

THE ROAD

AND

THE ROADSIDE.

BY

BURTON WILLIS POTTER.

SECOND EDITION.

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TO

THE HONORABLE JOHN E. RUSSELL,

SECRETARY OF
THE MASSACHUSETTS BOARD OF AGRICULTURE,

These Pages are Respectfully Inscribed,

AS A TOKEN OF MY LOVE AND ESTEEM FOR HIM AS A TRUE FRIEND,
A CLASSICAL SCHOLAR, AND AN ELOQUENT ORATOR,
WHOSE SPEECHES AND WRITINGS HAVE AIDED POWERFULLY
IN BRINGING ABOUT A REVIVAL OF AGRICULTURE,
AND IN CREATING AMONG THE PEOPLE
A LOVE OF AGRICULTURE AND
RURAL LIFE.

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PREFACE TO SECOND EDITION.

SINCE the publication of the first edition of this book, it has been suggested to me many times, privately and through the public press, that in case a new edition should be called for there ought to be a chapter upon Sidewalks, and another upon Cycle law. Feeling the force of these suggestions, I have prepared two chapters upon these subjects, which are contained in this issue. And having occasion to use many books, I have come to the opinion that every book which is worth publication is worth an index; and pursuant to this opinion I have prepared an Index for this edition, which I trust will add something to the convenience of those who may have occasion to consult its pages.

B. W. P.

WORCESTER, MASS.,

June, 1887.

P R E F A C E.

THE chapters of this book relating to the laws of public and private ways were written and read as a lecture at the Country Meeting of the Massachusetts Board of Agriculture, in December, 1885, at Framingham, and have since been published in the "Report on the Agriculture of Massachusetts for the Year 1885."

The laws as herein stated are, as I believe, the present laws of Massachusetts relative to public and private ways, and therefore they may not all be applicable to the ways in other States; but inasmuch as the common law is the basis of the road law in all the States, it will be found that the general principles herein laid down are as applicable in one State as in another.

Believing that good roads and the love of rural life are essential to the true happiness and lasting prosperity of any people, these pages have been written with the sincere desire to do something to improve our roads and to encourage country life; and they are now given to the public with the hope that they will exert some little influence in promoting these objects.

B. W. P.

WORCESTER, MASS.,
May, 1886.

CONTENTS.

CHAPTER I.

HISTORY, IMPORTANCE, AND SIGNIFICANCE OF ROADS.

PAGE

Roads the symbols of progress and civilization. — Macaulay and Bushnell on the value of public highways. — The first sponsors of art, science, and government were the builders of roads. — The ancient highway between Babylon and Memphis. — The Carthaginians as road-makers. — Roman roads : their construction, extent, and durability ; their instrumentality in giving Rome her pre-eminence in the ancient world ; their mode of construction described. — Ponderous roads in China. — Magnificent highways in the ancient empires of Mexico and Peru. — Prescott's description of the great roads in Peru. — Bad condition of the English roads in the sixteenth century. — With the revival of modern civilization the improvement of the public highways has engaged the thought of public and scientific men. — Advantages of good roads generally and especially as the means of a proper distribution of population 1-11

CHAPTER II.

LOCATION.

Best possible location desirable. — Permanent nature of roads. — Many of the ancient roads are still travelled by the people of to-day. — The law of the survival of the fittest applicable to

the location of roads. — The makers of a good road often build better than they know. — Roads may be located in three different ways. — The old Romans and the modern Latin nations locate in straight lines. — The English-speaking people usually locate their roads in curved lines. — Curved roads have many advantages over straight ones, as good grades are more desirable than straight roads 12-16

CHAPTER III.

CONSTRUCTION.

Importance of drainage. — Good roads impossible without proper drainage. — Proper width of roads for travel. — They should be wide enough to admit of foot-paths at their sides. — Every road should be crowned sufficiently to run off the surface water, but not enough to make the road-bed too unlevel. — The golden mean is to be sought. — A macadamized road the cheapest and best for our climate and soil. — Proper foundation and depth of stone covering for such a road. — The Telford road sometimes the best for clayey soil. — Its construction. — They will be the future roads of our country. — Earth-roads now generally prevail. — How to make them, and how to keep them up . 17-21

CHAPTER IV.

REPAIRS.

Economy and public convenience require roads to be kept up the year round. — Advantages of a road always in good condition. — Evils of the present system of annual or semi-annual repairs. — The present system described. — Advantages of the continual-repair system illustrated by the great turnpike from Virginia City to Sacramento, by Baden, Germany, France, Switzerland, Great Britain, and towns in the vicinity of our great cities. — This system alone will prevail when the principles of road-making become better known 22-27

CHAPTER V.

LAWS RELATING TO THE LAYING OUT OF WAYS.

	PAGE
For what purposes ways may be laid out, and how they may be established. — May be laid out by town or county authorities. — Distinction between town ways and public highways. — When the public officials refuse to lay out ways, parties interested may appeal. — How damages are avoided and costs paid	28-31

CHAPTER VI.

LAW AS TO REPAIRS.

How and by whom ways are to be kept in repair. — The duties and rights of the public authorities in making repairs. — The boundaries of highways. — The rights of travellers as to the removal of obstructions in the road. — Unauthorized persons have no right to repair ways. — Highways to be protected by proper railings. — How wide roads should be 32-35

CHAPTER VII.

GUIDE-POSTS, DRINKING-TROUGHS, AND FOUNTAINS.

Guide-posts to be erected and maintained at suitable places. — Penalties attached to neglect or refusal to erect and maintain them. — Town officers may establish and maintain drinking-troughs, wells, and fountains. — Their duty in this respect 36-38

CHAPTER VIII.

SHADE TREES, PARKS, AND COMMONS. ✓

Towns and cities have authority to beautify the roadsides and public squares. — May plant trees and encourage their plant-

ing by adjoining owners and improvement societies. — The rights of improvement societies and the penalties for interfering with their work. — Shade trees and other ornamental fixtures not to be injured or destroyed 39-41

CHAPTER IX.

PUBLIC USE OF HIGHWAYS.

How roads are to be used by the public and adjoining owners. — Due care to be used by travellers. — Masters responsible for their servants' acts. — No responsibility for inevitable accidents. — What is a proper rate of speed 42-44

CHAPTER X.

“THE LAW OF THE ROAD.”

Rules for the meeting, passing, and conduct of teams on the road. — These rules not inflexible. — When they may be deviated from. — Each traveller has a right to a fair share of the road. — The rights of light and heavily loaded vehicles. — When a traveller with team may use track of street railway . . . 45-49

CHAPTER XI.

EQUESTRIANS AND PEDESTRIANS.

Equestrians must give way for vehicles. — “The law of the road” does not apply to them by the terms of the statutes, but they should observe it as far as practicable. — Pedestrians have a right to walk on carriage-way. — In cities they should walk on the sidewalks. — They must use due care. — Their rights on cross-walks. — They are not subject to “the law of the road.” — They may walk out on Sunday for their health. 50-53

CHAPTER XII.

OMNIBUSES, STAGES, AND HORSE-CARS.

	PAGE
Carriers of passengers for hire are bound to use due diligence in providing suitable coaches, harnesses, horses, and coachmen. — They must not leave their horses unhitched. — If they receive passengers when their coaches are already full, they must use increased care. — Passengers must pay fare in advance, if demanded	54-56

CHAPTER XIII.

PURPOSES FOR WHICH HIGHWAYS MAY BE USED.

Public ways are mainly for the use of travellers, but they may be used for other public purposes, — gas, water-pipes, sewers, street railways, telephone and telegraph lines, etc. — Every one may use the highway to his own advantage, but with regard to the like rights of others. — What animals and vehicles are allowed upon the road. — Towns and cities may regulate by by-laws the use and management of the public ways . . . 57-61

CHAPTER XIV.

USE OF HIGHWAYS BY ADJOINING OWNERS.

They own the fee in the land, and are entitled to all the profits of the freehold, — the grass, the trees, fruit, etc. — If the land in the way is subjected to any new servitude, like an elevated railroad or telegraph or telephone lines, they are entitled to damages. — They can load and unload vehicles in connection with their business on their premises, but it must be done in such a manner as not to incommode the travelling public. — They must not fill up the roadside with logs, wood, or rubbish of any kind 62-69

CHAPTER XV.

PRIVATE WAYS.

	PAGE
Private ways may be established and discontinued in the same manner as public ways. — The owner of such way must keep it in repair. — The owner of the soil may use it for agricultural purposes, and keep up bars and gates. — “The law of the road” applies to private ways	70-72

CHAPTER XVI.

DON'T.

<p><u>Don't</u> drink intoxicating liquors when travelling. — Don't forget to look out for the engine while the bell rings. — Don't take animals affected by contagious diseases on the public way. — Don't go upon the road if you are afflicted with a contagious or infectious disease. — Don't go out sleigh-riding without bells attached to your harness. — Don't try to drive a horse on the road unless you know how to manage him. — Don't ride with a careless driver. — Don't use a vicious horse, or let him to be used on the road. — Don't let your horses get beyond your control. — Don't encroach upon or abuse the highway. — Don't ride on the outside platform of a passenger coach. — Don't jump off a coach when it is in motion. — Don't wilfully break down, injure, remove, or destroy a milestone, mile-board, or guide-post. — Don't go out of the road-way upon adjoining land. — Don't suppose that everything that frightens your horse or causes an accident is a defect in the highway. — Don't fail to give notice in writing if you meet with an accident on the road. — Don't convey land encumbered with a right of way. — Don't keep a barking dog</p>	73-83
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CHAPTER XVII.

FOOT-PATHS.

Necessity of air, sunlight, and exercise. — The progenitors of every vigorous race have found in forest and wilderness the sources

PAGE

of their strength. — The Israelites, Greeks, Romans, Dutch, Anglo-Saxons. — The teachings of Nature essential to the development of the human mind. — Job, David, Plato, Aristotle, Christ, Wordsworth. — Foot-paths tend to bring people into the open air and into communion with Nature. — The by-ways of old England. — Towns and cities should lay out foot-paths 84-88

CHAPTER XVIII.

WITHIN AND WITHOUT THE ROADSIDE.

Every dweller under obligation to maintain neatness and order within and without his roadside. — Unselfish exertion in this behalf pays. — He who beautifies the roadside benefits mankind and himself alike. — A dirty and shabby dwelling gives a traveller a mean idea of its inmates. — A cosy and clean house always speaks well for its inmates. — Every homestead should be adorned with trees. — The beauty and utility of trees. — They are inseparable from well-tilled land and beautiful scenery. — Wayside shrubbery : its use and abuse ; it should be allowed where green grass will not grow 89-94

CHAPTER XIX.

ENJOYMENT OF THE ROAD.

A traveller should have a hopeful and sunshiny disposition. — He should be in harmony with Nature ; he should have an observing eye to enjoy the *latent* enjoyments of the way. — How the observing faculties may be cultivated. — The pleasures incident to knowing how to appreciate the beautiful in Nature. — The different degrees of enjoyment in the same situation. — The love of Nature the sign of goodness of heart. — Ruskin, Wordsworth, Christ. — What an observing traveller can see to admire and enjoy on the road, — grass, flowers, trees, as reminders of human beings, domestic and pastoral scenery, mountains, animal and vegetable life, sun and sunlight, latent enjoyments in himself 95-104

CHAPTER XX.

SIDEWALKS AND CROSSWALKS.

	PAGE
Sidewalks and crosswalks are part of the highway, but distinct. — They may be used by adjoining owners and by the public. — What pedestrians may take with them on these walks. — Where and how they should be constructed, and by whom. — They should be kept free from obstructions. — Who liable for defects therein. — What are defects	105-121

CHAPTER XXI.

BICYCLES AND TRICYCLES.

Bicycles and tricycles among the marvellous inventions of the 19th century. — Their use conducive to public convenience and health. — Their legal status an important question. — They should be treated the same as ordinary road vehicles. — They are out of place on sidewalks. — Their use in public parks and commons. — The law relative to their use in Eng- land and the United States	122-136
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CHAPTER I.

HISTORY, IMPORTANCE, AND SIGNIFICANCE OF ROADS.

THE development of the means of communication between different communities, peoples, and races has ever been coexistent with the progress of civilization. Lord Macaulay declares that of all inventions, the alphabet and printing-press alone excepted, those inventions which abridge distance have done most for the civilization of our species. Every improvement of the means of locomotion benefits mankind morally and intellectually as well as materially.

“The road,” Bushnell says, “is that physical sign or symbol by which you will best understand any age or people. If they have no roads, they are savages; for the road is the creation of man and a type of civilized society. If you wish to know whether society is stagnant, learning scholastic, religion a dead formality, you may learn something by going into universities and

libraries, something also by the work that is doing on cathedrals and churches or in them, but quite as much by looking at the roads; for if there is any motion in society, the road, which is the symbol of motion, will indicate the fact."

As roads are the symbols of progress, so, according to the philosophy of Carlyle, they should only be used by working and progressive people, as he asserts that the public highways ought not to be occupied by people demonstrating that motion is impossible. Hence, when we trace back the history of the race to the dawn of civilization, we find that the first sponsors of art and science, commerce and manufacture, education and government, were the builders and supporters of public highways.

The two most ancient civilizations situated in the valleys of the Nile and the Euphrates were connected by a commercial and military highway leading from Babylon to Memphis, along which passed the war chariots and the armies of the great chieftains and military kings of ancient days, and over which were carried the gems, the gold, the spices, the ivories, the textile fabrics, and all the curious and unrivalled productions of the luxurious Orient. On the line of this roadway arose Nineveh, Palmyra, Damascus, Tyre, Antioch, and other great commercial cities.

On the southern shores of the Mediterranean the Carthaginians built up and consolidated an empire so prominent in military and naval achievements and in the arts and industries of civilized life, that for four

hundred years it was able to hold its own against the preponderance of Greece and Rome ; and as might have been expected, they were systematic and scientific road-makers from whom the Romans learned the art of road-building.

The Romans were apt scholars, and possessed a wonderful capacity not only to utilize prior inventions but also to develop them. They were beyond question the most successful and masterful road-builders in the ancient world ; and the perfection of their highways was one of the most potent causes of their superiority in progress and civilization. When they conquered a province they not only annexed it politically, by imposing on its people their laws and system of government, but they annexed it socially and commercially, by the construction of good roads from its chief places to one or more of the great roadways which brought them in easy and direct communication with the metropolis of the Roman world. And when their territory reached from the remote east to the farthest west, and a hundred millions of people acknowledged their military and political supremacy, their capital city was in the centre of such a network of highways that it was then a common saying, "All roads lead to Rome." From the forum of Rome a broad and magnificent highway ran out towards every province of the empire. It was terraced up with sand, gravel, and cement, and covered with stones and granite, and followed in a direct line without regard to the configuration of the country, passing over or under mountains and across streams and lakes, on arches of solid

masonry. The military roads were under the pretors, and were called pretorian roads; and the public roads for travel and commercial traffic were under the consuls, and were called consular roads. These roads were kept entirely distinct; the pretorian roads were used for the marching of armies and the transportation of military supplies, and the consular roads were used for traffic and general travel. They were frequently laid out alongside of each other from place to place, very much as railroads and highways are now found side by side. The consular roads were generally twelve feet wide in the travelled pathway, with a raised footway on the side; but sometimes the footway was in the middle of the road, with a carriage-way on each side of it. The military roads were generally sixty feet wide, with an elevated centre, twenty feet wide, and slopes upon either side, also twenty feet wide. Stirrups were not then invented, and mounting stones or blocks were necessary accommodations; and hence the lines of the roads were studded with mounting-blocks and also with mile-stones. Some of these roads could be travelled to the north and eastward two thousand miles; and they were kept in such good repair that a traveller thereon, by using relays of horses, which were kept on the road, could easily make a hundred miles a day. Far as the eye could see stretched those symbols of her all-conquering and all-attaining influence, which made the most distant provinces a part of her dominions, and connected them with her imperial capital by imperial highways.

The Romans not only had great public highways, but they possessed a complete and systematic network of cross-roads, which connected villages, and brought into communication therewith cultivated farms and prosperous homesteads. In Italy alone it is estimated that they had about fourteen thousand miles of good roads. Their laws relating to the construction and maintenance of highways were founded in reason and a just conception of the uses and objects of public ways; and they are the basis of modern highway legislation. By their law the roads were for the public use and convenience, and their emperors, consuls, and other public officials were their conservators. They were built at the public expense, under the supervision of professional engineers and surveyors, and kept in repair by the districts and provinces through which they passed.

But during the dark ages, when arts were lost, when popular learning disappeared or found shelter only in cloisters and convents, when commercial intercourse between nations vanished, and when civilization itself lay fallen and inert, these magnificent Roman roads were unused and left to the destructive agencies of time and the elements of Nature. Rains and floods washed away and inundated their embankments; forests and rank vegetation overgrew and concealed them; winds covered them with dust and heaps of sand; and little by little in the process of ages their hard surfaces and massive foundations were somewhat broken and caused to partially decay. That their remains still exist in every part of the world which ever bore up the Roman legions is

conclusive evidence that they were built by master workmen who realized that they were responsible to posterity and to the eternal powers.

“In the elder days of Art
Builders wrought with greatest care
Each minute and unseen part ;
For the gods see everywhere.”

In China, at one time, labor was so abundant that it was kept employed in constructing great walls and ponderous roads. The road-bed was raised several feet above the level of the ground by an accumulation of great stones, and then covered with huge granite blocks. It was found that in time the wheels of vehicles wore deep ruts in the stones, while the travelled part of the road became so smooth that it was almost impossible for animals to stand thereon.

In the ancient empires of Mexico and Peru, where there were no beasts fit for draught or for riding, magnificent roads were constructed for the treble purpose of facilitating the march of armies, accommodating the public traffic, and ministering to the convenience and luxury of the lordly rulers. In Peru two of these roads were from fifteen hundred to two thousand miles long, extending from Quito to Chili, — one by the borders of the ocean, and the other over the grand plateau by the mountains. Prescott says : “The road over the plateau was conducted over pathless sierras buried in snow ; galleries were cut for leagues through the living rock ; rivers were crossed by means of bridges that swung suspended in the air ; precipices were scaled by stairways

hewn out of the native bed; ravines of hideous depth were filled up with solid masonry; in short, all the difficulties that beset a wild and mountainous region, and which might appall the most courageous engineer of modern times, were encountered and successfully overcome. Stone pillars in the manner of European milestones were erected at stated intervals of somewhat more than a league all along the route. Its breadth scarcely exceeded twenty feet. It was built of heavy flags of freestone, and in some parts, at least, covered with a bituminous cement, which time has made harder than the stone itself. In some places where the ravines had been filled up with masonry, the mountain torrents, wearing on it for ages, have gradually eaten a way through the base, and left the superincumbent mass — such is the cohesion of the materials — still spanning the valley like an arch.

“Another great road of the Incas lay through the level country between the Andes and the ocean. It was constructed in a different manner, as demanded by the nature of the ground, which was for the most part low, and much of it sandy. The causeway was raised on a high embankment of earth, and defended on either side by a parapet or wall of clay; and trees and odoriferous shrubs were planted along the margin, regaling the sense of the traveller with their perfume, and refreshing him by their shades, so grateful under the burning sky of the tropics.

