, sec. 1000, note), as to what have been held to be *particular defects or obstructions*. *A pile of stones.* Bigelow *v.* Weston, 3 Pick. (Mass.) 267 ; Smith *v.* Wendell, 7 Cush. (Mass.) 498 ; Kellogg *v.* Northampton, 4 Gray, 65 ; Foreman *v.* Canterbury, L. R. 6 Q. B. 214. *A rock.* Card *v.* Ellsworth, 65 Me. 547 ; s. c. 20 Am. Rep. 722. *Sticks of timber, logs, &c.* Castor *v.* Uxbridge, 39 Up. Can. Q. B. 113 ; Springer *v.* Bowdoinham, 7 Me. 442 ; Snow *v.* Adams, 1 Cush. (Mass.) 443 ; Johnson *v.* Whitefield, 18 Me. 286 ; Davis *v.* Bangor, 42 Me. 522 ; Gorham *v.* Cooperstown, 59 N. Y. 660 (1875). *A tent.* Ayer *v.* Norwich, 39 Conn. 376 ; 12 Am. Rep. 396. *A portable furnace.* Rushville *v.* Adams, 107 Ind. 475. *Pile of lumber.* North Manheim *v.* Arnold, 119 Pa. St. 380. *Steam thresher.* Burrell Township *v.* Uncapher, 117 Pa. St. 353. *Steam motor.* Stanley *v.* Davenport, 54 Iowa, 463 ; *ante*, sec. 722, note. *A steam roller and engine.* Young *v.* New Haven, 39 Conn. 435 ;

to the line of public travel to interfere with or incommode travellers, are not defects in the highway.[1] It is not requisite, as we