“The care of the great roads was committed to the districts through which they passed, and a large number of

hands was constantly employed to keep them in repair. This was the more easily done in a country where the mode of travelling was altogether on foot; though the roads are said to have been so nicely constructed that a carriage might have rolled over them as securely as on any of the great roads of Europe. Still, in a region where the elements of fire and water are both actively at work in the business of destruction, they must without constant supervision have gradually gone to decay. Such has been their fate under the Spanish conquerors, who took no care to enforce the admirable system for their preservation adopted by the Incas. Yet the broken portions that still survive here and there, like the fragments of the great Roman roads scattered over Europe, bear evidence of their primitive grandeur, and have drawn forth eulogium from the discriminating traveller; for Humboldt, usually not profuse in his panegyrics, says, 'The roads of the Incas were among the most useful and stupendous works ever executed by man.' "

With the revival of human thought and civilization after the Middle Ages, the improvement of the roads engaged the attention of public and scientific men, and became once more an object of government; but for a long time the rulers who concerned themselves about roads thought more about repressing the crimes of violence and extortion thereon than they did about improving their condition for travel. The first act of the English Parliament relative to the improvement of roads in the kingdom was in 1523; yet in 1685 most of the roads in England were in a deplorable condition.

Macaulay says that on the best highways at that time the ruts were deep, the descents precipitous, and the way often such that it was hardly possible to distinguish it in the dark from the unenclosed heath and fen which lay on both sides. It was only in fine weather that the whole breadth of the road was available for wheeled vehicles ; often the mud lay deep on the right and on the left, and only a narrow track of firm ground rose above the quagmire. It happened almost every day that coaches stuck fast until a team of cattle could be procured from some neighboring farm to tug them out of the slough. But to the honor of England, this condition of her roads was not allowed to continue very long. Although her progress in trade and prosperity has been marvellously rapid, yet such progress can be measured by the improvement of her roads, which are now unsurpassed anywhere in the world.

Beyond question, internal communications are of vital importance to every nation, and good roads are a prime necessity to every town or city. A good road is always a source of comfort and pleasure to every traveller. It is also a source of great saving each year in the wear and tear of horse-flesh, vehicles, and harnesses. Good roads to market and neighbors increase the price of farm produce, and bring people into business relations and good fellowship, and thereby enhance in value every homestead situated in their neighborhood. They cause a proper distribution of population between town and country. For many years in this country there has been a movement of population from the rural districts

into the cities and manufacturing villages. Many ancestral homesteads have been deserted for promising "fresh woods and pastures new" in the commercial world. This centralization of population is evidently a violation of economic laws, and when carried too far results in business depression, in the multiplication of tramps, and in the origination and development of industrial and social troubles. The remedy for this state of affairs is found in the readjustment and proper distribution of population between town and country. When men, sick of waiting on waning business prospects, turn to the soil as their only refuge from non-employment and surplus productions of factories, and reoccupy and rehabilitate deserted or run-down farms, then business revives, and the wheels of industry and enterprise revolve steadily and with increased velocity at each revolution. Bad roads have a tendency to make the country disagreeable as a dwelling-place, and a town which is noted for its bad roads is shunned by people in search of rural homes. On the other hand, good roads have a tendency to make the country a desirable dwelling-place, and a town which is noted for its good roads becomes the abode of people of taste, wealth, and intelligence.) Hence it behooves every town to make itself a desirable place of residence; for many people are always puzzling themselves over the problem of where and how to live, and those towns which have their floors swept and garnished and their lamps trimmed and burning ready to receive the bride and bridegroom, will be most likely to attract within

their borders the seekers of farm life and rural homes. (We now live in the city and go to the country; but we should live in the country and go to the city.) This is "a consummation devoutly to be wished;" but it can never be brought about until good roads connect the cities and villages with the green fields and beautiful scenery of the country. All money and labor expended upon them result immediately in a convenience and benefit to the whole community. (Every one should deem it an honor to be able to do anything to improve and beautify the highways of his town.) The Lacedemonian kings were *ex officio* highway surveyors, and among the Thebans the most illustrious citizens were proud to hold that office; and a few years ago Horatio Seymour, of New York, said that his only remaining ambition for public life was to be regarded as the best path-master in Oneida County.

CHAPTER II.

LOCATION.

WHEN a new road is laid out it is important that it should be located in the best attainable place, considering the natural formation of the surrounding country; for when a highway is once established it is impossible to say how long the tide of humanity and commercial traffic will seek passage over it. While the ordinary processes of Nature — rain, thaw, and frost — are ever at work lowering the hills and mountains and filling up the valleys and lowlands, the public highways of a country remain in the same relative positions from age to age.

The great commercial and military highway which in the early dawn of Roman history led from the banks of the placid Euphrates to the banks of the many-mouthed Nile — over which Abraham once wended his weary steps on his way to Canaan, over which the hosts of Xerxes and the brave phalanxes of Alexander the Great once passed in all the pride and glory of war, over which the wise men of the East probably journeyed in search of him who was born King of the Jews, over which Mary fled with Christ in her flight into Egypt, and along which the early Christians travelled as they

the stress of trying times we have discovered in the constitution of our country latent powers which its framers never dreamed were there. Thus it is with the humble occupation of road-building. A road constructed for the convenience of some primitive community or to gratify the caprice of some rich man or lordly ruler becomes often in after years an Appian Way for public travel and commercial intercourse.

↓ A road may be located in one of three ways. It may be laid out in a straight line by crossing lowlands in the mud and going over hills at steep grades. The ancient Britons, like the early settlers in this country, established their homesteads and villages on commanding situations, and ran their roads and bridle-paths in direct courses by their habitations. The Romans, possessors of great wealth and abundant slave-labor, built their military and public roads in direct lines from place to place, regardless of expense. In this way they shortened distances somewhat, but their roads must have been constructed at enormous expense in money and labor. Their roads were marvels of engineering skill and workmanship, which even now, after the lapse of eighteen centuries, impress every thoughtful observer with the idea that he is in the presence of the work of the immortals. They threw arched bridges of solid masonry over rivers and across ravines; they cut tunnels through mountains, and sometimes carried their roads underground for the sole purpose of shelter from the sun; they levelled heights and made deep cuts through hills; and when they came to a marsh they built a causeway high

enough and strong enough to make it safe and dry at all seasons of the year. This mode of location is still followed in the Latin countries of Italy, France, and Spain, where many of the roads are identical with the old Roman roads.

The other mode of locating a highway is to seek the best attainable grade the country will permit of by winding through valleys and around and across hills. There is obviously one advantage to a perfectly straight road between two places: *it is the nearest route.* But this is about the only advantage a straight road has over a curved one. In a hilly country a straight road is frequently no shorter than a curved one, because the distance around a hill is generally no greater than over it, as the length of a pail-handle is the same whether it is vertical or in a horizontal position. In an uneven country a straight road with anything like the same grade as the curved road can only be constructed at enormous and unnecessary expense and labor. Even in a level country a road curved sufficiently to give variety of view and to conform to Hogarth's "line of beauty" is preferable to a perfectly straight road, which is always tedious to the traveller.

"The road the human being travels,
That on which blessing comes and goes, doth follow
The river's course, the valley's playful windings,
Curves round the corn-field and the hill of vines."

Moreover, we are told by competent engineers that the difference in length between a straight and a slightly curved road is very small. Thus, if a road between two

places ten miles apart was made to curve so that the eye could nowhere see farther than a quarter of a mile of it at once, its length would exceed that of a perfectly straight road between the same points by only about one hundred and fifty yards.

But, in any event, in road-making mere straightness should always yield to a level grade, even if thereby the distance is greatly increased; for on a good grade a horse can draw rapidly and easily a load which it would be impossible for him to draw on a steep grade. It is an accepted maxim by road-engineers that the horizontal length of a road may be advantageously increased, to avoid an ascent, by at least twenty times the perpendicular height which is to be thus saved; that is, to escape a hill a hundred feet high, it would be proper for the road to make such a circuit as would increase its length to two thousand feet.

Hence it is apparent that the ordinary road in a hilly and uneven country should follow the streams as far as possible, as Nature has located them in the places best adapted for highways; and when hills are found on the line of a road they should be surmounted by passing around and across them at the easiest grades possible rather than over them at steep grades.

CHAPTER III.

CONSTRUCTION.

SUITABLE drainage is the first requisite of a good road, as with our climate and soil it is impossible to have a road in a satisfactory condition at all seasons of the year unless the same is well drained. In building a new road provisions should be made to get rid of all surface water, and in wet land of the water in the soil, by ditches and drains sufficient to dispose of it in a thorough manner; and in repairing an old road it frequently happens that its condition can be greatly improved and sometimes perfected by simply providing proper drainage for it. It is not sufficient to have ditches on each side of the road; for if the water stands in them it is liable to make the road muddy and to weaken its substratum. The ditches themselves should be thoroughly drained, and all the water which accumulates in them should be carried into the natural watercourses of the country, or at any rate beyond the limits of the highway.

Every carriage-road ought to be wide enough at nearly all points to allow two vehicles to pass each other in safety. Whether it should be wider than that depends upon its location and its importance as a public thoroughfare. Any unnecessary width should be avoided,

except on pleasure and showy boulevards, because thereby land is wasted, and labor and cost in construction and repair are increased. All important highways should be wide enough to admit of footpaths five or six feet wide on each side, and of a macadamized or travelled way commensurate to the public traffic thereon.

If a road is to be made wider than two vehicles require, it should be made wide enough to accommodate one or more vehicles ; for any intermediate width causes unequal and excessive wear, and therefore is false economy.

The road-bed should generally be raised above the level of the surrounding land, in order that it may be as free as possible from water ; and it should "crown" sufficiently to allow all the surface water to find its way quickly into the side ditches. If it is not crowned enough, it soon becomes hollow, and therefore either muddy or dusty, and in times of heavy rains or thaws the water stands or flows in the middle of the road. If it is crowned too much, the drivers of vehicles will seek the middle of the road in order to keep their vehicles in level positions, and consequently the excessive travel in one part of the road soon wears it into ruts in which water accumulates, and carriages in meeting are forced to travel on a side hill, which causes unnecessary wear to the road by sliding down towards the ditches. This sliding tendency greatly augments the labor of the horses and the wear and tear of the carriages. Evidently, then, the wise course to pursue in the matter of crowning the road is to hit the golden mean. Much of success in life depends upon striking the golden mean, for human

experience teaches that those who follow in this pathway are apt to find themselves among the happy and the successful. The advice which the wise old Horace made a sage seaman give two thousand years ago is good for road-makers of to-day, —

“ Licinius, trust a seaman’s lore :
Steer not too boldly to the deep ;
Nor dreading storms by treacherous shore
Too closely creep.”

It ought therefore to be an accepted maxim in road-making that the road-bed should be so constructed as to induce vehicles to travel it equally in every part.

For our climate and soil, no doubt, a macadamized road is the cheapest and best for general travel. This is made by covering the bottom of the road-bed with stones broken into angular pieces to a depth of from four to twelve inches. The bottom of the road-bed should be solid earth, and crowned sufficiently to carry off all water that may reach it. The depth of the stone coating may properly vary from four to twelve inches, as required by the nature of the soil, the climate, and the travel on it; and the size of the broken stones may also be varied to meet the requirements of the road. If there is to be heavy travel on the road, the stone coating should be thicker than on a road over which only lightly loaded teams are expected to pass; and in the former case the broken stones should be larger than in the latter case. In any event, the top of the stone coating should be composed of stones broken into small fragments. A coating, from four to six inches in depth, of broken stones from

one to two inches in diameter is ordinarily sufficient to make a hard, dry, and beautiful country-road, if kept up at all seasons of the year. Flat or round stones should never be used, because they will not unite and consolidate into a mass, as small angular stones will do. When travel is first admitted upon the stone coating, the ruts should be filled up as soon as formed; or what is better, a heavy roller should be used until the stones have become well consolidated.

Sometimes in wet or clayey soil it is well to put at the bottom of the stone coating a layer of large stones, set on their broadest edges and lengthwise across the road in the form of a pavement. This is called a Telford road, and has advantages over the McAdam road in a soil retentive of moisture, as the layer of large stones operates as an under drain to the stone coating above it.

It is undoubtedly true that the McAdam or Telford road is the best road for all practical purposes in this country, and will be the country road of the future; yet it is also true that the most of our highways are mere earth-roads, and will probably remain such for many years, and it is therefore desirable that they should be constructed as well as they can be made. It is an admitted canon of the road-making art, that a road ought to be so hard and smooth that wheels will roll easily over it and not sink into it, so dry and compact that rain will not affect it beyond making it dirty, and its component parts so firmly moulded together that the sun cannot convert them into deep dust. Therefore the

travelled part of an earth-road should not be composed of loam fertile enough for a corn-field, nor of sand deep enough for a beach. If the road runs through sandy land, it can be greatly and cheaply improved by covering it with a few inches of clayish soil ; and if it runs through clayey land, a similar application of sand will be beneficial. A gravelly soil is usually the best material for an earth-road, and when practicable every such road should be covered with a coating of it. The larger gravel, however, should never be placed at the bottom and the smaller at the top, as the frost and the vehicles will cause the large gravel to rise and the small to descend, like the materials in a shaken sieve, and the road will never become smooth and hard.

CHAPTER IV.

REPAIRS.

AFTER a road is located and constructed, economy as well as public convenience demands that it be kept in good condition the year round. If a road is allowed to go for several months at a time without repairs, ruts and holes are likely to form on its surface, and frequently the middle becomes lower than the sides. Then, in order to put it in good condition again, a great deal of work and expense are necessary, whereas if every break is repaired immediately, much less labor and expense are required to keep up the road for the same length of time, besides the increased advantage and convenience of a good road from day to day.

No doubt our roads could be kept in better condition than at present without any additional expense, by the application of good sense and business principles in their management. The present system in nearly all our country towns consists in dividing up the roads into districts, and appointing a highway surveyor for each district, with a stated allowance of money to expend on repairs; and sometimes the tax-payer residing in the district has a right to work out his road tax. This surveyor is usually a farmer, who is very busy during

planting-time in the spring, and during the haying and harvesting seasons ; and consequently he works upon the roads between the planting and the haying seasons, or in the autumn after he has finished the fall work upon his farm. It sometimes happens that he works out all the money allowed him in early summer, and then nothing more is done for a year.

If a road is only to be repaired once a year, the work ought to be done in the spring, when the soil is moist and will pack together hard, and not in the summer, when it is dry and turns easily to dust, nor in the late autumn, when the fall rains make it muddy. The surveyor generally makes the repairs by ploughing up the road-bed and smoothing it off a little, or else by ploughing up the dust, turf, and stones alongside the road-bed, and scraping the same upon it. After this is done he goes about his farm work.

The stones in the road soon begin to work up to the surface, and remain there like so many footballs for every horse to kick as he passes over them. A horse-path naturally forms in the centre of the road, and wheel-ruts upon either side, which make excellent channels for the water to run in during every rain-storm. At first the water finds its way over the water-bars in small quantities ; but the channels increase in depth with every shower, and soon during every hard rain there are from one to three streams of water running over the road-bed from the top to the bottom of nearly every hill, and as a consequence the road is washed all to pieces. The road then generally remains in this con-

dition until the next fall, and sometimes until the next spring. When a road is repaired in this way, it follows as a matter of course that it is in a bad condition all the year round. Just after repairs the road is wretched, for it is then in better condition to be planted than to be travelled over; when trodden down a little, the wash of the rains and the loose stones make it bad again; it then grows worse and worse until another general repair makes it wretched again, and so on *ad infinitum*. The only way to remedy this state of affairs is to change the system.

There should be only one highway surveyor for the whole town, with authority to supply such men and teams as may be necessary to keep the roads in a good state of repair. Let them not only work in the early summer and fall, but at all times when there is anything which needs to be done to the roads. A few shovels of dirt and a little labor in the nick of time will do more towards keeping a road in good condition than whole days of ploughing and scraping once or twice a year only. Every good housewife knows that there is a world of truth in the old maxim, "A stitch in time saves nine." The managers of all our well-conducted railroads understand this. They have a gang of men pass often over each section of the roads.

What would be said of a mill-owner who should let his milldam wash away once or twice each year, and then rebuild it instead of keeping it in constant repair? The proprietors of the great turnpike road from Sacramento to Virginia City in California, which runs mainly

over mountains a distance of one hundred and fifty miles, and has an annual traffic of seven or eight thousand heavy teams, have found by careful experiment that the cheapest way to keep that great road in good condition is to have every portion of it looked after every day, and during dry weather every rod of it is sprinkled with water. This continual-repair system was adopted in Baden, Germany, 1845. It was soon found that it was less expensive and more satisfactory than the old system of annual repairs. Other European countries soon found it to their advantage to follow Baden's example in this respect; and now the new system is in universal use in all the civilized nations of Europe. As a consequence the roads in those countries as a general thing are in splendid condition throughout the year. They are on an even grade, and as smooth as a racing-track in this country. The poorest roads in France, Germany, Switzerland, or Great Britain are as good as the best of our own. They are nearly all macadamized, and are kept in continuous repair by laborers and competent engineers and surveyors, who give their sole labor and attention to the roads as a business throughout the year.

But it is not necessary to go to Europe to prove the superiority of the new system over the old. Many towns in this country, especially those situated in the vicinity of the large cities, have adopted the new system, and find by experiment that it is better than the old. An intelligent citizen and town official of Chelmsford, Mass., Mr. Henry S. Perham, thus describes the opera-

tion of the old and the new system in that town : “ Until 1877 the old highway district system, common in the New England country towns, was in vogue here. Eleven highway surveyors were chosen annually in town-meeting, who had charge of the roads in their respective districts ; and although the town appropriated money liberally for highway repairs, the roads seemed to be continually growing worse, owing to the superficial manner in which the repairs were made. In 1877 the town adopted an entirely different plan for doing the work. The plan was to choose one surveyor for the whole town, who was to have charge of all the roads, and the town to purchase suitable teams and implements to be kept at the town farm. This is now the ninth year in which this system has been in practice, and the result of the change has been most satisfactory. The advantages are that the surveyor is chosen for his especial fitness for the work. The men under him are mostly employed by the month and boarded at the town farm, where the teams are also kept. A force now costing the town ten dollars per day will accomplish more and better work in one week than would be ordinarily accomplished by a surveyor under the old system in a season. And the reason is obvious. The men and teams are accustomed to the work ; the best implements and machinery are employed, road-scrapers doing the work where the nature of the soil will permit ; and what is still more important, the work is directed by the surveyor to the best advantage. In the winter season the teams break out the roads after heavy snows, and in fair weather

cart gravel on to the roads as in summer. And although we have an extraordinary length of road to support,—namely, two hundred and seventy-five miles, being more by twenty-five miles than any other town in the State,—there has been a marked and continual improvement in their condition.

“When this plan was first presented to the attention of the town, it met with sharp opposition, and passed by only a small majority; but the favor with which it is now regarded may be judged by the fact that since its adoption it has met with almost universal approval, and we should now as soon think of going back to the school-district system or to support the churches by taxation as of returning to the old method of repairing our roads.”

This method is undoubtedly better than the old district system; but the system of the future will not include a road-scraper except for the building of new roads. Any system is radically defective which scrapes the dust and worn-out soil of the gutters or the turf and loam of the roadside upon the road-bed. Perhaps this kind of repairing is better than none in many localities; but as civilization advances and the true principles of road-making become better known, after the foundation of a road-bed has been properly established, nothing but good road material will ever be put upon it, and this will be put there from time to time as needed to keep up a continual good condition of the road.

CHAPTER V.

LAWS RELATING TO THE LAYING OUT OF WAYS.

NEW roads are not often required now to reach and develop new tracts of land, except in large towns and cities; but they are frequently needed to shorten distances and to improve grades. Consequently the laws relative to the laying out, maintenance, and use of highways are of personal interest to every citizen, and many are also interested in the laws relating to private ways.

The public have a right to lay out ways for purposes of business, amusement, or recreation, as to markets, to public parks or commons, to places of historic interest or beautiful natural scenery.¹ And such ways may be established by prescription, by dedication, or by the acts of the proper public authorities. Twenty years' uninterrupted use by the public will make a prescriptive highway. Many of the old roads in our towns and cities have become public thoroughfares by prescriptive use, which began in colonial days, and perhaps then followed Indian trails, or were first used as bridle-paths.

When the owner in fee of land gives to the public a right of passage and repassage over it, and his gift is accepted by the public, the land thus travelled over

¹ 11 Allen, 530.

becomes a way by dedication. The dedication may be made by the writing, the declaration, or by the acts of the owner. It must, however, clearly appear that he intended and has made the dedication; and when it has been accepted by the public it is irrevocable. Formerly it could be accepted by the public by use, or by some act or circumstance showing the town's assent and acquiescence in such dedication; but now no city or town is chargeable for such dedicated way until it has been laid out and established in the manner provided by the statutes.¹ It was formerly thought that this act applied to prescriptive ways as well as to dedicated ways; but it is now settled that it applies only to ways by dedication, and ways by prescription are not affected by it.²

The proper town or city authorities have jurisdiction to lay out or alter ways within the limits of their respective cities or towns, and to order specific repairs thereon. The county commissioners have also jurisdiction to lay out public ways, the termini of which are exclusively within the same town; and they are also clothed with authority to lay them out from town to town. Hence roads may be either town ways or public highways. When the proceedings for their location originate with the town or city officials, they are town ways; and when the proceedings originate with the county commissioners, they are public highways.³ Suppose a new road is wanted, or an alteration in an old one is desired, within the limits of a town, a petition therefor

¹ Pub. St. c. 49, § 94.

² 128 Mass. 63.

³ 7 Cush. 394.

may be presented either to the town authorities or to the county commissioners. If the proposed road is not situated entirely within the limits of one town or city, then the commissioners alone have jurisdiction in the premises. When the selectmen or road commissioners of a town decide to lay out a new road, or to alter an old one, their doings must be reported and allowed at some public meeting of the inhabitants regularly warned and notified therefor; but while the inhabitants are vested with the right of approval, they have no right to vote that the selectmen or road commissioners shall lay out a particular way, as it is the intention of the statute that these officials shall exercise their own discretion upon the subject.¹ If the town authorities unreasonably refuse or neglect to lay out a way, or if the town unreasonably refuses or delays to approve and allow such way as laid out or altered by its officials, then the parties aggrieved thereby may, at any time within one year, apply to the county commissioners, who have authority to cause such way to be laid out or altered. But when a petition for a public way is presented in the first instance to the county commissioners, or when the matter is brought before them by way of appeal, their decision on the question of the public necessity and convenience of such way is final, and from it there is no appeal. If damage is sustained by any person in his property by the laying out, alteration, or discontinuance of a public way, he is entitled to receive just and adequate damages therefor, to be assessed, in the first place, by the

¹ 5 Pick. 492.

town or city authorities or by the county commissioners, and, finally, by a jury, in case one is demanded by him. He is entitled to a reasonable time to take off any timber, wood or trees, which may be upon the land to be taken; but if he does not remove the same within the time allowed, he is deemed to have relinquished his right thereto. In estimating the damage to the land-owner caused by the laying out or the alteration of a public way over his land, neither the city nor town authorities nor a jury are confined to the value of the land taken. He is also entitled to the amount of the damage done to his remaining land by such laying out or alteration.¹ But in such estimation of damages any direct or peculiar benefit or increase of value accruing to his adjoining land is to be allowed as a betterment, by way of set-off; but not any general benefit or increase of value received by him in common with other land in the neighborhood.²

The cost of making and altering ways, including damages caused thereby, is to be paid by the city or town wherein the same are located, provided the proceedings originate with the town or city authorities; but when the proceedings originate with the county commissioners, they divide the cost between the towns and the county in such manner as they think to be just and reasonable.³

¹ 14 Gray, 214.

² 4 Cush. 291.

³ 6 Met. 329.

CHAPTER VI.

LAW AS TO REPAIRS.

AFTER highways, town-ways, streets, causeways, and bridges have been established, they are to be kept in such repair as to be reasonably safe and convenient for travellers at all seasons of the year at the expense of the town or city in which they are situated.

It is the duty of each town to grant and vote such sums of money as are necessary for repairing the public ways within its borders ; and if it fails to do so, the highway surveyors, in their respective districts, may employ persons, as directed in the statutes, to repair the roads, and the persons so employed may collect pay for their labor of the town. In order to make such repairs, city and town authorities may select and lay out land within their respective limits as gravel and clay pits from which may be taken earth and gravel necessary for the construction and repairs of streets and ways.¹ And they may turn the surface drainage of the roads upon the land of the adjoining owners without liability.² But no highway surveyor has a right, without the written approbation of the selectmen, to cause a water-course, occasioned by the wash of the road, to be so

¹ Pub. St. c. 49, § 99.

² 13 Gray, 601.

conveyed by the roadside as to incommode a house, a store, shop, or other building, or to obstruct a person in the prosecution of his business.¹ Properly authorized city or town officers may trim or lop off trees and bushes standing in the public ways, or cut down and remove such trees; and may cause to be dug up and removed whatever obstructs such ways, or endangers, hinders, or incommodes persons travelling therein.² Even the boundaries of public ways are so well guarded that when they are ascertainable no length of time less than forty years justifies the continuance of a fence or building within their limits; but the same may, upon the presentment of a grand jury, be removed as a nuisance.³

It is so important that the public ways be kept free for travel, that any person may take down and remove gates, rails, bars, or fences upon or across highways, unless the same have been there placed for the purpose of preventing the spreading of a disease dangerous to the public health, or have been erected or continued by the license of the selectmen or county commissioners.⁴ A highway surveyor acting within the scope of his authority may dig up and remove the soil within the limits of the public ways for the purpose of repairing the same, and may carry it from one part of the town to another;⁵ and he has a right to deposit the soil thus removed on his own land, if that is the best way of clearing the road of useless material.⁶

¹ Pub. St. c. 52, § 12.

² Pub. St. c. 54.

³ 125 Mass. 216.

⁴ St. 1885, c. 123.

⁵ Pub. St. c. 54.

⁶ 128 Mass. 546.

Though the law is imperative that the roads must be kept in good condition, and to this end gives municipal corporations great powers, yet let no one who is not a highway surveyor or in his employ imagine that he can repair a road not on his own land with impunity; for it has been decided that if an unauthorized person digs up the soil on the roadside by another person's land for the purpose of repairing the road, he is a trespasser and liable for damages, although he does only what a highway surveyor might properly do.¹ It is also the duty of cities and towns to guard with sufficient and suitable railings every road which passes over a bank, bridge, or along a precipice, excavation, or deep water; and it makes no difference whether these dangerous places are within or without the limits of the road, if they are so imminent to the line of public travel as to expose travellers to unusual hazard.² But towns are not obliged to put up railings merely to prevent travellers from straying out of the highway, where there is no unsafe place immediately contiguous to the way.³

The roads are for the use of travellers, and a city or town is not bound to keep up railings strong enough for idlers to lounge against or children to play upon.⁴

The travelled parts of all roads ought to be wide enough to allow of the ordinary shying and frights of horses with safety, for shying is one of the natural habits of the animal;⁵ although it seems that switching his

¹ 8 Allen, 473.

² 13 Allen, 429.

³ 122 Mass. 389.

⁴ 3 Allen, 374; 8 Allen, 237.

⁵ 100 Mass. 49.

tail over the reins is not a natural habit of the animal, as it has been decided that if a horse throws his tail over the reins and thereby a defect in the road is run against, no damages can be recovered.¹

¹ 98 Mass. 578.

CHAPTER VII.

GUIDE-POSTS, DRINKING-TROUGHS, AND FOUNTAINS.

THE statutes undertake to provide for the erection and maintenance of guide-posts at suitable places on the public ways ; but a person has to travel but little in many of the towns of the State to come to the conclusion that the law is either deficient in construction or a dead letter in execution. The law makes it incumbent upon the selectmen or road commissioners of each town to submit to the inhabitants, at every annual meeting, a report of all the places in which guide-posts are erected and maintained within the town, and of all places at which, in their opinion, they ought to be erected and maintained. For each neglect or refusal to make such report they shall severally forfeit ten dollars. After the report is made the town shall determine the several places at which guide-posts shall be erected and maintained, which shall be recorded in the town records. A town which neglects or refuses to determine such places, and to cause a record thereof to be made, shall forfeit five dollars for every month during which it neglects or refuses to do so.

At each of the places determined by the town there shall be erected, unless the town at the annual meeting

agrees upon some suitable substitute therefor, a substantial post of not less than eight feet in height, near the upper end of which shall be placed a board or boards, with plain inscription thereon, directing travellers to the next town or towns and informing them of the distance thereto.

Every town which neglects or refuses to erect and maintain such guide-posts, or some suitable substitutes therefor, shall forfeit annually five dollars for every guide-post which it neglects or refuses to maintain.¹ These forfeitures can be recovered either by indictment or by an action of tort for the benefit of the county wherein the acts of negligence or refusal occur; and any interested or public-spirited person can make complaint of such negligence or refusal to the superior court, or to any trial justice, police, district or municipal court, having jurisdiction of the matter.²

The selectmen may establish and maintain such drinking-troughs, wells, and fountains within the public highways, squares, and commons of their respective towns, as in their judgment the public necessity and convenience may require, and the towns may vote money to defray the expenses thereof.³ But the vote of a town instructing the selectmen to establish a watering-trough at a particular place would be irregular and void, because towns in their corporate capacity have not been given the right by statute to construct drinking-troughs in the public highways. And towns would not

¹ Pub. St. c. 53, §§ 1-5. ² Pub. St. c. 217; 108 Mass. 140.

³ Pub. St. c. 27, § 50.

be liable for the acts of the selectmen performed in pursuance of this statute, because the law makes the selectmen a board of public officers, representing the general public, and not the agents of their respective towns. However, if the inhabitants of a town should construct a drinking trough or fountain of such hideous shape, and paint it with such brilliant color, that it would frighten an ordinarily gentle and well-broken horse, by reason of which a traveller should be brought in contact with a defect in the way or on the side of the way, and thus injured, the town might be held liable to pay damages.¹

It is my purpose to state what the law is, and not what it ought to be ; but I will venture the suggestion that it would not be an unreasonable hardship on towns to require them to establish and maintain suitable watering-troughs at suitable places, and it would be a merciful kindness to many horses which now frequently have to travel long distances over dusty roads in summer heat without a chance to get a swallow of water from a public drinking-trough.

¹ 125 Mass. 526.

CHAPTER VIII.

SHADE TREES, PARKS, AND COMMONS.

THE law of the Commonwealth not only requires the public ways to be kept safe and convenient, but of late years statutes have been passed allowing owners of land, improvement societies, cities and towns, to do something to beautify the roadsides and public squares of any city or town. A city or town may grant or vote a sum not exceeding fifty cents for each of its ratable polls in the preceding year, to be expended in planting, or encouraging the planting by the owners of adjoining real estate, of shade trees upon the public squares or highways.¹ Such trees may be planted wherever it will not interfere with the public travel or with private rights, and they shall be deemed and taken to be the private property of the person so planting them or upon whose premises they stand.²

Improvement societies, properly organized for the purpose of improving and ornamenting the streets and public squares of any city or town by planting and cultivating ornamental trees therein, may be authorized by any town to use, take care of, and control the public

¹ St. 1885, c. 123.

² Pub. St. c. 54, § 6.

grounds or open spaces in any of its public ways, not needed for public travel. They may grade, drain, curb, set out shade or ornamental trees, lay out flower plots, and otherwise improve the same ; and may protect their work by suitable fences or railings, subject to such directions as may be given by the selectmen or road commissioners. And any person who wantonly, maliciously, or mischievously drives cattle, horses, or other animals, or drives teams, carriages, or other vehicles, on or across such grounds or open spaces, or removes or destroys any fence or railing on the same, or plays ball or other games thereon, or otherwise interferes with or damages the work of such corporation, is subject to a fine not exceeding twenty dollars for each offence, for the benefit of the society.¹

It is also a legal offence for any one wantonly to injure or deface a shade tree, shrub, rose, or other plant or fixture of ornament or utility in a street, road, square, court, park, or public garden, or carelessly to suffer a horse or other beast driven by or for him, or a beast belonging to him and lawfully on the highway, to break down or injure a tree, not his own, standing for use or ornament on said highway.² And no one, even if he be the owner of the land, has the right to cut down or remove an ornamental or shade tree standing in a public way, without first giving notice of his intention to the municipal authorities, who are entitled to ten days to decide whether the tree can be removed or not. And

¹ St. 1885, c. 157.

² Pub. St. c. 54, §§ 7, 8.

whoever cuts down or removes or injures such tree in violation of the law shall forfeit not less than five nor more than one hundred dollars for the benefit of the city or town wherein the same stands.¹

¹ Pub. St. c. 54, §§ 10, 11.

CHAPTER IX.

PUBLIC USE OF HIGHWAYS.

AFTER the roads are ready for use and beautified by shade trees and green parks at convenient places, we are confronted with the question, How are they to be used by the public and the owners of adjoining estates? We, as a people, are not only continental and terrestrial travellers, but we are continually passing hither and thither over the public ways of this State, and consequently it is important for us to know how to travel the common roads in a legal and proper manner.

In the first place, every one who travels upon a public thoroughfare is bound to drive with due care and discretion, and to have an ordinarily gentle and well trained horse, with harness and vehicle in good roadworthy condition, as he is liable for whatever damages may be occasioned by any insufficiency in this respect.¹

Another duty which every traveller is bound to observe is to drive at a moderate rate of speed. To drive a carriage or other vehicle on a public way at such a rate or in such a manner as to endanger the safety of other travellers, or the inhabitants along the road, is an indictable offence at common law, and amounts to a

¹ 4 Gray, 178.

breach of the peace; and in case any one is injured or damaged thereby, he may look to the fast driver for his recompense. But it does not follow that a man may not drive a well-bred and high-spirited horse at a rapid gait, if he does not thereby violate any ordinance or by-law of a town or city; for it has been held that it cannot be said, as matter of law, that a man is negligent who drives a high-spirited and lively-stepping horse at the rate of ten miles an hour in a dark night.¹

It then behoves every one to drive with care and caution, whether he is going fast or slow; and it also behoves him to see that his servants drive with equal care and caution, for he is responsible to third persons for the negligence of his servants, in the scope of their employment, to the same extent as if the act were his own, although the servants disobey his express orders. If you send your servant upon the road with a team, with instructions to drive carefully and to avoid coming in contact with any carriage, but instead of driving carefully he drives carelessly against a carriage, you are liable for all damages resulting from the collision; and if the servant acts wantonly or mischievously, causing thereby additional bodily or mental injury, such wantonness or mischief will enhance the damage against you.²

You may think this a hard law; but it is not so hard as it would be if it allowed you to hire ignorant, wilful, and incompetent servants to go upon the road and injure the lives and property of innocent people without redress save against the servants, who perchance might

¹ 8 Allen, 522.

² 3 Cush. 300; 114 Mass. 518.

be financially irresponsible. It should however be stated in this connection that if your team should get away from you or your servant, without any fault on your or his part, and should run away and do great damage, by colliding with other teams, or by running over people on foot, you would not be held responsible, as in law it would be regarded as an inevitable accident. Thus, if your horse should get scared by some sudden noise or frightful object by the wayside, or through his natural viciousness of which you were ignorant, or by some means should get unhitched after you had left him securely tied, and in consequence thereof should plunge the shaft of your wagon into some other man's horse, or should knock down and injure a dozen people, you would not be liable, because the injury resulted from circumstances over which you had no control.¹

¹ 1 Addison on Torts, 466.

CHAPTER X.

"THE LAW OF THE ROAD."

THERE are certain rules applicable to travellers upon public ways, which are so important that everybody ought to know and observe them. The law relative thereto is known as "the law of the road." These rules relate to the meeting, passing, and conduct of teams on the road; and it is more important that there should be some well established and understood rules on the subject than what the rules are. In England the rules are somewhat different, and some of them are the reverse of what they are in this country. But the rules and the law relating thereto in this country are about the same in every State of the Union. Our statutes provide that when persons meet each other on a bridge or road, travelling with carriages or other vehicles, each person shall seasonably drive his carriage or other vehicle to the right of the middle of the travelled part of such bridge or road, so that their respective carriages or other vehicles may pass each other without interference; that one party passing another going in the same direction must do so on the left-hand side of the middle of the road, and if there is room enough, the foremost driver must not wilfully obstruct the road.¹

¹ Pub. St. c. 93.

Although these are statutory rules, yet they are not inflexible in every instance, as on proper occasions they may be waived or reversed. They are intended for the use of an intelligent and civilized people; and in the crowded streets of villages and cities, situations or circumstances may frequently arise when a deviation will not only be justifiable but absolutely necessary. One may always pass on the left side of a road, or across it, for the purpose of stopping on that side, if he can do so without interrupting or obstructing a person lawfully passing on the other side.¹ And if the driver of a carriage on the proper side of the road sees a horse coming furiously on the wrong side of the road, it is his duty to give way and go upon the wrong side of the road, if by so doing he can avoid an accident.² But in deviating from the "law of the road," one must be able to show that it was the proper and reasonable thing to do under the circumstances, or else he will be answerable for all damages; for the law presumes that a party who is violating an established rule of travelling is a wrongdoer.³ Of course a person on the right side of the road has no right to run purposely or recklessly into a trespasser, simply because he has wrongfully given him the opportunity to receive an injury, and then turn round and sue for damages arising from his own foolhardiness and devil-may-care conduct.⁴

Every one seeking redress at law on account of an accident must be able to show that he himself was at

¹ Angell on Highways, § 336.

³ 121 Mass. 216.

² Shear. & Red. on Negligence, § 309.

⁴ 12 Met. 415.

the time in the exercise of ordinary care and precaution, and it is not enough for him to show that somebody else was violating a rule of law. When the road is unoccupied a traveller is at liberty to take whichever side of the road best suits his convenience, as he is only required "seasonably to drive to the right" when he meets another traveller; but if parties meet *on the sudden*, and an injury results, the party on the wrong side of the road is responsible, unless it clearly appears that the party on the proper side has ample means and opportunity to prevent it.¹

Where there is occasion for one driver to pass another going in the same direction, the foremost driver may keep the even tenor of his way in the middle or on either side of the road, provided there is sufficient room for the rear driver to pass by; but if there is not sufficient room, it is the duty of the foremost driver to afford it, by yielding an equal share of the road, if that be practicable; but if not, then the object must be deferred till the parties arrive at ground more favorable to its accomplishment. If the leading traveller then wilfully refuses to comply, he makes himself liable, criminally, to the penalty imposed by the statute, and answerable at law in case the rear traveller suffers damage in consequence of the delay. There being no statute regulations as to the manner in which persons should drive when they meet at the junction of two streets, the rule of the common law applies, and each person is bound

¹ 10 Cush. 495; 3 Carr. & Payne, 554; Angell on Carriers, § 555.

to use due and reasonable care, adapted to the circumstances and place.¹

By the "travelled part" of the road is intended that part which is usually wrought for travelling, and not any track which may happen to be made in the road by the passing of vehicles; but when the wrought part of the road is hidden by the snow, and a path is beaten and travelled on the side of the wrought part, persons meeting on such beaten and travelled path are required to drive their vehicles to the right of the middle of such path.² Many drivers of heavily loaded vehicles seem to think that all lightly loaded ones should turn out and give them all the travelled part of the road. No doubt a lightly loaded vehicle can often turn out with less inconvenience than a heavily loaded one, and generally every thoughtful and considerate driver of a light vehicle is willing to, and does, give the heavy vehicle more than half the road on every proper occasion; but the driver of the heavy vehicle ought to understand that it is done out of courtesy to himself and consideration for his horses, and not because it is required by any rule of law. The statute law of the road in this State makes no distinction between the lightly and the heavily loaded vehicle. Both alike are required to pass to the right of the travelled part of the road. In case of accident the court would undoubtedly take into consideration the size and load of each vehicle, as bearing upon the question of the conduct of the drivers under the circumstances, and their responsibility would be settled in

¹ 12 Allen, 84.