s. c. 12 Am. Rep. 400 *n*. *Pole.* Mochler *v.* Shaftsborough, 46 Vt. 580; s. c. 14 Am. Rep. 634; Turner *v.* Buchanan, 82 Ind. 147. *But not a broken-down wagon.* Rounds *v.* Stratford, 26 Up. Can. C. P. 11. *Posts.* Soule *v.* Grand Trunk Ry. Co., 21 Up. Can. C. P. 308; Coggswell *v.* Lexington, 4 Cush. (Mass.) 307. But see McComber *v.* Taunton, 100 Mass. 255. See, further, Ray *v.* Manchester, 46 N. H. 59. *Holes or excavations.* Reed *v.* Northfield, 13 Pick. 94; Congreve *v.* Morgan, 5 Duer (N. Y.), 495; Doherty *v.* Waltham, 4 Gray, 596; Willard *v.* Newbury, 22 Vt. 458; Batty *v.* Duxbury, 24 Vt. 155; Murphy *v.* Gloucester, 105 Mass. 470; Ghenn *v.* Provincetown, *Ib.* 313. *Loose planks, projections, or other inequalities of surface.* Irwin *v.* Bradford, 22 Up. Can. C. P. 19, 421; Hall *v.* Manchester, 40 N. H. 410; Winn *v.* Lowell, 1 Allen, 177; Raymond *v.* Lowell, 6 Cush. (Mass.) 524; Hubbard *v.* Concord, 35 N. H. 52; Smith *v.* Wendell, 7 Cush. (Mass.) 498. *An ash pile.* Ring *v.* Cohoes, 77 N. Y. 83. *Machinery left on roadside.* Bennett *v.* Lovell, 12 R. I. 166. As to *rope extended across the street* being an obstruction or defect. French *v.* Brunswick, 21 Me. 29 (1842). But see Barber *v.* Roxbury, 11 Allen, 318 (1865), that it is not. "*Obstructions,*" *or want of repairs, defined* by *Bartlett*, J. Ray *v.* Manchester, 46 N. H. 59 (1865). Loaded wagons *standing* on a street under care of a driver not a "defect or want of repair" of streets. Davis *v.* Bangor, 42 Me. 522 (1856). *Any object upon or near the travelled way, which in its nature is calculated to frighten horses of ordinary gentleness, may be held, under some circumstances, to constitute a defect in the way itself.* Morse *v.* Richmond, 41 Vt. 435; Chamberlain *v.* Engfield, 43 N. H. 356; Winship *v.* Enfield, 42 N. H. 197; Lund *v.* Tyngsboro', 11 Cush. (Mass.) 563; Dimock *v.* Suffield, 30 Conn. 129; Hewison *v.* New Haven, 34 Conn. 136. But see Horton *v.* Taunton, 97 Mass. 266; Kingsbury *v.* Dedham, 13 Allen, 186; Cook *v.* Charlestown, *Ib.* 190, note; Keith *v.* Easton, 2 Allen, 552. See, also, Corby *v.* Hill, 4 C. B. N. S. 556; Pickhard *v.* Smith, 10 C. B. N. S. 470; Tarry *v.* Ashton, L. R. 1 Q. B. Div. 314; Soule *v.* Grand Trunk Ry. Co., 21 Up. Can. C. P. 308; Vars *v.* Grand Trunk Ry. Co., 23 Up. Can. C. P. 143; Crawfordsville *v.* Smith, 79 Ind. 308. The onus is on the plaintiff to give affirmative evidence of negligence. Lester *v.* Pittsford, 7 Vt. 158; Perkins *v.* Concord R. R. Co., 44 N. H. 223. Evidence to show that other horses besides the plaintiff's were frightened at the object is admissible. Darling *v.* Westmoreland, 52 N. H. 401; s. c. 13 Am. Rep. 55. The jury are not to infer a defect on the highway at a particular time and place *merely from the fact that an injury was sustained* at that time and place. Church *v.* Cherryfield, 33 Me. 460; Sherman *v.* Kortright, 52 Barb. 267; Collins *v.* Dorchester, 6 Cush. (Mass.) 396; Packard *v.* New Bedford, 9 Allen, 200; Calkins *v.* Hartford, 33 Conn. 57. But see Kearney *v.* London, B., & S. C. Ry. Co., L. R. 5 Q. B. 411; s. c. L. R. 6 Q. B. 759; Feital *v.* Middlesex R. R. Co., 109 Mass. 398; s. c. 12 Am. Rep. 720; Mullen *v.* St. Johns, 57 N. Y. 567; 15 Am. Rep. 530; Harrison's Munic. Manual (5th ed.), 486 *et seq.*

[1] Farrell *v.* Oldtown, 69 Me. 72; Bartlett *v.* Kittery, 68 Me. 358; Rounds *v.* Stratford, 26 Up. Can. C. P. 11; Nichols *v.* Athens, 68 Me. 413. Thus where the wrought part of a highway was sufficiently smooth and wide for safe transit, a traveller's horse, meeting cows with boards on their horns, became frightened and ran the wagon against a blasted rock lying outside the wrought part, but inside the highway limit, it was held that the town was not liable for the consequent injury to the traveller. Perkins *v.* Fayette, 68 Me. 152, approving Moulton *v.* Sanford, 51 Me. 127; S. P. Rockford *v.* Tripp, 83 Ill. 247; Marble *v.* Worcester, 4 Gray (Mass.), 395. Compare Blake *v.* Newfield, *Ib.* 365; Shearm. & Red. Neg. (4th ed.) secs. 350, 351, and cases; 2 Thomps. Neg. 766, and cases.

have already seen, that a highway, *in its whole width* as located, should be fitted for travel. It is sufficient if it be of suitable width, and in good condition for the needs of the public.[1]