² 4 Pick. 125; 8 Met. 213.

accordance with "the law of the road," modified and possibly reversed by the situation of the parties and the circumstances surrounding them at the time.¹

A traveller in a common carriage may use the track of a street railway when the same is not in use by the company ; but the company is entitled to the unrestricted use of their rails upon all proper occasions, and then such traveller must keep off their track, or else he renders himself liable to indictment under the statutes of the State.²

¹ 111 Mass. 360.

² Pub. St. c. 113, § 37 ; 7 Allen, 573.

CHAPTER XI.

EQUESTRIANS AND PEDESTRIANS.

IN England "the law of the road" applies as well to equestrians as to travellers by carriage, and I can see no good reason why it should not do so here. The statutes are silent on the subject, and I cannot find that our Supreme Court has ever had occasion to pass upon the question; but it has been decided in some of the States that when a traveller on horseback meets another equestrian or a carriage, he may exercise his own notions of prudence, and turn either to the right or to the left at his option.¹ By common consent and immemorial usage an equestrian is expected to yield the road, or a good share of it, to a wagon or other vehicle. It has been decided in Pennsylvania that if he has a chance to turn out and refuses to do so, and his steed or himself is injured by a collision, he is remediless.²

It is clear that the statute law of the road in this State is not applicable to people on horseback, as it is expressly limited to carriages or other vehicles, and therefore equestrians are amenable only to the common law of the land. By this law they are required to ride on the public ways with due care and precaution, and

¹ 24 Wend. 465.

² 23 Penn. St. 196.

to exercise reasonably good judgment on every occasion, under all the attendant circumstances. When they meet wagons, whether heavily loaded or not, they ought to yield as much of the road as they can conveniently, — certainly more than half, as they do not need that much of the road to pass conveniently, — but when they meet a vehicle in the form of a bicycle there seems to be no good reason why they should yield more than half the road. For the convenience of themselves and the public at large, on meeting vehicles or each other, they ought to pass to the right, as by adopting the statute law of the road in this respect order is promoted and confusion avoided.

A public thoroughfare is a way for foot-passengers as well as carriages, and a person has a right to walk on the carriage-way if he pleases; but, as Chief Justice Denman once remarked, "he had better not, especially at night, when carriages are passing along."¹ However, all persons have an undoubted right to walk on the beaten track of a road, if it has no sidewalk, even if infirm with age or disease, and are entitled to the exercise of reasonable care on the part of persons driving vehicles along it. If there is a sidewalk which is in bad condition, or obstructed by merchandise or otherwise, then the foot-passenger has a right to walk on the road if he pleases. But it should be borne in mind that what is proper on a country road might not be in the crowded streets of a city. In law every one is bound to regulate his conduct to meet the situations in which

¹ 5 Carr. & Payne, 407.

he is placed, and the circumstances around him at the time. A person infirm with age or disease or afflicted with poor eyesight should always take extraordinary precaution in walking upon the road.¹ Thus, a man who traverses a crowded thoroughfare with edged tools or bars of iron must take especial care that he does not cut or bruise others with the things he carries. Such a person would be bound to keep a better lookout than the man who merely carried an umbrella; and the man who carried an umbrella would be bound to take more care when walking with it than a person who had nothing.²

Footmen have a right to cross a highway on every proper occasion, but when convenient they should pass upon cross-walks, and in so doing should look out for teams; for it is as much their duty, on crossing a road, to look out for teams, as it is the duty of the drivers of teams to be vigilant in not running over them. "The law of the road" as to the meeting of vehicles does not apply to them. They may walk upon whichever side they please, and turn, upon meeting teams, either to the right or to the left, at their option, but it is their duty to yield the road to such an extent as is necessary and reasonable; and if they walk in the beaten track or cross it when teams are passing along, they must use extraordinary care and caution or they will be remediless in case of injury to themselves. They may travel on the Lord's day for all purposes of necessity or charity; and they may also take short walks in the public

¹ 1 Allen, 180.

² 1 Addison on Torts, § 480.

highway on Sundays, simply for exercise and to take the air, and even to call to see friends on such walks, without liability to punishment therefor under the statutes for the observance of the Lord's day, and they can recover damages for injuries wrongfully sustained while so walking.¹

¹ 14 Allen, 475; *Barker v. Worcester*, 139 Mass. 74.

CHAPTER XII.

OMNIBUSES, STAGES, AND HORSE-CARS.

NEARLY every one has occasion, more or less often, to travel over the public ways in the coaches of passenger carriers. Whoever undertakes to carry passengers and their baggage for hire from place to place is bound to use the utmost care and diligence in providing safe and suitable coaches, harnesses, horses, and coachmen, in order to prevent such injuries as human care and foresight can guard against.

If an accident happens from a defect in the coach or harness which might have been discovered and remedied upon careful and thorough examination, such accident must be ascribed to negligence, for which the owner is liable in case of injury to a passenger happening by reason of such accident.

On the other hand, where the accident arises from a hidden and internal defect, which careful and thorough examination would not disclose, and which could not be guarded against by the exercise of sound judgment and the most vigilant oversight, then the proprietor is not liable for the injury, but the misfortune must be borne by the sufferer as one of that class of injuries

for which the law can afford no redress in the form of a pecuniary recompense.

If a passenger, in peril arising from an accident for which the proprietors are responsible, is in so dangerous a situation as to render his leaping from the coach an act of reasonable precaution, and he leaps therefrom and breaks a limb, the proprietors are answerable to him in damages, though he might safely have retained his seat.¹

When the proprietors of stages or street-car coaches, which are already full and overloaded, stop their coaches, whether at the signal or not of would-be passengers, and open the doors for their entrance, they must be considered as inviting them to ride, and thereby assuring them that their passage will be a safe one, at least so far as dependent upon the exercise of reasonable and ordinary care, diligence, and skill, on their part, in driving and managing their horses and coaches; and, in fact, they are rather to be held responsible for such increased watchfulness and solicitous care, skill, and attention, as the crowded condition of the vehicle requires. If, under such circumstances, a passenger is thrown out of or off the coach by its violent jerk at starting or stopping, or in any other way through the negligence of the proprietors or their agents, he may hold them liable for his injuries.² A passenger must pay his fare in advance, if demanded, otherwise he may have to pay a fine for evading fare; and if he is riding free, the proprietors are not responsible,

¹ 9 Met. 1.

² 103 Mass. 391.

except for gross negligence ; and he must also properly and securely pack his baggage, if he expects to recover damages in case of loss. A mail-coach is protected by act of Congress from obstructions, but is subject in all other respects to "the law of the road."¹

If the proprietors of coaches used for the common carriage of persons are guilty of gross carelessness or neglect in the conduct and management of the same while in such use, they are liable to a fine not exceeding five thousand dollars, or to imprisonment not exceeding three years.² And if a driver of a stage-coach or other vehicle for the conveyance of passengers for hire, when a passenger is within or upon such coach or vehicle, leaves the horses thereof without some suitable person to take the charge and guidance of them, or without fastening them in a safe and prudent manner, he may be imprisoned two months or fined fifty dollars.³

¹ 1 Watts, Pa. 360.

² Pub. St. c. 202, § 34.

³ Pub. St. c. 202, § 35.

CHAPTER XIII.

PURPOSES FOR WHICH HIGHWAYS MAY BE USED.

As before intimated, the public ways are mainly for the use of travellers; but in the progress of civilization it has become convenient and necessary to use them for other purposes of a public nature. It is the great merit of the common law, that while its fundamental principles remain fixed from generation to generation, yet they are generally so comprehensive and so well adapted to new institutions and conditions of society, new modes of commerce, new usages and practices, that they are capable of application to every phase of society and business life. Time and necessity, as well as locality, are important elements in determining the character of any particular use of a public way. Many public ways are now used for gas, water-pipes, and sewers, because the public health and convenience are subserved by such use. They are also used for the transmission of intelligence by electricity, and the post-boy and the mail-coach are disappearing.

The horse-railroad was deemed a new invention; but it was held that a portion of the road might well be

¹ 35 N. H. 257.

set aside for it, although the rights of other travellers to some extent were limited by the privileges necessary for its use.¹

And now motor cars and elevated railroads are making their appearance in the centres of civilized life, and the bicycle and tricycle are familiar objects on all the great thoroughfares. Should human ingenuity discover any new modes of conveying persons and property over the public ways, or of transmitting intelligence along the same, which should prove convenient to the everyday life of humanity, no doubt the highway law will be found applicable to all the needs of advancing civilization. The underlying principle of the law is that every person may use the highway to his own best advantage, but with a just regard to the like rights of others. The law does not specify what kind of animals or vehicles are to be allowed upon the road, but leaves every case to be decided as it shall arise, in view of the customs and necessities of the people from time to time. All persons may lawfully travel upon the public ways with any animal or vehicle which is suitable for a way prepared and intended to afford the usual and reasonable accommodations needful to the requirements of a people in their present state of civilization; but if any person undertakes to use or travel upon the highway in an unusual or extraordinary manner, or with animals, vehicles, or freight not suitable or adapted to a way opened and prepared for the public use, in the common intercourse of society, and in the transaction of usual and ordinary

¹ 136 Mass. 75.

business, he then takes every possible risk of loss and damage upon himself.¹

If a party leads a bull or other animal through a public way without properly guarding and restraining the same, and for want of such care and restraint people rightfully on the way and using due care are injured, the owner of the animal is responsible, because under such circumstances he is bound to use the utmost care and diligence, especially in villages and cities, to avoid injuries to people on the road.² So, if a man goes upon the highway with a vehicle of such peculiar and unusual construction, or which is operated in such a manner, as to frighten horses and to create noise and confusion on the road, he is guilty of an indictable offence and answerable in damages besides. An ycleped velocipede in the road has been held in Canada to be a nuisance, and its owner was indicted and found guilty of a criminal offence.³ In England a man who had taken a traction steam-engine upon the road was held liable to a party who had suffered damages by reason of his horses being frightened by it.⁴ It has been held to be a nuisance at common law to carry an unreasonable weight on a highway with an unusual number of horses.⁵ And so it is a nuisance for a large number of persons to assemble on or near a highway for the purpose of shouting and making a noise and disturbance; and likewise it is a nuisance for one to make a large collection of tubs in

¹ 14 Gray, 242.

² 106 Mass. 281; 126 Mass. 506.

³ 30 Q. B. Ont. 41.

⁴ 2 F. & F. 229.

⁵ 3 Salk. 183.

the road, or to blockade the way by a large number of logs, cattle, or wagons; for, as Lord Ellenborough once said, the king's highway is not to be used as a stable or lumber yard.

Towns and cities have authority to make such by-laws regulating the use and management of the public ways within their respective limits, not repugnant to law, as they shall judge to be most conducive to their welfare.¹ They may make such by-laws to secure, among other things, the removal of snow and ice from sidewalks by the owners of adjoining estates; to prevent the pasturing of cattle or other animals in the highways; to regulate the driving of sheep, swine, and neat cattle over the public ways; to regulate the transportation of the offal of slaughtered cattle, sheep, hogs, and other animals along the roads; to prohibit fast driving or riding on the highways; to regulate travel over bridges; to regulate the passage of carriages or other vehicles, and sleds used for coasting, over the public ways; to regulate and control itinerant musicians who frequent the streets and public places; and to regulate the moving of buildings in the highways. Many people are inclined to make the highway the receptacle for the surplus stones and rubbish around their premises, and to use the wayside for a lumber and wood yard; and some farmers are in the habit of supplying their hog-pens and barn cellars with loam and soil dug out of the highway.

Again, some highway surveyors have very little taste for rural beauty, and show very poor judgment, and

¹ Pub. St. c. 27, § 15, and c. 53; 97 Mass. 221.

perhaps now and then a little spite, in ploughing up the green grass by the roadside and sometimes in front of houses. These evils can be remedied by every town which will pass suitable by-laws upon the subject and see that they are enforced. Such by-laws might provide that no one should be allowed to deposit within the limits of the highway any stones, brush, wood, rubbish, or other substance inconvenient to public travel; that no one should be permitted to dig up and carry away any loam or soil within the limits of the highway; and that no highway surveyor should be allowed to dig or plough up the greensward in front of any dwelling-house, or other building used in connection therewith, without the written direction or consent of the selectmen.

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CHAPTER XIV.

USE OF HIGHWAYS BY ADJOINING OWNERS.

THE owner of land adjoining a highway ordinarily owns to the middle of the road; and while he has the same rights as the public therein, he also has, in addition thereto, certain other rights incident to the ownership of the land over which the road passes. When land is taken for a highway, it is taken for all the present and prospective purposes for which a public thoroughfare may properly be used, and the damages to the owner of the land are estimated with reference to such use; but the land can be used for no other purpose, and when the servitude ceases the land reverts to him free from encumbrance. During the continuance of the servitude he is entitled to use the land, subject to the easement, for any and all purposes not incompatible with the public enjoyment. If the legislature authorizes the addition of any new servitude, essentially distinct from the ordinary use of a highway, like an elevated railroad, then the land-owner is entitled to additional compensation; for it cannot be deemed, in law, to have been within the contemplation of the parties, at the time of the laying out of the road, that it might be used for such new and additional purposes. It has been held

in New York, Illinois, and some of the United States circuit courts, that the use of a highway for a telegraph line will entitle such owner to additional compensation ; but in the recent case of *Pierce v. Drew*¹ the majority of our Supreme Court decided that the erection of a telegraph line is not a new servitude for which the land-owner is entitled to additional compensation.

A minority of the court, in an able argument, maintained that the erection of telegraph and telephone posts and wires along the roads, fitted with cross-beams adapted for layer after layer of almost countless wires, which necessitate to some extent the destruction of trees along the highways or streets, the occupation of the ground, the filling of the air, the interference with access to or escape from buildings, the increased difficulty of putting out fires, the obstruction of the view, the presentation of unsightly objects to the eye, and the creation of unpleasant noises in the wind, is an actual injury to abutting land along the line, and constitutes a new and increased servitude, for which the land-owner is entitled to a distinct compensation. After the rendering of the majority decision, the legislature very promptly passed a law allowing an owner of land abutting upon a highway along which telegraph or telephone, electric light or electric power, lines shall be constructed, to recover damages to the full extent of the injuries to his property, provided he applies, within three months after such construction, to the mayor and aldermen or selectmen to assess and appraise his damage.²

¹ 136 Mass. 75.

² St. 1884, c. 306.

The public has a right to occupy the highway for travel and other legitimate purposes, and to use the soil, the growing timber, and other materials found within the space of the road, in a reasonable manner, for the purpose of making and repairing the road and the bridges thereon.¹ But the public cannot go upon the land of an adjoining owner without his consent, to remove stones or earth, to repair a bridge or the highway; and if in consequence of such removal the land is injured, by floods or otherwise, he can recover damages therefor.² He is not obliged to build or maintain a road fence, except to keep his own animals at home, but if he does build a fence he must set it entirely on his own land; and likewise, if a town constructs an embankment to support a road or bridge, it must keep entirely within the limits of the highway, for if any part of the embankment is built on his land he can collect damages of the town.³ He may carry water-pipes underground through the highway, or turn a watercourse across the same below the surface, provided he does not deprive the public of their rights in the way.⁴ From the time of Edward IV. it has been the settled law that the owner of the soil in the highway is entitled to all the profits of the freehold, the grass and trees upon it and the mines under it. He can lawfully claim all the products of the soil and all the fruit and nuts upon the trees. He may maintain trespass for any injury to the soil or to the growing trees thereon, which is not incidental to the ordinary and

¹ 15 Johns, 447.

² 107 Mass. 414.

³ 4 Gray, 215; 136 Mass. 10.

⁴ 6 Mass. 454.

legitimate uses of the road by the public. His land in the highway may be recovered in ejectment just the same as any of his other land. No one has any more right to graze his highway land than his tillage land.¹ He may cut the hay on the roadside, gather the fruit and crops thereon, and graze his own animals there; and the by-laws of the cities and towns preventing the pasturing of cattle and other animals in the highway are not to affect his right to the use of land within the limits of the road adjoining his own premises.²

It is not one of the legitimate uses of the highway for a traveller or a loafer to stop in front of your house to abuse you with blackguardism, or to play a tune or sing a song which is objectionable to you; and if you request him to pass on and he refuses to go, you may treat him as a trespasser and make him pay damages and costs, if he is financially responsible.³ And likewise, if any person does anything on the highway in front of your premises to disturb the peace, to draw a crowd together, or to obstruct the way, he is answerable in damages to you and liable to an indictment by the grand jury.⁴

Although the owner of the fee in a highway has many rights in the way not common to the public, yet he must exercise those rights with due regard to the public safety and convenience. Perhaps, in the absence of objections on the part of the highway surveyor, or of prohibitory by-laws on the part of the town, he has a right to take soil or other material from the roadside for his own pri-

¹ 16 Mass. 33; 8 Allen, 473.

² Pub. St. c. 53, § 10.

³ 38 Me. 195.

⁴ 24 Pick. 187.

vate use, but he certainly has no right to injure the road by his excavations, or to endanger the lives of travellers by leaving unsafe pits in the wayside. He can load and unload his vehicles in the highway, in connection with his business on the adjoining land, but it must be done in such a manner as not unreasonably to interfere with or incommode the travelling public. When a man finds it necessary to crowd his teams and wagons into the street, and thereby blockade the highway for hours at a time, he ought either to enlarge his premises or remove his business to some more convenient spot. He has a right to occupy the roadside with his vehicles, loaded or unloaded, to a reasonable extent; but when he fills up the road with logs and wood, tubs and barrels, wagons and sleighs, pig-pens and agricultural machinery, or deposits therein stones and rubbish, he is not using the highway properly, but is abusing it shamefully, and is responsible in damages to any one who is injured in person or property through his negligence, and, moreover, is liable to indictment for illegally obstructing the roadway.¹ As before said, he has a perfect right to pasture the roadside with his animals; but if he turns them loose in the road, and they there injure the person or property of any one legally travelling therein, he is answerable in damages to the full extent of the injuries, whether he knows they have any vicious habits or not.² If his cow, bull, or horse, thus loose

¹ 1 Cush. 443; 13 Met. 115; 107 Mass. 264; 14 Gray, 75; Pub. St. c. 112, § 17.

² 4 Allen, 444.

in the highway, gore or kick the horse of some traveller, he is liable for all damages;¹ and in one instance a peaceable and well-behaved hog in the road cost her owner a large sum of money, because the horse of a traveller, being frightened at her looks, ran away, smashed his carriage, and threw him out.²

As an offset to his advantages as adjoining owner there are a few disadvantages. Highways are set apart, among other things, that cattle and sheep may be driven thereon; and as, from the nature of such animals, it is impossible even with care to keep them upon the highways unless the adjoining land is properly fenced, it follows that when they are driven along the road with due care, and then escape upon adjoining land and do damage their owner is not liable therefor, if he makes reasonable efforts to remove them as speedily as possible.³ Likewise, if a traveller bent upon some errand of mercy or business finds the highway impassable by reason of some wash-out, snowdrift, or other defect, he may go round upon adjoining land, without liability, so far as necessary to bring him to the road again, beyond the defect.⁴ If a watercourse on adjoining land is allowed by the land-owner to become so obstructed by ice and snow, or other cause, that the water is set back, and overflows or obstructs the road, the highway surveyor may, without liability, enter upon adjoining land and remove the nuisance, if he acts with due regard

¹ 10 Cox, 102.