§ 1011 *a* (1021). **Licensed Exhibitions rendering Streets unsafe.** — Where the municipal authorities expressly allowed the street of a city to become *unsafe for public use by licensing or authorizing the exhibition of wild animals thereon,* in consequence of which the horses of a person lawfully using the street took fright, and injury was sustained, the city was held by the Supreme Court of Wisconsin (conformably to the line of decisions in that State holding towns and cities liable for defective streets) to be liable in damages, on the ground that it had authorized a use to be made of a street which rendered it dangerous or unsafe to travellers.[2] But in the same case it was afterwards held that the city was not thus liable where it had not licensed such an exhibition *in the street,* but simply licensed the exhibition of bears, and the police negligently suffered it to take place in the street. The latter case seems to qualify and limit the former.[3] In a somewhat similar case in Massachusetts a city was, under the circumstances appearing in the note, held not to be liable for an injury caused by a horse taking fright from an authorized exhibition of an animal known as the "Sacred Ox."[4]

[1] *Supra,* sec. 1008; *post,* sec. 1016; Farrell *v.* Oldtown, 69 Me. 72; Perkins *v.* Fayette, 68 Me. 152; Seeley *v.* Litchfield, 49 Conn. 134; Shearm. & Red. Neg. (4th ed.) sec. 352. A new side line or concession line, opened in a township thinly scattered, could scarcely be expected to be found in as perfect a condition as an old highway in a well-settled township. Colbeck *v.* Brantford, 21 Up. Can. Q. B. 276; The Queen *v.* Epsom Union Guard., 8 L. T. N. S. 383; O'Connor *v.* Otonabee Tp., 35 Up. Can. Q. B. 73.

[2] Little *v.* Madison, 42 Wis. 643 (1877); s. c. 24 Am. Rep. 435; Same *v.* Same, 49 Wis. 605. "We should certainly hesitate," says *Cole,* J., "to sanction the principle that a municipal corporation might knowingly and unnecessarily permit or authorize a nuisance or dangerous obstruction to be placed in one of its streets, without being answerable for damages occasioned thereby." *Ib.* See Stanley *v.* Davenport (steam-motor case), 54 Iowa, 463, referred to, *ante,* sec. 722, note. Compare Stange *v.* Hill & W. D. Street Ry. Co., 54 Iowa, 669; *supra,* secs. 953, note, 1011, note; Cooley, Torts, 617.

[3] Little *v.* Madison, 49 Wis. 605. City licensed a shooting gallery. Plaintiff passing along the street was injured by the firing of a gun from the inside of the gallery, which was near the street. Held, that the city was not liable. It was not the case of defect, want of repair, or insufficiency of the street under the Wisconsin statute. Hubbell *v.* Viroqua Wis.), 30 Northwest. Rep. 847.

[4] Cole *v.* Newburyport, 129 Mass. 594 (1880); s. c. 23 Alb. L. J. 3. The case just cited was decided on demurrer to the declaration, which in substance alleged that the city, by its clerk, duly authorized, contracted with the owners of an animal known as the "Sacred Ox," authorizing them to erect a booth on Market Square, and to occupy the highway for the use and exhibition of the animal for the consideration of $2.50 a day; that the mayor and aldermen of the city, by the city ordinances, are authorized to grant permission to maintain tents and booths

§ 1012. **Defective Sidewalks.** — The liability of a city or town *for actionable defects extends*, as already remarked, to sidewalks, they being deemed to constitute part of the street.[1] Where the charter

in public places and upon the public highways for the purpose of exhibition, and are authorized to lease and grant permission to use the same; that the ox was also of an uncouth and strange shape and appearance, and was caparisoned in a gaudy and strange manner, so that he was an object of terror to horses and cattle; that the plaintiff's cart and horse were lawfully travelling along Merrimac Street, the horse being well broken and kind and being driven by a safe and experienced driver, who exercised due caution, and near Market Square met the ox, which was being led back and forth on the highway for his usual and necessary exercise, and that the horse was frightened by the odor and frightful appearance and caparison of the ox, and ran and overturned the cart, damaging it so that it was substantially destroyed, and seriously injuring the horse. The defendant demurred. The demurrer was sustained, on the ground that at the time of the accident the ox was not in the place for the use of which the city received compensation, nor in charge of any agent of the city, and the city was not responsible for the fright while both animals were travelling along the highway. Shearm. & Red. Neg. (4th ed.) secs. 263, 358; 2 Thomps. Neg. 778.

[1] *Ante*, sec. 1008. Studley *v.* Oshkosh, 45 Wis. 380; Furnell *v.* St. Paul, 20 Minn. 117 (1873); Warren *v.* Wright, 3 Ill. App. 602; Rockford *v.* Hilderbrand, 61 Ill. 155 (1871); Chicago *v.* Langlass, 66 Ill. 361 (1873); Chicago *v.* Crooker, 2 Ill. App. 279; Atlanta *v.* Perdue, 53 Ga. 607 (1875); Chicago *v.* McCarthy, 75 Ill. 602 (1875); Moore *v.* Minneapolis, 19 Minn. 300 (1872); Market *v.* St. Louis, 56 Mo. 189 (1874); Barnes *v.* Newton, 46 Iowa, 567 (1877); Higert *v.* Greencastle, 43 Ind. 574 (1873); O'Neil *v.* New Orleans, 30 La. An. 202; Bacon *v.* Boston (a deep opening made by adjoining owner for cellar window), 3 Cush. (Mass.) 174 (1849); Lowell *v.* Spaulding, 4 Cush. 275; *Ib.* 277; Kirby *v.* Market Association, 14 Gray, 249 (1859); Manchester *v.* Hartford, 30 Conn. 118 (1861); See, also, Atchison *v.* Jansen, 21 Kan. 560; Hubbard *v.* Concord, 35 N. H. 52 (1857), reviewing Raymond *v.* Lowell, 6 Cush. 524; Boucher *v.* New Haven, 40 Conn. 456 (1873). A cover made partly of glass and partly of iron, forming a portion of the surface of a sidewalk in a city, and so changed by wear as to become smooth and slippery, on which a traveller using due care slips and falls, solely by reason of its smoothness, is such a defect in a highway as to render a city liable. Cromarty *v.* Boston, 127 Mass. 329; Morse *v.* Boston, 109 Mass. 446; Kellogg *v.* Janesville, 34 Minn. 132; Noonan *v.* Stillwater, 33 Minn. 198; Nanticoke Boro' *v.* Warne (rotten sidewalk), 106 Pa. St. 373; Beazan *v.* Mason City, 58 Iowa, 233; Thomas *v.* Brooklyn, 58 Iowa, 438; Smalley *v.* Appleton, 70 Wis. 340; Stack *v.* Portsmouth, 52 N. H. 221 (1872), and *defining measure of duty, as respects sidewalks*. Duty as respects *crossings; foot-passengers, where to cross*. Raymond *v.* Lowell, 6 Cush. (Mass.) 524 (1850); Brady *v.* Lowell, 3 *Ib.* 121 (1849). A *bridge over a drain* at a street crossing which had been habitually used by passengers along the sidewalk, was considered a part of the sidewalk, and the city held liable for injuries caused by defects in it. Atlanta *v.* Champe, 66 Ga. 659. *Ante*, sec. 1009, and note. Where a sidewalk is constructed by a private person, without the authority or direction of the city, the city will be liable for injuries sustained by reason of defects in it, if it has assumed jurisdiction over it — as, by ordering the owner to repair it, or by permitting it to be used as a part of the continuous sidewalk of a travelled thoroughfare. Plattsmouth *v.* Mitchell, 20 Neb. 228; Russell *v.* Canastota, 98 N. Y. 496 (giving notice to an abutting owner to repair a sidewalk does not release the municipal corporation from liability). A municipal corporation held liable for an injury sustained by reason of a defective sidewalk constructed without its authority, the defect having existed a sufficient length of time to charge it with notice. Saulsbury *v.* Ithaca, 94

of a city gives it the power to cause sidewalks to be kept in repair, and makes adequate provision for so doing, the exercise of the power, according to the prevailing judgment of the courts, follows as a duty. In such case the city is liable for actionable defects in sidewalks, although the charter requires the lot-owner to build the sidewalks, and imposes a penalty for his failure in this regard. The abutting owner is not bound to keep the sidewalk in repair unless by virtue of the requirement of a statute, and is not responsible to travellers for defects therein not caused by himself.[1] The lot-owner has been held not liable over to the city for damages resulting to passers-by from the non-repair of a sidewalk in respect of which he was under no legal obligation to make the repairs, and which was not defective by reason of any obstruction caused or other act done by him.[2]