³ 114 Mass. 466.

² 25 Me. 538.

⁴ 7 Cush. 408.

to the safety and protection of the land from needless injury.¹

A town or city has a right, in repairing a highway, to so raise the grade or so construct the water-bars within its limits, as to cause surface water to flow in large quantities upon adjoining land, to the injury of the owner thereof; but, on the other hand, the land-owner has a right to cause, if he can, the surface water on his land to flow off upon the highway, and he may lawfully do anything he can, on his own land, to prevent surface water from coming thereon from the highway, and may even stop up the mouth of a culvert built by a town across the way for the purpose of conducting such surface water upon his land, providing he can do it without exceeding the limits of his own land.²

When the owner of land is constructing or repairing a building adjoining the highway, it is his duty to provide sufficient safeguards to warn and protect passing travellers against any danger arising therefrom; and if he neglects to do so, and a traveller is injured by a falling brick, stick of timber, or otherwise, he is responsible.³

If the adjoining owner of a building suffers snow and ice to accumulate on the roof, and allows it to remain there for an unusual and unreasonable time, he is liable, if it slides off and injures a passing traveller.⁴ And, generally, the adjoining owner is bound to use ordinary care in maintaining his own premises in such a

¹ 134 Mass. 522.

² 13 Allen, 211, 291; 136 Mass. 119.

³ 123 Mass. 26.

⁴ 101 Mass. 251; 106 Mass. 194.

condition that persons lawfully using the highway may do so with safety.

The general doctrine as to the use of property is here, as elsewhere, *Sic utere tuo ut alienum non lædas*, — “So use your own property as not to injure the rights of another.” If you make an excavation on your land so near to a highway that travellers are liable accidentally to fall therein, you had better surround it with a fence or other safeguard sufficient to protect reasonably the safety of travellers. If you have any passage-ways, vaults, coal-holes, flap-doors, or traps of any kind on your premises, which are dangerous for children or unwary adults, you had better abolish them, or at any rate take reasonable precaution to cover or guard them in such manner as ordinary prudence dictates, and especially if they are near the highway; for if you do not you may, some time when not convenient for you, be called upon to pay a large claim for damages or to defend yourself against an indictment. But if you have so covered and guarded them, and by the act of a trespasser, or in some other way without fault on your part, the cover, fence, or guard is removed, you are not liable until you have had actual or constructive notice of the fact, and have had reasonable opportunity to put it right.¹

¹ 4 Carr. & Payne, 262, 337; 51 N. Y. 229; 19 Conn. 507.

CHAPTER XV.

PRIVATE WAYS.

A PRIVATE way is the right of passage over another man's land. It may be established and discontinued in the same manner as a public way, and it may also arise from necessity. A way of necessity is where a person sells land to another which is wholly surrounded by his own land, or which cannot be reached from the public highways or from the land of the purchaser. In such case the purchaser is unable to reach his land at all unless he can go over some of the surrounding estates; and inasmuch as he cannot go over the premises of those who are strangers to him, in law, and inasmuch as public policy and simple justice call for a passage-way to his land, for his use in the care and cultivation of it, the law gives him a way of necessity over his grantor's land, which runs with his land, as appurtenant thereto, so long as the necessity exists, even if nothing is said in the deed about a right of way, because it is presumed that when the grantor sells the land he intends to convey with it a right of way, without which it could not be used and enjoyed; but when the necessity ceases, the right ceases also.¹ In the

¹ 14 Mass. 49; 2 Met. 457; 14 Gray, 126.

absence of contract, it belongs to the owner of a private way to keep it in repair,¹ and for this purpose he may enter upon the way and do whatever is necessary to make it safe and convenient; but if in so doing he removes soil and stones which are not needed on the way, such surplus material belongs to the owner of the land over which the way passes.² If a defined and designated way becomes impassable for want of repair or by natural causes, the owner of the way has not the right of a traveller on a public road to go outside the limits of the way in order to pass from one point to another.³ But if the owner of the land obstructs the way, a person entitled to use it may, without liability, enter upon and go over adjoining land of the same owner, provided he does no unnecessary damage.⁴ The reason for this distinction in the law between a public and a private way is that in the case of a private way the owner of the way, who alone has the right to its use, is bound to keep it in repair, whereas in the case of a public way the traveller is under no obligation to keep it in passable condition. A private way once established cannot be re-located except with the consent of both the owner of the land and of the way; but if both are agreed, the old way may be discontinued and re-located in another place.⁵ The owner of the soil of a private way may, the same as the owner of the fee in a highway, make any and all uses thereof to which the land can be

¹ 12 Mass. 65.

² 10 Gray, 65.

³ Wash. on Ease. *196.

⁴ 2 Allen, 543.

⁵ 5 Gray, 409; 14 Gray, 473.

applied.¹ In the absence of agreement to the contrary, he may lawfully and without liability cover such way with a building or other structure, if he leaves a space so wide, high, and light that the way is substantially as convenient as before for the purpose for which it was established.² And so, in the absence of agreement, he may maintain such fences across the way as are necessary to enable him to use his land for agricultural purposes, but he must provide suitable bars or gates for the use and convenience of the owner of the way. He is not required to leave it as an open way, nor to provide swing gates, if a reasonably convenient mode of passage is furnished; and if the owner of the way or his agents leave the bars or gates open, and in consequence thereof damage is done by animals, he is liable to respond in damages.³ "The law of the road" applies as well to private as to public ways, as the object of the law is to prescribe a rule of conduct for the convenience and safety of those who may have occasion to travel, and actually do travel, with carriages on a place adapted to and fitted and actually used for that purpose.⁴ The description of a way as a "bridle-road" does not confine the right of way to a particular class of animals or special mode of use, but it may be used for any of the ordinary purposes of a private road.⁵

¹ Wash. on Ease. *196.

² 2 Met. 457.

³ 31 N. Y. 366; 44 N. H. 539; 4 M. & W. 245.

⁴ 23 Pick. 201.

⁵ 16 Gray, 175.

CHAPTER XVI.

DON'T.

IN school, church, and society many things are taught by the prohibitory *don't*; and thus many rules of law relating to public and private ways may be taught and illustrated in the same way. For instance:—

Don't ever drink intoxicating liquor as a beverage, at least in large quantities. If you ever have occasion to use it at all, use it very sparingly, especially if you are travelling or are about to travel with a team; for if you should collide with another team, or meet with an accident on account of a defect in the way, in a state of intoxication, your boozy condition would be some evidence that you were negligent. The law, however, is merciful and just, and if you could satisfy the court or jury that notwithstanding your unmanly condition you were using due care, and that the calamity happened through no fault of yours, you would still be entitled to a decision in your favor; but when you consider how apt a sober human mind is to think that an intoxicated mind is incapable of clear thought and intelligent action, I think you will agree with the decisions of the courts, which mean, when expressed in plain language, "You

had better not be drunk when you get into trouble on the highway.”¹

Don't ever approach a railway crossing without looking out for the engine while the bell rings, and listening to see if the train is coming; for there is good sense as well as good law in the suggestion of Chief Baron Pollock, that a railway track *per se* is a warning of danger to those about to go upon it, and cautions them to see if a train is coming. And our court has decided that when one approaches a railway crossing he is bound to keep his eyes open, and to look up and down the rails before going upon them, without waiting for the engineer to ring the bell or to blow the whistle.² It is a duty dictated by common sense and prudence, for one approaching a railway crossing to do so carefully and cautiously both for his own sake and the sake of those travelling by rail. If one blindly and wilfully goes upon a railway track when danger is imminent and obvious, and sustains damage, he must bear the consequences of his own rashness and folly.

Don't drive horses or other animals affected by contagious diseases on the public way, or allow them to drink at public watering-places, or keep them at home, for that matter. The common law allows a man to keep on his own premises horses afflicted with glanders, or sheep afflicted with foot-rot, or other domestic animals afflicted with any kind of diseases, provided he guards them with diligence and does not permit them to escape on to his neighbor's land or the public way. But under the

¹ 3 Allen, 402; 115 Mass. 239.

² 12 Met. 415.

statute law of this State, a man having knowledge of the existence of a contagious disease among any species of domestic animals is liable to a fine of five hundred dollars, or imprisonment for one year, if he does not forthwith inform the public authorities of such disease.¹ Aside from the penalty of the statute law, it is clearly an indictable offence for any one to take domestic animals affected with contagious diseases, knowing or having reason to know them to be so affected, upon the public ways, where they are likely to give such diseases to sound animals; and he would be answerable in damages, besides.²

If you are afflicted with a contagious or infectious disease, don't expose yourself on a highway or in a public place; and don't expose another person afflicted with such disease, as thereby you may jeopardize the health of other people, and your property also, in case you should be sued by some one suffering on account of your negligence.³

When there is snow on the ground, and the movement of your sleigh is comparatively noiseless, don't drive on a public way without having at least three bells attached to some part of your harness, as that is the statute as well as the common law. By the statute law you would be liable to pay a fine of fifty dollars for each offence. And by the statute and common law, in case of a collision with another team, you would probably be held guilty

¹ St. 1885, c. 148.

² 2 Rob. N. Y. 326; 16 Conn. 200.

³ 4 M. & S. 73; Wood on Nuisances, 70.

of culpable negligence and made to pay heavy damages. Of course you would be allowed to show that the absence of bells on your team did not cause the accident or justify the negligence of the driver of the other team, but it would be a circumstance which would tell against you at every stage of the case.¹

If you have no acquaintance with the nature and habits of horses, and no experience in driving or riding them, don't try to ride or drive any of them on a public way at first, but confine your exercise in horsemanship to your own land until you have acquired ordinary skill in their management; for the law requires every driver or rider on a highway to be reasonably proficient in the care and management of any animal he assumes to conduct through a public thoroughfare.²

Don't ride with a careless driver, if you can help it, because every traveller in a conveyance is so far identified with the one who drives or directs it, that if any injury is sustained by him by collision with another vehicle or railway train through the negligence or contributory negligence of the driver, he cannot recover damages for his injuries. The passenger, in law, is considered as being in the same position as the driver of the conveyance, and is a partaker with him in his negligence, if not in his sins.³

If you have a vicious and runaway horse, and you know it, you had better sell him, or keep him at work on the farm. Don't, at any rate, use him on the road

¹ 12 Met. 415; 11 Gray, 392; 8 Allen, 436.

² 2 Lev. 173.

³ Addison on Torts, § 479.

yourself, or let him to other people to use thereon ; for if in your hands he should commit injuries to person or property, you would have to foot the bills ; and if he should injure the person to whom you had let him, unless you had previously informed him of the character and habits of the horse, you would be liable to pay all the damages caused by the viciousness of the horse. If you should meet with an accident by reason of a defect in the highway, you could not recover anything, however severely you might be injured or damaged, provided the vicious habits of the horse contributed to the accident.¹

In riding or driving keep hold of the reins, and don't let your horses get beyond your control ; for if you do your chances of victory in a lawsuit will be pretty slim. If you tie up your reins for the purpose of walking in order to get warm or to lighten the load, and let your horses go uncontrolled, and they run over a child in the road and kill it or seriously injure it, you will probably have to pay more than the value of the horses, unless they are very good ones. Or if, going thus uncontrolled, they fail to use due care and good judgment in meeting other teams, and in consequence thereof damages occur, you would be expected to make everything satisfactory, because your team is required to observe "the law of the road" whether you are with it or not, especially if you turn it loose in the highway. Even if you have hold of the reins, and your horses get beyond your control by reason of fright or other cause, and afterwards you meet

¹ 4 Gray, 478 ; 117 Mass. 204.

with an accident by reason of a defect in the highway, you cannot recover anything.¹

Don't encroach upon or abuse the highway, either by crowding fences or buildings upon its limits or by using it as a storage yard. If you set a building on the line of the road, and then put the doorsteps, the eaves, and the bow-windows of the building over the line, you are liable to an indictment for maintaining a public nuisance; and possibly you may be ordered by the court to remove them forthwith at your own expense.² If you build an expensive bank-wall for a road fence, and place any part of it over the line, you must remove it upon the request of the public authorities, or else take your chances on an indictment for maintaining an illegal obstruction in the highway. If you deposit on the roadside logs, lumber, shingles, stones, or anything else which constitutes an obstruction to travel or a defect in the way, or which is calculated to frighten horses of ordinary gentleness, and allow the same to remain for an unreasonable length of time, you are liable to respond in damages for all injuries resulting therefrom. Even if the town should have to settle for the damages in the first instance, you might still be called upon to reimburse the town.³

Don't ride on the outside platform of a passenger coach; for if you cling upon a crowded stage-coach or

¹ 101 Mass. 93; 106 Mass. 278; 40 Barb. 193.

² 107 Mass. 234.

³ Wood on Nuisances, §§ 326, 327; 102 Mass. 341; 18 Me. 286; 41 Vt. 435.

street car, and voluntarily take a position in which your hold is necessarily precarious and uncertain, you have no right to complain of any accident that is the direct result of the danger to which you have seen fit to expose yourself. However, if the coach is stopped for you to get on and fare is taken for your ride, the fact that you are on the platform is not conclusive evidence against you ; but the court will allow the jury to determine, upon all the evidence and under all the circumstances, whether you were in the exercise of due care, instructing them that the burden of proof is upon you to show that the injury resulted solely by the negligence of the proprietors of the coach.¹

Don't jump off a passenger coach when it is in motion ; for if you get off without doing or saying anything, or if you ring the bell and then get off before the coach is stopped, without any notice to those in charge of it, and without their knowing, or being negligent in not knowing, what you are doing, the coach proprietors are not liable for any injury you may receive through a fall occasioned by the sudden starting of the coach during your attempt to get off.²

Don't wilfully break down, injure, remove, or destroy a milestone, mile-board, or guide-post erected upon a public way, or wilfully deface or alter the inscription on any such stone or board, or extinguish a lamp, or break, destroy, or remove a lamp, lamp-post, railing, or posts erected on a street or other public place ; for if you

¹ 103 Mass. 391 ; 8 Allen, 234 ; 115 Mass. 239.

² 106 Mass. 463.

do you are liable to six months' imprisonment or a fine of fifty dollars.¹

If in travelling you find the road impassable, or closed for repairs, and you find it convenient to turn aside and enter upon adjoining land in order to go on your way, don't be careless or imprudent; for if you take down more fences and do more damage than necessary, you may have to answer in damages to the owner of the land; and if you meet with an accident while thus out of the road, you cannot look to the town for any remuneration therefor, because when you go out of the limits of the way voluntarily, you go at your peril and on your own responsibility.²

Don't make the mistake of supposing that everything that frightens your horse or causes an accident in the highway is a defect for which the town is liable. If a town negligently suffers snowdrifts to remain in the road for a long time, and thereby you are prevented from passing over the road to attend to your business, or, in making an attempt to pass, your horses get into the snow and you are put to great trouble, expense, and loss of time in extricating them, you are remediless unless you receive some physical injury in your person or property; as the remedy provided by the statutes, in case of defects in the highway, does not extend to expenses or loss of time unless they are incident to such physical injury. In other words, the statute gives no one a claim for damages sustained in consequence of inability to use a

¹ Pub. St. c. 203, § 76.

² 8 Met. 391; 7 Cush. 408; 7 Barb. 309.

road.¹ And so a town or city is not obliged to light the highways, and an omission to do so is not a defect in the way for which it is liable.²

Nor is the mere narrowness and crookedness of a road a defect within the meaning of the statutes. Towns and cities are only required to keep highways in suitable repair as they are located by the public authorities, and they have no right to go outside the limits defined by the location in order to make the road more safe and convenient for travel. If a highway is so narrow or crooked as to be unsafe, the proper remedy is by an application to the county commissioners to widen or straighten it.³ Nor is smooth and slippery ice, in country road or city street, a defect for which a town or city is liable, if the road whereon the ice accumulates is reasonably level and well constructed. In our climate the formation of thin but slippery ice over the whole surface of the ground is frequently only the work of a few hours; and to require towns and cities to remove this immediately or at all is supposing that the legislature intended to cast upon them a duty impossible to perform, and a burden beyond their ability to carry.⁴

If you meet with an accident on the highway by reason of a defect therein, don't fail to give notice in writing within thirty days, to the county, town, place, or persons by law obliged to keep said highway in

¹ 13 Met. 297; 6 Cush. 141.

² 136 Mass. 419.

³ 105 Mass. 473.

⁴ 12 Allen, 566; 102 Mass. 329; 104 Mass. 78.

repair, stating the time, place, and cause of the injury or damage.¹ This notice is a condition precedent to the right to maintain an action for such injury or damage, and cannot be waived by the city or town.² Nothing will excuse such notice except the physical or mental incapacity of the person injured, in which case he may give the notice within ten days after such incapacity is removed, and in case of his death it may be given by his executors or administrators.³ Formerly it was essential that the time, place, and cause of the injury should be set forth in the notice with considerable particularity, but now the notice is not invalid by reason of any inaccuracy in stating the time, place, and cause, if the error is not intentional and the party entitled to notice is not misled.⁴

Don't convey by warranty deed a piece of land over which there is a public or a private way, without conveying subject to such way; for if you do you may be called upon to make up the difference in value in the land with the incumbrance upon it and with it off, which is regarded as a just compensation for the injury resulting from such an incumbrance.⁵

Finally, don't keep a dog that is in the habit of running into the road and barking at passing teams. You had better get rid of him or break him of the habit. Under our statutes the owner or keeper of a dog is responsible to any person injured by him, either in person

¹ Pub. St. c. 52, §§ 19-21.

² 128 Mass. 387.

³ Pub. St. c. 52, § 21.

⁴ St. 1882, c. 36.

⁵ 2 Mass. 97; 15 Pick. 66; 2 Allen, 428.

or property, double the amount of damage sustained ; and after he has received notice of the bad disposition of his dog, he is liable to have the damage increased threefold.

Every dog that has the habit of barking at people on the highway is liable any day to subject his owner or keeper to large liabilities ; for if he frightens a horse by leaping or barking at him in mere play, and the horse runs away, or tips over the vehicle to which he is hitched, his owner or keeper is responsible for double the damages thus caused by his dog. Hence I repeat the injunction, Get rid of such a dog or break him of the habit ; and if this cannot be done, then break his neck.

Perhaps it might be well to say, in this connection, that any traveller on the road, either riding or walking peaceably, who is suddenly assaulted by a dog, whether licensed or not, may legally kill him, and thus relieve his owner or keeper of a disagreeable duty.¹

¹ 11 Gray, 29 ; 1 Allen, 191 ; 3 Allen, 191.

CHAPTER XVII.

FOOT-PATHS.

AIR, sunlight, and exercise are absolutely essential for the proper physical and intellectual development of human beings. Thoreau thought it necessary for people who wished to preserve their health and spirits to spend four hours a day in the open air, sauntering through the woods and over the hills and fields, free from all worldly engagements. No doubt he spoke from his own personal standpoint, and many persons do not require so much exercise in the open air as he did in order to preserve their health and spirits; but the proper observance of the laws of health certainly requires every one to spend a portion of every pleasant day in the open air, and on foot if possible. Since the morning stars first sang together, the whole creation has been groaning and travailing in preparing the earth for the habitation of man; and the influence and teachings of Nature have ever aided powerfully in perfecting man and upbuilding the ruling nations of the world.

The progenitors of every vigorous race have always found in forest and wilderness the tonics and sources of their strength. It took forty years of wandering in the wilderness to prepare the Israelites for the occupation

of the promised land. In the open and out-door life of the Athenians was developed a civilization noble in high aspirations for the ideal in beauty and life, rich in literary and oratorical achievements, and glorious in the great and profound thoughts of immortal teachers and philosophers. The august and all-conquering civilization of the Romans had its origin on Palatine Hill when herdsmen and wolves roamed over it. In Holland, where the people are ever in conflict with the elements of Nature, the land has been reclaimed by human effort from "the multitudinous waves of the sea." The streams that once spread over the land or hid themselves in quicksands and thickets are made to flow in channels and form a network of watery highways for commerce and the fertilization of the soil; and where formerly lagoons and morasses found a home, there are now pleasant homesteads, great cities, and beautiful villages. The Anglo-Saxon race, which is now and has been for centuries the most vigorous and progressive in the world, has always had an insatiable hunger for the earth, and a love for a life in the fields by stream or by roadside. Everywhere we find the highest type of civilization where man has gained the mastery of Nature by the work of his hands. The home of such a civilization is usually found where forests have been removed, and the wild vegetation of primitive times has been expelled to make room for the thousand and one productions of modern cultivation; where hillsides and mountain-cliffs have been festooned with vines and made to blossom like the rose; where watercourses

have been made highways for trade and utilized for purposes of manufacture ; and where gloomy morasses and damp lowlands have been dried up and made fertile and habitable by drainage and cultivation.

As close contact with Nature is necessary for the making of nations, so her teachings are essential for the largest expansion of the human mind. All the great teachers of the race have found in Nature the germs of the thoughts which have widened the bounds of human knowledge "with the process of the suns." "Speak to the earth, and it will teach thee," was the basis of Job's philosophy. When David wanted light and assistance, he lifted up his eyes unto the hills, from whence came his help. Plato taught in the consecrated groves of the Academy, and Aristotle in the pleasant fields of Nymphæum or in the shady walks of the Lyceum. Christ taught his disciples to heed the teachings of Nature, and he sought strength and inspiration in the wilderness and the mountains. Wordsworth's library was in his house, but his study was out of doors. But why enumerate, when the entire intellectual history of our race demonstrates that every invention or thought which has extended man's mental vision and knowledge has been evolved from the discovery of some hitherto hidden law of the material world, or from the teachings of Nature, which always foreshadow the fundamental principles regnant in the seen and the unseen world ? Hence anything which tends to bring people into the open air and into a closer communion with Nature is worthy of encouragement.

Good foot-paths would furnish an easy and convenient way of getting at Nature; and being free from the dust and heat of the highway, and somewhat retired and secluded, they would be, during a considerable portion of the year, musical with the song of birds and beautiful with green foliage and lovely flowers. These paths would invite and encourage people to take long walks, and this habit would undoubtedly conduce to their longevity and robust health. And the promotion of health is now regarded, in every enlightened community, as one of the objects of government. The enjoyment of life depends in great measure upon the state of our health. When the air feels bracing, and food and drink taste sweet to us, much else in life tastes sweet which would otherwise taste sour and disagreeable. Good drainage and vaccination are not the only means available for the promotion of the public health. People should be encouraged and educated into the habit of taking plenty of exercise in the open air, as in this way the public health will be improved.

One of the charms of old England is to be found in her numerous foot-paths and green lanes, which are recognized by law, for many of them are older than the highways. When a walker tires of the public road or is in a hurry, if he knows the country, he can turn into some foot-path and reach the place of his destination by short cuts through green lanes, across pleasant meadows, and along shady hedgerows. As one passes along these cosy byways, he sees, from every eminence or turn, a new prospect over the landscape interspersed

with trees, now and then the bright gleam of water through the foliage, and occasionally some beautiful vista view across parks and homesteads. In this way one can go from town to town, and get about the country quite independently of the highways. Most of the country churches are approachable by lanes and foot-paths which seem to run by all the houses in the vicinage, and by their sweet attractiveness to invite all the people to go to church, at least in pleasant summer weather.

In Massachusetts and some of the other States, towns and cities have authority to lay out foot-paths in the same manner as public ways. It is to be hoped ere long that the intelligent and public-spirited citizens of our towns and cities will cause now and then a good foot-walk to be constructed, where it would shorten the distance from one place to another, and possibly pass through pleasant fields and woods, and over hills commanding beautiful and extensive views. It is not pleasant to walk in the dust and publicity of highways, nor on gravel walks in artificial parks, where sign-boards and policemen warn you frequently to "keep off the grass."

Before our towns and cities spend any more money building boulevards and opening new parks, would it not be well for them to consider the advisability of laying out some foot-paths for the comfort and convenience of pedestrians? At any rate, foot-paths could be made alongside of the road-bed of some of the public ways, so that every pedestrian would not of necessity have to trudge along in the dust or mud incident to the middle of the road.

CHAPTER XVIII.

WITHIN AND WITHOUT THE ROADSIDE.

BESIDES the legal duty every dweller by a highway is under, to use it with due regard to the rights of the public, he is under a moral and Christian obligation to maintain order and neatness within and without his roadside. The occupations and amenities of life are so interwoven and intermixed that no one can live for himself alone with justice to himself or to society. There is something in the very nature of things which makes for the reward of unselfish exertion and for the condemnation of selfish acts. "Whosoever shall seek to save his life, shall lose it; and whosoever shall lose his life, shall preserve it." Public spirit, like virtue, is its own exceeding great reward. When one benefits the community in which he lives, he thereby also benefits himself; and when he is possessed of the right kind of a public spirit, he will beautify and improve his homestead and his roadside, and will even throw the cobble-stones out of the roadway in front of his house without compensation or even hope of financial reward.

When he plants a tree for the sole purpose of doing something for posterity, and then watches its growth and expansion from day to day until he becomes familiar

with its varied aspects in sunny and in stormy weather, and finally, walking beneath its cooling shade and seeing its limbs swaying gracefully over surrounding objects, his heart goes out towards it with a feeling of tenderness and love, and he feels that he has been paid a thousand times for setting it out. When after years of endeavor in trying to keep his roadside neat and clean and covered with greensward, he finds that his example is having some influence on his neighbors, and that even the road-menders begin to respect his efforts to improve the wayside, he feels that he has been amply compensated for all his trouble and care in his own increased enjoyment and in the increased enjoyment he has been the means of giving to the public.

First impressions always have great influence upon our minds. Nothing will give a traveller a poorer and meaner opinion of a town and its inhabitants than dilapidated buildings surrounded by rubbish and broken-down fences. When a traveller passes a house of this character, he instinctively says to himself, "Some shiftless and poverty-stricken family lives here;" but when he passes a well-kept house with pleasant surroundings, he says, "This must be the abode of intelligent and well-to-do people." He feels like stopping and forming their acquaintance, for he is sure that their acquaintance would be worth having. Our opinion of a person's character is always more or less influenced by the clothes he wears and by the house in which he lives. The surroundings of every home of intelligence and tidiness should indicate that it is not the abode of the vulgar

and ignorant. Therefore every owner of a homestead should strive to make it a cosy and pleasant home for himself and family. He should take a just pride in keeping his buildings in good repair, well painted and suitably arranged for the purposes of his business and a happy and healthy home life. The surroundings should be made neat and attractive, by the absence of rubbish, and the presence of green grass and shade trees.

If he owns much land, he ought to be landscape gardener enough to set out his fruit and shade trees and to lay out his fields in the best way for convenience and scenic effect. He should also have sufficient rural taste not to locate his barn and other out-buildings in such a way as to shut off the best views from his house. He ought also to have a general knowledge of the nature and uses of trees and forests, and the necessity of their cultivation for the good of himself and mankind at large.

Forest and shade trees greatly enhance the beauties of a country, and no country can be beautiful in the highest degree without them. If the green hills and mountains of New England were stripped of their woods, the lovers of natural scenery and rural life would seek elsewhere the gratification of their tastes. Even the stately homes of England would appear commonplace in the absence of the majestic trees and forests which now encircle them. A plain, modest house, situated in the midst of an open grass-plot and sheltered by a few handsome shade trees, is more beautiful and appeals more strongly to the feelings than the stateliest

mansion unprotected from the sun. Who would care to live by the side of the purest stream or body of water, if it were not fringed with trees? Were it not for trees, would there be any beauty in mountain, hill, or valley, — for who can conceive of a beautiful landscape scene devoid of trees?

The love of trees seems to be implanted in all noble natures. The ancients believed that “the groves were the first temples of the gods.” Christopher North says that the man who loves not trees would make no bones of murdering.

Some people give as an excuse for not planting trees that it takes so long for them to grow that they will not live to enjoy them. The selfishness of this excuse is enough to condemn it; but it is not tenable from any point of view. It has been said that he who makes two blades of grass grow where only one grew before is a benefactor of his race; and of all the pursuits connected with the interests of mankind what can be the source of more true and disinterested happiness than the knowledge that one has been instrumental in changing a waste and unproductive piece of land into a scene of umbrageous and waving beauty? Cicero speaks of tree-planting as the most delightful occupation of advanced life; and Sir Robert Walpole once said that among the various actions of his busy life none had given him so much satisfaction in the performance and so much unsullied pleasure in the retrospect as the planting with his own hands many of those magnificent trees that now form the pride of Houghton.

Of course it is not claimed that every one should have expensive buildings upon his homestead, or wide-spreading lawns around his house. Many are so situated that they cannot afford to live in costly houses or to spend much money on their surroundings; but every one can make his home, however humble, pleasant and homelike, and can keep his dooryard and wayside free from old rubbish. I can understand how love can be happy in a cottage, but I do not believe it possible for a family to grow in knowledge and virtue and enjoy life while dwelling in mean and dirty apartments.

Cleanliness is next to godliness, and it is just as true of the outside of the house as of the inside. A pleasant and beautiful exterior usually signifies pleasantness and peace within. While well-fenced and well-tilled farms are always pleasing to the eyesight, and neatly dressed roadsides are generally desirable, it does not follow that no shrubbery or sylvan tangles of trees should be allowed to grow on farms or by the wayside. A bare and rocky hill or knoll suggests images of bleak and barren desolation, cold blasts, and parching sun; while a hill clothed and capped with woods gives the impression of a rich and charming country. Therefore the land unsuitable for pasturage or cultivation on a farm had better be covered with clusters of trees or with forests; and frequently an old stone-wall or heaps of stones can be advantageously hidden by vines and shrubbery, as they add beauty to the landscape, furnish shelter to birds, and often protect the crops from cold winds. Many a wayside in country by-roads is so rough and uneven, so

rocky and full of earth-pits, that it had better be covered with the wild shrubbery of Nature than to be cleared up in such a way as to expose to view all its unsightly objects. Whenever the roadside cannot be covered by greensward, the native shrubs and wild vines ought to be allowed to hide its nakedness with green foliage and beautiful flowers. They give beauty to wayside scenery, and increase the interest and pleasure of those travelling along the road.

CHAPTER XIX.

ENJOYMENT OF THE ROAD.

IN travelling, whether one is riding or walking, it is not sufficient for the proper enjoyment of the way to know how to get along in a legal manner, but he should know how to put himself in harmony with the elements of Nature, and to feel the "gay, fresh sentiment of the road." The first requisite for this enjoyment is to have a hopeful and sunshiny disposition. When people are buoyed up by hope they will find enjoyment under very adverse circumstances. Adam and Eve, according to Milton, saw without terror for the first time the sun descend beneath the horizon, and the darkness close in upon the earth, and "the firmament glow with living sapphires," although they did not then know of a sunrise to come. Yet even in such a time as that, according to this poet, these hopeful natures walked hand in hand "in the grateful evening mild," and held such sweet converse with each other that they forgot all time, all seasons and their change, for all pleased alike. Thus it was in the beginning, and thus it will be at the end; for even in the darkest as in the brightest hours hopeful humanity looks forward to something better, as —

"Of better and brighter days to come
Man is talking and dreaming ever."

And who would have it otherwise? As sunshine is the most important thing in the natural world, so it is the best thing in human life. People with sunshiny dispositions are always happy and welcome everywhere, whether on the road, in the sick-room, or in the halls of gayety. They drive away the blues and bring in hope and good cheer; without them, life would not be worth living.

The French philosopher Figuiet was so impressed with the value of sunshine in human nature that he taught that the rays of the sun, which bring light and heat and life and all blessings to the earth, are nothing but the loving emanations of the just spirits who have reached the sun, the final abode of all immortal souls; and its light and heat are the result of their effulgent goodness and sunshiny dispositions.

Every traveller, then, who wishes to experience even the common and apparent enjoyments of the way, should start out with a light heart and rich in hope; but if he wishes to taste also the *latent* enjoyments of the way, he must have an observing eye, and the love of Nature in his heart. It is astonishing how the systematic cultivation of the observing faculties will develop in one the habit of seeing and enjoying his environment. This habit grows as rapidly as heavenly wisdom in one who has made an honest attempt to obtain a knowledge of God, when —

"Each faculty tasked to perceive Him
Has gained an abyss where a dewdrop was asked."

What a source of pleasure, solace, and recreation, then, is open to him who knows how to distinguish and appre-

ciate the beautiful in Nature! He hears in every breeze and every ripple of water a voice which the uncultivated ear cannot hear; and he sees in every fleeting cloud and varied aspect of Nature some beauty which the ignorant cannot see.

“ Earth’s crammed with heaven,
And every common bush afire with God;
But only he who sees takes off his shoes.”

There is truth in the quaint language of Platen: “The more things thou learnest to know and to enjoy, the more complete and full will be for thee the delight of living.”

We frequently find that when two persons are placed in the same situation, one will find much to enjoy while the other will not, and simply because one has the love of Nature in his heart, and the other has not. One person, living in the midst of the most beautiful natural scenery, is not charmed by anything he sees on the earth or in the sky. To him all Nature is like an empty barnyard, in which there is nothing to inspire him with a noble thought or stir him with a generous emotion. Another person living in the same vicinity sees much in his surroundings to admire and to enjoy. He looks at the sunset glows with delight; he sees beauty in the grass, and glory in the flowers; he sees with admiration and awe the storm-clouds, black and terrible, rushing together like veritable war-horses, or piling themselves up like mountains, reverberating with the artillery of heaven and tongued with fire; wherever he looks nearly every prospect pleases; and

to him Nature, like the Scriptures, is new every morning and new every night. Such a person is more likely to be a better neighbor, a better citizen, and a better Christian than one who has not the love of Nature in his heart. Ruskin says: "The love of Nature is an invariable sign of goodness of heart and justice of moral perception; that in proportion to the degree in which it is felt, will probably be the degree in which all nobleness and beauty of character will also be felt; that when it is absent from any mind, that mind in many other respects is hard, worldly, and degraded." The love of Nature has ever been characteristic of the greatest and the noblest minds. To Wordsworth the meanest flower that blows gave him thoughts too deep for tears; and to Christ the lily of the field was more beautifully arrayed than Solomon in all his glory. Likewise we often find that two travellers will pass together over the same route, and one will see much to admire and to enjoy by the way, and the other will see nothing to admire or to enjoy. The one who has an observing eye, and enjoys beautiful and grand natural scenery, sees in every nook and corner by the way some lovely flower or comely shrub to admire, and, like Wordsworth, —

"Beside the lake, beneath the trees,
Fluttering and dancing in the breeze,
He sees the golden daffodils."

And he not only enjoys the present sight, but he enjoys the scene as often as he thinks of it afterwards, as in imagination he views the scene over and over again, —

“For oft when on his couch he lies
In vacant or in pensive mood,
They flash upon the inward eye
Which is the bliss of solitude ;
And then his heart with pleasure fills,
And dances with the daffodils.”

And in the common and unnoticed grass by the roadside or in the field, he can see in each blade a system of masonry and architecture that no human skill has ever been able to equal. The stem is very slender, but is so elastic and strong that it waves gracefully in the breeze and bends to the earth in the storm without breaking, and assumes an upright attitude again. It is made up of delicate cells and perfect and intricate channels, through which hidden currents of life throb and flow as mysteriously as the vital blood through the human frame. It is colored with an emerald tint of such beautiful hues that it has been the despair of artists to imitate it in every age. Ages and ages before the human hand learned its cunning, the command went forth for grass to bring forth seed after its kind ; and to-day it is waving gracefully in every field, and crowned with the same beautiful flowers and tasselled seed-vessels as of old. Men in their haughty ambition have builded much larger structures. They have erected towers, pyramids, obelisks, spires, monuments, and triumphal arches, which have commanded the admiration of their builders and of their fellow-men in every part of the world ; but every principle of their masonry and architecture is an imitation of that in the humblest spear of grass. Thus every traveller on a country road is sur-

rounded by monuments more ancient, more impressive, and more beautiful than the ancient or modern world can show as the production of human hands.

He finds much enjoyment in the study of the forms and characteristics of the different trees by the wayside. If the road passes over highland, on a breezy day he can look down upon or across the tops of undulating forest trees, whose swaying movements remind him of the waves of the sea. He can see in each species not only a variety in the color and form of its foliage, but some characteristic which reminds him of some human being. The rugged oak or apple tree recalls to his mind some sturdy man, of great strength and honesty of character, with picturesque but awkward manners. The gracefully swaying branches of the stately elm or weeping willow remind him of some woman whose elegant form and manners make her as lovely as the moon and as beautiful as light. The rapid and constant motion of the foliage of the poplar and the aspen reminds him of some nervous and excitable person who is never quiet or easy for a moment. The prim spruce-tree suggests to him some person of formal habits and primness of dress. The symmetrical maple and pine remind him of some quiet and dignified character who is well balanced and rounded at every point. The patriarchal tree which has outlived all its companions and stands alone with few and withered branches, but still raising its majestic head to heaven as if in supplication for blessings on the earth, reminds him of some gray-haired person who, full of years and rich in faith, after a well-spent life is approach-

ing and can almost see the other side of the river which separates this life from the eternal world.

If he has a taste for domestic and pastoral scenery, it is gratified as he views the green pastures and meadows, the waving grain-fields, and the occasional gleam of water through the foliage. Ever and anon he passes by some dwelling where the charms of culture have been added to the charms of Nature. By kind treatment the grass-plot before the door has become a refreshing piece of verdure. By careful pruning and training the trees on the lawn have become objects of beauty, and cast their graceful shadows over the velvety greensward beneath. The woodbine tastefully trained over the porch, the flower-bed in the yard brilliant with flowers, and the garden and the fruit orchard in the field, all tend to cheer and sanctify human life in such an abode. Perchance the road runs by some rural homestead which reminds him of his own ancestral home, humble yet beautiful to him, and all the scenes of his childhood come vividly to mind as fond recollection presents them to view. He is once more a barefoot boy, and all is outward sunshine and inward joy. He slacks his thirst once more from the well by the door or at the spring on the hillside; and he visits again the old familiar play-ground, the lane through which the cows are driven, the brook where the sheep are washed, the fish are caught, and the boys go in swimming.