N. Y. 27. While a city having a power to construct sidewalks may adopt one already constructed, it must do so by a corporate act; but where the *plan* of a sidewalk has been changed by an owner of adjoining property without objection by the city, its omission to take any action in reference to it, after notice, cannot constitute a defence in its favor to an action brought by one who has received injury by reason of defects in the walk. Urquhart *v.* Ogdensburgh, 97 N. Y. 238. Right of *foot-travellers* to travel *along and across street*. *Ib.*; Coombs *v.* Purrington, 42 Me. 332 (1856); Bacon *v.* Boston, 3 Cush. (Mass.) 174; Barker *v.* Savage, 45 N. Y. 191 (1871); Robinson *v.* Western Pac. R. R. Co., 48 Cal. 409 (1874). *What inequalities in surface actionable*. Raymond *v.* Lowell, 6 Cush. (Mass.) 524 Hubbard *v.* Concord, 35 N. H. 52; Smith *v.* Wendell, 7 Cush. 498; Winn *v.* Lowell, 1 Allen, 177; Lacon *v.* Page, 48 Ill. 499; Loan *v.* Boston, 106 Mass. 450. See as to gross negligence, Chicago *v.* Langlass, 66 Ill. 361. As to ordinary care and diligence, see Warren *v.* Wright, 3 Ill. App. 602.

A walk crossing an alley is a "crosswalk" and not a "sidewalk" within the meaning of the statute of *Michigan* imposing liability for injuries caused by defective streets, &c. Pequinot *v.* Detroit, 16 Fed. Rep. 211. Proof that others have passed over an obstruction in a sidewalk without injury is not admissible, nor is proof (as here) that the construction of a plank crossing was the same as that of other crossings in the city. Bauer *v.* Indianapolis, 99 Ind. 56. One who had *full knowledge* of an obstruction in a sidewalk, held not entitled to recover for an injury caused by it, though the accident occurred when by reason of darkness it was difficult to see it. Indianapolis *v.* Cook, 99 Ind. 10. For illustrations of faulty construction of cross-walks see Whitney *v.* Milwaukee, 57 Wis. 639; Schroth *v.* Prescott, 63 Wis. 652; Stilling *v.* Thorp, 54 Wis. 538; Hill *v.* Fond du Lac, 56 Wis. 242; Grossenbach *v.* Milwaukee, 65 Wis. 31; Shearm. & Red. Neg. (4th ed.) sec. 353, and cases; 2 Thomps. Neg. 781–784, where the extent of the duty to repair sidewalks and cross-walks is considered.

[1] Moore *v.* Gadsden, 87 N. Y. 84; s. c. on another appeal, 93 N. Y. 12. These two decisions hold that although by an ordinance in the nature of a police regulation the abutting owner is required to remove ice and snow within a fixed time, he is not thereby made liable for injuries caused by his neglect to comply with the ordinance. Hill *v.* Fond du Lac, 56 Wis. 242; Knupfle *v.* Knick. Ice Co., 84 N. Y. 488; Weller *v.* McCormick, 47 N. J. L. 397. *Ante*, sec. 1006, note.

[2] Keokuk *v.* Keokuk Indep. Sch. Dist., 53 Iowa, 352; s. c. 5 N. W. Rep. 503; Kirby *v.* Boylston Market Association, 14 Gray (Mass.), 249; Flynn *v.* Canton