When the road leads him into the mountains or in sight of them, he is charmed by their majesty and awed by their sublimity. A mountain panorama presents

all the characteristic phases of Nature and all the moving variation of the atmosphere. At one time they are cloud-capped and surrounded with fog, and then in an incredibly short time they are glittering in a halo of sunlight. As one beholds their majestic heads, around which the storms of centuries have beat, disappear as twilight changes into night, he can but feel oppressed with the gloom and melancholy of the scene. But in the morning, when —

“Night’s candles are burnt out, and jocund day
Stands tiptoe on the misty mountain-tops,”

he can but conclude with Ruskin, that “mountain scenery has been prepared in order to unite as far as possible and in the closest compass every means of delighting and sanctifying the heart of man. Mountains seem to have been built for the human race, as at once their schools and cathedrals, full of treasures of illuminated manuscript for the scholar, kindly in simple lessons to the worker, quiet in pale cloisters for the thinker, glowing in holiness for the worshipper.”

Then, again, a country road is a good place to become acquainted with some forms of animal and vegetable life. The odors of growing vegetation, the movement of squirrels and other creatures, and the song of birds, all have a tendency to impress one with the idea that the material world is animated with life. And when the sun pours down a flood of glowing sunlight, and swathes the traveller and the whole world with its glowing and life-giving beams, he realizes that the sun

is the source of every material blessing. In the city people know in a general way that the sun is the source of heat and light, and that he adds to their comfort and convenience, as do the electric light and the fire on the hearth ; but they hardly realize that his rays are necessary for their existence, to say nothing of their comfort, for even a week. But when a traveller in the morning sees all animated Nature stirring and rejoicing with the throbbings of warmed and rejuvenated life ; when he looks out over the landscape and sees the sun raising in misty vapors the water which supplies our springs, lakes, and streams, and refreshes the earth in showers of rain, he realizes that the sun is not only the fire which warms the world, but it is also the mighty hydraulic engine of Nature.

These are some of the enjoyments of the way ; but every thoughtful and observing traveller knows that they cannot be enumerated. Like Burroughs, "he is not isolated, but one with things, with the farms and industries on either hand. The vital, universal currents play through him. He knows the ground is alive : he feels the pulses of the wind, and reads the mute language of things. His sympathies are all aroused ; his senses are continually reporting messages to his mind. Wind, frost, rain, heat, cold, are something to him. He is not merely a spectator of the panorama of Nature, but a participator in it. He experiences the country he passes through, — tastes it, feels it, absorbs it."

Neither is he confined to the material demonstrations of Nature for his enjoyment of the way. Some of the

greatest sermons and speeches have been thought out on the road. A solitary traveller can think calmly and thoughtfully on the great problems of life and death, and can learn to appreciate the fact that "the gods approve the depth, and not the tumult, of the soul."

CHAPTER XX.

SIDEWALKS AND CROSSWALKS.

A SIDEWALK is a part of the highway and must be kept safe and convenient at all seasons of the year.¹ And even that part of the way which lies between the sidewalk and the carriage-way must be kept in such repair that foot-passengers may cross any part thereof at all times with a reasonable degree of safety. Yet in some respects the sidewalk is a distinct and separate part of the way, and when its limits are well defined the law relating to it is also distinct and well defined. While the carriage-way may be used by footmen as well as by the drivers of teams, it does not follow that the sidewalk may be used by the drivers of vehicles except for the purpose of crossing to adjoining estates.² The sidewalk is designed for the use of foot-passengers, and in the absence of strong evidence of necessity, it would be regarded as evidence of negligence for the driver of a team to encroach upon its limits.³

It is public policy to encourage the construction of sidewalks alongside the carriage-way of every well trav-

¹ 3 Cush. 174; 110 Mass. 334; 40 N. H. 410; 2 Hilt. 440.

² Pub. St. c. 53, § 6; 130 Mass. 330; 6 Cush. 524.

³ 130 Mass. 330.

elled road. In this way foot and carriage passengers are induced to travel on separate parts of the highway, and thereby accidents and confusion are avoided and the convenience of travellers promoted. To this end no barbed wire fence is permitted to be maintained within six feet above the ground along any sidewalk located on or upon any public street or highway, under penalty of not less than twenty dollars and not more than fifty dollars for such offence;¹ and to this end the law allows every person owning or occupying lands adjoining a highway or road in a town to construct a sidewalk within such highway or road and along the line of such lands, indicating the width of such sidewalk by trees, posts, or curbstones at reasonable distances apart, or by a railing erected thereto; and where a sidewalk is so constructed, whoever rides or drives a horse or team upon or along the same shall forfeit one dollar, to be recovered by such owner or occupant in an action of tort.² But while this statute gives this privilege to the owner or occupant of land bordering upon the road, it does not relieve him from the responsibility incumbent upon every one not to unreasonably obstruct the highway. The highway surveyors or the public road officers still have as much authority as ever over the highway and the sidewalk, and they may cause the posts, trees, or curbstones, and even the sidewalk itself to be removed at any time.³

If the owner or occupant in building a sidewalk ob-

¹ Mass. Acts, 1884, c. 272.

² Pub. St. c. 53, § 6.

³ Pub. St. c. 53, § 6; 121 Mass. 161.

structs the way to such an extent as to make travelling on the way unsafe, then he is liable directly to any party injured or damaged in the exercise of due care;¹ and if a town or city is compelled to pay damages on account of injuries suffered from a defect or obstruction caused or erected by him, an action will lie in favor of such city or town against him for the amount paid on account thereof, including costs of suit in case he had notice of the action and an opportunity to defend.²

After a sidewalk is constructed and prepared for public use, the city or town must keep it safe and convenient for travel at all seasons of the year.³ The owners or occupants of adjoining land are not responsible to individuals for injuries resulting to them from defects in sidewalks not caused by them, or by means of snow and ice accumulated by natural causes thereon, although by ordinances and by-laws of cities and towns, it is made the duty of abutters, under prescribed penalties, to keep the sidewalks adjoining their estates in good repair, and seasonably to remove all snow and ice therefrom.⁴ Such ordinances and by-laws are valid, and are designed and intended effectually to secure the proper application of whatever labor and means are necessary to keep the sidewalk in good repair and clear of snow and ice; and to this extent they relieve the

¹ 115 Mass. 86; 18 N. Y. 79; 40 Barb. 380; 43 Iowa, 119; 23 Pa. St. 209.

² 122 Mass. 100; 32 N. H. 59; 102 Mass. 341; 2 Blackf. 418; 66 Me. 585; 43 Iowa, 119.

³ Pub. St. c. 52, § 1; 13 Pick. 343.

⁴ 14 Gray, 249.

cities and towns of the charges which otherwise they would be subjected to, but they in no degree exonerate the cities and towns from their obligations to keep the sidewalks safe and convenient for travel at all times.¹ This obligation is primarily upon the city or town; but in consideration of this burden, the city or town can look to any one who causes a defect in a sidewalk to recompense it for any loss or damage it is obliged to suffer on account thereof. But any individual who with use of due care suffers injury or damage by reason of an obstruction or a defect in a sidewalk caused by the careless instrumentality of another person, may maintain an action against such person for such injury or damage. Even a license from a town or city to construct a building or repair premises, does not authorize the licensee to make and leave insufficiently guarded an excavation across a sidewalk or in the carriage-way.² For one to leave a ditch across a public sidewalk unlighted and unguarded at night, is negligence as a matter of law, and evidence of permission from the public authorities is no defence. And one who interferes in any way with a sidewalk, and leaves it in a dangerous condition, is liable, irrespective of any license from the public officers to do the work from which the injury arose.³ But as the license is no excuse for the negligence of the licensee, so likewise the license is no excuse for the city or town, in case the highway becomes unsafe through the doings of the

¹ 14 Gray, 249; 53 Iowa, 352; 5 Thomp. & C. 621.

² 53 Ill. 212.

³ 56 Barb. 119.

licensee; for it is its duty to see to it that persons whom it authorizes to use the streets shall properly guard and protect the obstructions, and for a negligent failure to perform this duty it is liable.¹

And for a similar reason, a town or city is liable for injury received from the falling of a defective awning projected over and across a sidewalk by the owner or occupant of a building, provided it is supported upon posts at the outer edge of the sidewalk.² But for an injury received in a similar manner from the falling of a defective sign projected over and across a sidewalk, but supported entirely by an iron frame attached to the building, the city or town is held not to be liable.³ So if injury is received from the fall of snow or ice projected from the roof of a building, and overhanging the sidewalk, the city or town is not liable.⁴ But if the owner or occupant suffers ice or snow to remain upon a roof subject to his use and under his control for an unusual and unreasonable time after he has notice of its accumulation and an opportunity to remove it, and the ice and snow slide off and injure a person traveling with due care in a highway, he is liable for such injury, even if the roof does not project over the sidewalk.⁵

The owner or occupant of land adjoining a sidewalk

¹ 71 Ind. 5; 4 Abt. N. Y. Appt. 563; 27 Minn. 243; 11 Gray, 154; 5 Thomp. & C. 579.

² 13 Met. 292; 5 Allen, 98; 74 N. Y. 264.

³ 104 Mass. 75; 8 R. I. 349.

⁴ 13 Gray, 59.

⁵ 101 Mass. 251; 22 Hun. 60.

has the right to use the sidewalk for all purposes not inconsistent with the right of the public. He may build on his land, and construct his cellar in such a way that the doors, windows, and passage-ways may be reached through apertures opening in the sidewalks. He may construct coal vaults under the sidewalk, and, in fact, if he own the land, he may use the entire space beneath the walk for any legitimate purpose not inconsistent with the rights of the public, provided the walk is securely and safely covered.¹

But while the law gives this privilege to the owner or occupant, it requires him to use the privilege with care, and with an eye to the safety and convenience of the public; for if individuals sustain injuries, or suffer loss or damage peculiar and special to themselves, from nuisances created, or obstructions unlawfully placed by another person in a public highway, they may maintain an action against him to recover compensation therefor.² And even a blind man has the right to walk the streets unattended, provided he is familiar with the localities in which he travels, and uses as much care as can be expected of one deprived of sight. When the occupants of a store adjoining a sidewalk in Boston opened a trap-door in the sidewalk for the purpose of removing boxes from the basement, and their employees were actually engaged in the work, but no rail, rope, or other barrier was put up to keep persons from walking into the hole, and nobody was there with special instruc-

¹ 40 Ind. 62; 3 Cush. 174.

² 14 Gray, 251; 9 Ad. & El. N. R. 991.

tions to look out for and warn persons who might be approaching, they were held liable for the injuries of a blind man who walked into the hole. In rendering the decision, the court remarked that although totally blind, he has a right to rely to some extent that pitfalls would not be left unguarded in the sidewalk.¹

And at the same time it is the duty of a city or town to see that all vaults under sidewalks are properly constructed, all gratings or covers properly placed and made of suitable material, and all openings properly guarded and protected.²

But in all these cases, the owner or occupant of the building to which the signs or awnings are attached, or to which the trap-doors or other openings lead, is liable primarily to the party receiving the injury, and secondarily to the town or city, in case it has been compelled to pay damages for such injury.³

The question may arise, Why is so much individual, corporate, and joint liability necessary? The answer is, that with all this liability, the highways and sidewalks are not kept in any too good repair for the convenience and safety of travellers; and were it not for this spur of financial liability, the most of our roads and public walks would be in wretched condition the year round. Where all share in the public convenience

¹ 143 Mass. 556; 37 N. Y. 568; 52 N. H. 244.

² 122 Mass. 223; 127 Mass. 329; 2 Daly, 243; 61 Ill. 287; 55 Ga. 556; 15 Kan. 81; 1 Wils. (Ind.) 129; 75 Mo. 672.

³ 9 Allen, 18; 18 N. Y. 79; 43 Iowa, 119; 100 Mass. 94; 4 Cush. 277; 32 N. H. 59; 109 Mass. 283; 66 Me. 585; 79 Ind. 547; 52 Ill. 189; 14 Gray, 249.

and safety, each one should be willing to bear his proportional share of the public and private responsibility necessary to promote the greatest good of the greatest number.

The question whether a sidewalk or crosswalk is reasonably safe and convenient for public travel at any particular time, or whether the person injured was in the exercise of due care, are questions for the jury, in view of all the facts and the surrounding circumstances of each case.¹

Every one, whatever may be his age or condition, has the right to travel on a sidewalk for any purpose of business, convenience, or pleasure while engaged in any of the pursuits or duties of life. But a city or town cannot be held responsible for every case of damage to person or property which may happen by reason of a defect in a highway, without regard to the use to which it was appropriated at the time of the accident by the person injured. A juggler or gymnast could hardly expect to be regarded as a traveller entitled to recover for injuries sustained by him in the exhibition of his feats of agility and strength in the highway, even though they were occasioned in whole or in part by a defect in the road. It would hardly be fair to hold a town or city liable for damages occasioned to parties using the highway solely for coasting purposes. And it has been decided that a boy eleven years old, who was playing "old man on the castle" on a plank sidewalk, and

¹ 128 Mass. 321; 57 Wis. 639; 46 Conn. 213; 52 N. H. 221; 39 Me. 193; 17 How. 161; 91 Pa. St. 226.

caught his foot between the planks and twisted it in trying to extricate it, could not recover for injuries thus received while using the street for a playground.¹ And it has been decided that a six-years-old girl, who, while playing "tag" in the street, fell into a sewer and was injured, could not recover for her injuries;² and likewise, where a three-years-old child, being permitted by her parents to go out for the purpose of walking, and while sitting on the sidewalk, sustained an injury by the falling of some stones intended to be used as curb-stones, it was held that she was remediless.³ But the court in 8 Allen, 237, says that it would not be understood as saying that a child who receives an injury caused by a defect or want of repair in a road or street, while passing over or through it, would be barred of all remedy against a town merely because, at the time of the occurrence of the accident, he was also engaged in some childish sport or amusement. And it has been held in other States, that a city or town cannot escape liability for an injury sustained by a child in use of the public streets, by showing that he was playing in the street and not travelling in it.⁴ And whether a child, stopping to look at toys in a shop-window, is a traveller, is a proper question for the jury.⁵ As before said, every one has the right to walk upon a sidewalk for any of the ordinary purposes of travel, but the law requires him to walk with discretion with regard to the rights of others, and to use such care as a per-

¹ 8 Allen, 237.

² 119 Mass. 472.

³ 119 Mass. 491.

⁴ 75 Mo. 401; 91 N. Y. 303.

⁵ 121 Mass. 294.

son of ordinary diligence would use under the same circumstances.

Just what amounts to a defect, is usually a question of fact in each particular case; but the citation of a few of the leading cases relative to defects in sidewalks, may enable the reader to form an intelligent opinion as to what things do or do not constitute legal defects. Mere slipperiness of the surface of a sidewalk or way, properly constructed, and of no unusual slope, by reason of ice, whether occasioned by the ordinary action of rain, snow, or frost, or by such travel as does not alter the form of the surface, is not a defect for which a town or city is liable to an action.¹ But a sidewalk constructed of such form and slope as naturally and usually to induce such a collection or formation of ice or snow as to be peculiarly dangerous to passengers, may constitute a defect.² And ice and snow suffered to remain upon a sidewalk in such an uneven and rounded form that a person cannot walk over it, using due care, without danger of falling down, may also be a defect. Likewise, ice formed in a sidewalk by the freezing of melted snow and of surface water flowing from a hill by the side of the highway, may be a defect.⁴ Although mere slipperiness, caused by smooth ice on a sidewalk, is not a defect, the same rule is held not to apply to a cover in a sidewalk made of glass and iron, and so changed by wear as to become smooth and slip-

¹ 100 Mass. 49; 12 Allen, 566; 72 Me. 249; 78 Ill. 347; 24 Wis. 270.

² 109 Mass. 204.

³ 97 Mass. 268, 272.

⁴ 109 Mass. 446

pery. Smooth and slippery ice is held not to be within the meaning of the statute, because it results from atmospheric influences, and it would be impossible for cities and towns to protect the sidewalks from the icy slipperiness caused by moisture and frost in such a climate as ours. But the slipperiness of covers over holes in a sidewalk results, either from original faulty construction, or by wear of the material by footsteps of travellers, or by the action of natural causes, such as storms or floods, and is within the statute requiring cities and towns to keep the highways in suitable condition for travel.¹

Likewise a brittle and weak flagstone over a coal vault in a sidewalk may be a defect, although its defective condition is not open and visible.² And a hole in a plank sidewalk, or a hole in a culvert covered with a stone, may constitute a defect for which a city or town is liable.³

Although it is very convenient to have public streets lighted at night, and nearly all enterprising cities and villages do have them lighted, yet an omission to light a street either in a city or town is not a defect for which it is liable; and it makes no difference in this respect whether there is a by-law or ordinance requiring the road commissioners to place lights there.⁴

Neither is the coasting upon handsleds on a sidewalk or street in a city or town a defect or want of

¹ 127 Mass. 329.

² 122 Mass. 223.

³ 105 Mass. 313; 116 Mass. 573.

⁴ 136 Mass. 419; 72 Ind. 196.

repair for which it is liable to a person struck by a moving sled.¹

Whether bolts, gratings, or other obstructions reaching above the level of a sidewalk, and whether the depressions and elevations of a walk are too uneven for safe travelling, are severally questions of fact to be decided upon the evidence and circumstances of each case.²

And likewise the right of a pedestrian to take along the sidewalk with him a perambulator, velocipede, hand-cart, wheelbarrow, bath-chair, or other vehicle or thing, is a question of mixed fact and law for the jury and court. In *Purple v. Greenfield*,³ the court say that it cannot be ruled as a matter of law that any and every use of any kind of a velocipede upon the sidewalk is unlawful. And in *Regina v. Mathias*,⁴ the jury was left to decide, and failed to agree, whether a perambulator eighteen inches wide and weighing fourteen pounds was an improper vehicle to be used upon a public foot-way.

As before indicated,⁵ cities and towns are authorized by general laws⁶ to pass by-laws regulating to a certain extent the use of streets and sidewalks. They may prescribe under what conditions and for what purposes the sidewalk may be used; they may prohibit the use

¹ 129 Mass. 534; 41 Vt. 271.

² 116 Mass. 93; 6 Cush. 524; 72 Me. 537; 27 Wis. 191; 43 Ind. 574; 66 N. Y. 334.

³ 138 Mass. 1.

⁴ 2 F. & F. 570.

⁵ *Ante*, p. 60.

⁶ Pub. St. c. 27, § 15, and c. 53; 97 Mass. 221.

thereon of animals, carriages, bicycles, wheelbarrows, handcarts, or other vehicle; they may forbid any person to stop his team or vehicle, or to place any obstruction of any kind upon any flag or stepping-stones or other footwalk across any street; they may prevent the swinging of any gate, door, or sign over the sidewalks, or the building of any structure or thing so that it shall extend into or over the same; and they may interdict the discharge of sink-water, impure water, or rain-water in spouts or conductors upon or over the sidewalks.

In case of accident on a sidewalk, the person injured must give notice in writing within thirty days to the county, town, place, or persons by law obliged to keep it in repair, stating the time, place, and cause of the injury or damage, the same as if he were injured or damaged on the highway.¹

Whether a sidewalk is required upon any street in order that foot travel along the same may be safe and convenient, depends mainly upon the location of the street and the amount of travel thereon.² In cities and towns which accept the provisions of the statutes relating thereto, the public authorities may establish and grade sidewalks in such streets as in their judgment the public convenience may require, with or without edge-stones, and cover them with brick, flat stones, concrete, gravel, or other appropriate material, and may assess the abutters on such sidewalks one-half the expense of the same, providing such assessment does not exceed one per cent of the valuation of his abut-

¹ Pub. St. c. 52, §§ 19-21; *ante*, 82

² 30 Conn. 118.

ting estate; the residue to be paid by the city or town where the sidewalk is located. When the sidewalk has been constructed and graded it is to be maintained at the public expense. And no sidewalk constructed and graded shall be dug up or obstructed in any part thereof without the consent of the public authorities.¹ No city or town can maintain an action at law to recover of an abutter the amount of any assessment upon him. The assessment is a lien on the estate; and the only way the city or town can collect the same is to enforce the lien given by the statute.²

The acts giving authority to cities and towns to assess one-half the expense of sidewalks upon the owners of abutting estates, are not unconstitutional because no right of appeal to a jury is given to a party aggrieved by the doings of the municipal officers, or because they do not fix the rule of proportion to be followed in making the assessments. The purpose of the legislation is to provide for improvements in the public streets, the expense of which shall be partly borne by those immediately interested, and whose estates are benefited thereby. This is merely a mode of taxation, and clearly distinguishable from the exercise of eminent domain, and does not like that require that a right of appeal to a jury should be secured.³

But the mode of assessment must be reasonable, and the amount assessed to an abutter must be a propor-

¹ Pub. St. c. 50, §§ 20-22.

² 114 Mass. 546.

³ 114 Mass. 388.

tionate part of the whole expense.¹ And the municipal officers have no right to join in a single assessment the expense of constructing sidewalks in different streets. Each street should be considered separately, and with a view to its own special circumstances. The power to treat two sidewalks in two distinct streets as one, for the purposes of assessment, is not given by the statute. Each estate is liable to assessment, not necessarily for the expense of that portion of the sidewalk upon which it adjoins or fronts, but according to a just proportion of the collective amount of all the expense incurred on the same side of the same street.²

The obligations of a city or town to keep the highways within its limits safe and convenient for travellers, does not necessarily extend to the whole width of the highway as located. When sidewalks are not made, it is sufficient if there is a carriage-way of suitable width, properly constructed and protected.³ But if the travelled part of a highway is allowed to become widened so as to be equally suitable for travel the whole width of the road, then the whole width must be kept safe and convenient.⁴ And likewise, if any portion of a highway is permitted to be used by the public as a sidewalk, for any considerable length of time, with the knowledge and acquiescence of the town or city where the same is situated, it may be presumed to be a recognized part of the wrought and finished

¹ 124 Mass. 464.

² 106 Mass. 352.

³ 100 Mass. 255.

⁴ 56 N. H. 428.

track which ought to be kept in suitable condition for public travel.¹

It has been decided in England, and it ought to be good law everywhere, that the right of the public to use a highway extends to the whole road, and not merely to the part used as *via trita*; and therefore ditches, fifteen inches wide and ten inches deep, cut completely across the strips of grass-land at the sides of the road, so as to amount to a danger to persons walking along the strips, amount to a nuisance and obstruction, which the courts on application will order to be abated.²

Foot-paths across public commons, which have not been laid out by municipal authority, are not like sidewalks a part of the system of highways in any city or town; and a city or town is not liable for a defect in any such foot-path.³ It has been decided that if it can be said that there is any duty in a city or town to construct paths over public commons, or to keep such paths in repair, it is a corporate duty, imposed upon it as the representative and agent of the public and for the public benefit. For a breach of such a duty a private action cannot be maintained against a town or city, unless such action is given by statute.⁴

But foot-paths outside the highway which have been laid out by municipal authority for public use, must be

¹ 110 Mass. 334.

² 50 Law Times Rep. n. s. 112.

³ 128 Mass. 569, 583; 102 Mass. 489; 120 Mass. 300.

⁴ 122 Mass. 344; 128 Mass. 567.

kept in suitable condition for foot-passengers.¹ And cross-walks, like sidewalks, are a part of the public highway; and cities and towns are under the same obligations towards them as they are towards the rest of the highway.² If the municipal corporation neglects to provide crossings at places required to meet the needs of public travel, and crossings at those places are established by long-continued public use, the corporation is liable for injury from defects therein.³

¹ 120 Mass. 300; Pub. St. c. 49, § 83.

² 60 Barb. 378; 43 How. Pr. 366; 50 Ill. 61.

³ 134 Mass. 507; 59 N. H. 24; 57 Wis. 630.

CHAPTER XXI.

BICYCLES AND TRICYCLES.

WITHIN the past few years a new species of vehicle has appeared upon the highways of the world. Among the marvellous inventions of the nineteenth century, the vehicle of the road has shared in the improvements which have everywhere measured the progress of mankind in mechanical ingenuity and scientific attainments. Good roads are always evidences of high civilization; and with good roads we may always look for convenient and artistic methods of travel. The noble horse has been used for travel since the dawn of human history; and, like man, his physical and mental capacity is probably no greater now than three thousand years ago. But everything else used for travel has been wonderfully improved since Joseph rode in Pharaoh's chariot, and Jacob and his family in Pharaoh's wagons. But of all the carriages ever used for the conveyance of persons along the ordinary highways, the modern bicycle and tricycle may easily claim the first place for lightness of weight, facility of management, and perfection of mechanism. The bicycle is verily something new under the sun. It was never among the lost arts. It weighs from twenty to sixty

pounds, and costs from fifty to one hundred and fifty dollars. It depends upon motion for its balance. It will not stand upright for a single moment at rest, but when kept rolling it maintains a perfect equilibrium. It is, according to Justice Mellor's idea, a compound of man and wheels, — a kind of centaur. When it passes a foot or carriage passenger at night, it flits by as noiselessly as a ghostly traveller, as swiftly as a winged word of Homer, and as awe-inspiring as Elijah in a chariot of fire. As it spins around the world, should the law of gravitation become relaxed sufficiently to let it move off into space, we should expect it to travel on in a majestic manner among the planets and the stars.

Besides being a convenient and cheap mode of travel, the use of the bicycle, swing-bicycle, tricycle, and tandem-tricycle is highly beneficial to the public in other respects. It will have a tendency to cause the public roads to be kept in suitable condition for carriage travel. Every rider of one of these vehicles will learn by experience the superiority of a smooth and hard road over a rough and sandy one, and of a well-graded road over a steep-graded one; and, consequently, he will use his influence for the improvement of the highways both for himself and for the horses and carriages of other persons. And, moreover, it will improve the health and physical endurance of many fragile persons, and be promotive of physical culture generally. It is an economic method of travelling, as it costs much less to keep one housed and in good repair than it does to keep

and care for a horse and carriage. It is well adapted to afford intelligent exercise suitable to human needs, and of a kind which is at once fascinating, invigorating, and graceful. In the education of the people into the belief that the cultivation of bodily health is as essential and profitable as the cultivation of mental development, it is undoubtedly destined to play an important part. The use of these vehicles has been greatly developed within a few years in all civilized countries. They have undoubtedly come to stay, and ere long they will be as common on all well-travelled thoroughfares as the ordinary horse-carriages and wagons.

As they come into general use, the legal status of the machines on the highway becomes an interesting and important question to their owners and the public at large. There is very little statute or adjudicated law bearing directly upon their use in our public streets and ways, but no doubt many of the well-established principles of our road law are as applicable to them as to the ordinary road vehicle. Every new invention or discovery produces changes in the law. The main principles of the law remain substantially the same from one generation to another; but new applications and modifications of these principles are constantly necessitated by new inventions and discoveries in the mechanic arts, which change the habits and modes of life of the people. The fact that bicycles and tricycles have come so suddenly into every-day use without more acts relating to them on the statute books, or adjudicated cases in law reports, indicates that their

use is not attended with much inconvenience to the public, or injury to life, or damage to property. There seems to be little disposition in the State legislatures of this country, or in the parliaments of Great Britain and her colonies, to encumber the statute books with special legislation concerning their use, and very likely cycle law will be established slowly, from precedent to precedent in the courts, without the aid of legislative enactments.

If they are treated in law the same as ordinary road vehicles now known to the law, then their use is already regulated by the customs and usages of generations past, and the principles of law applicable to them have been settled by the decisions of the highest courts of the world. But if they are considered in law not as ordinary road vehicles, but with special favor or disfavor, according to the varying circumstances of each case, then there will be confusion and uncertainty in the law relative to their use. Is there any good reason why they should not be treated the same as ordinary road vehicles? Some of the enthusiastic votaries of the cycle have been disposed to regard the machine as the fit accompaniment of every wheelman on all occasions and in all places, and to this end they have invoked the aid of the Constitution of the nation and those of the several States which guarantee the protection of the property and life of every well-behaved individual. They have claimed the right to ride their wheeled steeds on the sidewalks of cities, and in all public parks and commons; and because they have

been prohibited from so doing by some city ordinances and by some park commissioners, they have thought their rights and privileges were unjustly abridged. The use of cycles under certain restrictions on sidewalks is permitted by ordinance in Paris and some other European cities, and such use is not specifically prohibited by statute in most of the cities of this country and of the English-speaking cities of the world. Neither is there a special prohibition of the use on sidewalks of carriages, wagons, sleighs, and other road vehicles and animals; but there is a clear distinction in law between the right to use a sidewalk on foot and the right to use it with horses and cattle and carriages.¹ Sidewalks are chiefly and primarily intended for the use of foot-passengers, and it seems reasonable that the use of them should be forbidden to bicycles, tricycles, and other vehicles. It seems no court of recognized authority has ever decided, as a matter of law, that a bicycle or tricycle cannot be used on a sidewalk; and should the question arise, it would probably be left to the jury to say whether the sidewalk had been improperly used, under all the circumstances of the case.² Bicycles and tricycles are permitted to be used in Fairmount Park, Philadelphia, and in many of the other public parks and commons of this country. But their use is not allowed in some public parks and commons. And where their presence is forbidden, by parties duly authorized by legislative authority, the courts sustain their decisions as within their discretionary power.

¹ 130 Mass. 330.

² 2 Foster & Finlason, 570; 138 Mass. 1.

In England, by Act of Parliament,¹ the county authorities are given power to regulate the use of bicycles on the highways, and any violation of their rules and regulations relating thereto is punishable by a fine not exceeding two pounds.

In this, and many other States of the Union, cities and towns have authority to regulate by by-laws the use of the public ways therein within the limits prescribed by the legislature.² They may prescribe the maximum rate of speed at which animals and vehicles shall be driven, and also prohibit their use upon the sidewalks and their stopping upon the crosswalks. This authority is vested in the county commissioners in some of the States, and frequently park commissioners and trustees of cemeteries are clothed with power to regulate and prescribe the use and management of animals and vehicles within the territory under their control.

In the matter of Wright and others,³ it was decided that the Park Commissioners of New York City have power to adopt ordinances prohibiting the use of bicycles in the Central and other city parks. The Act of the Legislature creating the board of commissioners, gave them the full and exclusive power to govern, manage, and direct the said parks; to pass ordinances for the regulation and government thereof. The parties under arrest for violating the ordinance of the commission, claimed that the ordinance was unreasonable and illegal. The court, after reviewing the case, came to

¹ 41 & 42 Victoria, c. 77, § 26. ² Pub. St. c. 27, § 15 and c. 53.

³ 36 N. Y. 357.

the conclusion that the ordinance was within the discretionary power of the commissioners, and that the court cannot say, as matter of law or fact, that it is unreasonable.

Most of the existing statutes relating to highways and their use were enacted before the bicycle and tricycle were known, or before they had come into general use, and therefore they have to be interpreted by the courts in their application to these vehicles, in view of the object of each statute, rather than by any specific use of the language therein. So there may lurk in these old statutes possibilities of safety, and perchance of danger, to the cyclists little dreamed of by the authors of the acts.

In 1879, one Goodwin rode his bicycle at such a furious pace through a public street in London that he knocked down and injured one Taylor. Taylor sought redress at law, and the magistrates of Highgate convicted Goodwin for furiously driving a carriage in a highway, under an Act of Parliament passed in 1836, which prohibits any person from riding any horse or other animal or driving any carriage so furiously as to endanger the life or limb of any passenger. Goodwin having succeeded in riding his bicycle at a breakneck speed through a public street, appealed the case, and undertook to drive his bicycle through the Act of Parliament. His counsel argued before the Queen's Bench that a bicycle is not a "carriage" within the meaning of the act, nor can it be said to be "driven" in the ordinary sense of the term. Bicycles were unknown

when the act was passed. The act refers to carriages drawn by horses or other animals. A person is never said to "drive" a bicycle. The fact that a bicycle has wheels does not make it a carriage. A bath-chair or wheelbarrow would not be a carriage within the act. It would be far too wide a construction to hold that every apparatus by which a man is carried is a "carriage." Wheeled skates would be a carriage under such construction.

The Court of Queen's Bench decided that Goodwin had been properly convicted, and said: "It may be that bicycles were unknown at the time the act was passed, but the legislature clearly desired to prohibit the use of 'any sort of carriage' in a manner dangerous to the life and limb of any passenger. The word 'carriage' is large enough to include a machine, such as a bicycle, which carries the person who gets upon it, and such person may be said to 'drive' it. He guides as well as propels it, and may be said to drive it as an engine-driver is said to drive an engine. The furious driving of a bicycle is clearly within the mischief of the act, and seems to be within the meaning of the words, giving them a reasonable construction." Thus it has been decided that a tricycle capable of being worked by steam as well as by treadles, is a locomotive within the meaning of the Locomotives Act of Parliament, 1865, which provides that "every locomotive propelled by steam or any other than animal power on any turnpike road or public highway, shall be worked" according to the rules and regulations thereafter contained. Sir

Thomas Perkyns, Bart., invented the motor tricycle after 1865, and used it upon the public highways without complying with the rules and regulations of the Locomotives Act. It weighed about two hundred pounds, and the tires of the wheels were of India-rubber, and were about one and a half inches in width. It was capable of being propelled by the feet of the rider, like the ordinary tricycle, or by steam as an auxiliary, or by steam alone. There was no smoke, no escape of steam into the air, nor anything to indicate that it was being worked by steam, nor anything which could frighten horses, or cause danger to the public using the highways beyond any ordinary tricycle. Lord Coleridge, C. J., in rendering the decision of the Court of Queen's Bench, said: "It seems scarcely necessary to do more than to read this description, in order to show that the tricycle in question comes within the words of the above statutes as being 'a locomotive propelled by steam, or any other than animal power.' It cannot be less within this description because it is capable of propulsion in the ordinary way by the foot of the rider, it being expressly found in the case that the steam power was sufficiently powerful to move it if desired, without the foot motion. It was argued, however, on behalf of the appellant, that such a machine could not have been within the contemplation of the framers of the statutes in question, which apparently were intended to be directed against the use of locomotives larger in size and heavier in weight, and therefore more dangerous to persons using the public highway, than the locomotive

in question. It is probable that the statutes in question were not pointed against the specific form of locomotive which is described in this case. Indeed, such a locomotive was not known when they were passed, and possibly not contemplated. As, however, it comes within the very words of the statutes, it seems to us that we cannot on any true ground of construction exclude it from their operation; and it may be observed, that even if the fullest scope be given to this argument, the explanation that the principle of invention was capable of extension to larger carriages, would show that a locomotive similar in construction and principle to that which is the subject-matter of this case, might, by reason of its size and power, become much more dangerous; and if this be so, the question to be considered in each case would not be whether the locomotive in question properly came within the language of the statutes, but whether, by reason of the size and weight of the particular machine, it came within the mischief supposed to be contemplated, which shows that such an argument is vicious.”¹

In North Carolina the charter of the Wilmington and Coast Turnpike Company has been so amended by legislative enactment that “no person shall use upon the roads of said company a bicycle or tricycle, or other non-horse vehicle, without the express permission of the superintendent of said road.”

The wheelmen of Wilmington have brought the matter before the Supreme Court of that State, where it is

¹ 7 Q. B. D. 317.

still waiting decision on questions of constitutionality. But in England it has been decided that wheelmen have a right to travel the turnpike roads with their cycle vehicles, and that, too, without paying toll. In *Williams v. Ellis*,¹ the court in deciding that a bicycle is not a "carriage" within the meaning of the Turnpike Act, said, that "when the words of the legislature do not directly apply to the particular case, we must consider the object of the Act; and therefore in *Taylor v. Goodwin*,² it was held that the words 'furiously driving any sort of carriage,' applied to a bicycle; for it was the object of the act to prevent injury from the furious driving of any kind of vehicle.

"The present act begins with imposing a toll upon particular carriages, which are described, 'or other such carriage;' and then imposes a further toll upon 'every carriage of whatever description and for whatever purpose, impelled by steam or any other power not being that of horses.' The carriages here referred to must be carriages *ejusdem generis* with the carriages previously specified. If a bicycle were held liable for toll as a carriage, I do not know where we could draw the line."

In Kentucky, by an act of the legislature, bicycles are not permitted to be used in certain counties of the State; and in Oregon, by legislative enactment, every bicycle rider is required to dismount one hundred yards in front of an approaching team, and to remain so until it has passed. It is easy to conceive that bicycling in that State, on a well-travelled thoroughfare, would not

¹ 5 Q. B. D. 175.

² 4 Q. B. D. 228.

be the mode of travel selected by those in a hurry; nor would it be a favorite method of recreation for those not blessed with everlasting patience. Whether this legislation was prompted by the timidity of the female voters of that State, or by the natural timidity of the horses in that part of the country, it does not appear in the legislative act; but whatever was the moving cause of the act, it will not encumber the statutes of that State after the horses have seen a few bicycles and discovered that they will not harm them; and especially after the women have enjoyed a few rides on tricycles or tandem tricycles, and have discovered the beneficial effects of the use of the bicycle upon their husbands, sons, and male friends. A recognized legal authority on cycle law,¹ in a recent article on "Legislation as to Highways," well remarks: "The key to the law of bicycling, not only constitutional, but legislative, which we now come to consider, lies in the fact that the bicycle is a carriage. Plainly as this simple fact should appear to all, it seems to be left out of sight still by many. No correct definition of carriage or vehicle can be found or framed, or could have been found or framed fifty years or a century ago, that will not include the most modern bicycle. Although judicial and municipal law has recognized and expressed this fact both in this country and in Great Britain, it is one of those ineliminable facts in the nature of things that cannot be made or changed by any legislative or official decision, any more than the fact that 'Maud S.' or an

¹ Charles E. Pratt, Esq.

Alderney bull are domestic animals. The chaise and the velocipede of Holmes's and Sumner's early days were not the village cart or the tricycle of to-day, but they were no more and no less carriages. Nor does it require reference to exceptional performances, like the European tours of the Pennells, Laumailé's thirty thousand leagues in Europe, or Stevens's twenty thousand miles in three continents, to make the fact appreciable, when the bicycle, as a matter of common knowledge, is put by thousands in most of our States to every use of a wagon, save that of hitching a horse to it, perhaps, of painting signs on it. Since the conservative English High Court of Justice, Queen's Bench Division, could find and hold eight years ago that the statutes of William IV. included bicycles in their provisions concerning 'carriages,' we may safely assume that the highway statutes of our States also relate to bicycles. In this, however, we are further warranted by the decision of our own tribunals, from justices of the peace to the Supreme Courts, constituted interpreters of our statutes, that the bicycle and tricycle being carriages, they and their riders are subject to the same laws as other carriages and drivers. Only make the wheelmen and the non-wheelmen appreciate this fact at its value, that the bicycle is a carriage, and the bicycler a wagoner, and most of the misunderstandings and friction will disappear. The present status of wheelmen as to rights and remedies is then easily understood."

When the various kinds of road cycles are recognized as vehicles or carriages within the meaning of the stat-

utes relating to highways, it will be easy to define the legal rights and duties of wheelmen in the use of their vehicles upon the public roads. "The law of the road" and the decisions of the courts relating thereto will be applicable to them. Under this law they are bound to use on the highway only such cycle carriages as are in a safe and roadworthy condition; they must ride and drive them with due care and discretion, and at a moderate rate of speed; they must be careful not to collide with other vehicles or persons, and to use the same care in crossing foot-walks as is required of carriage-drivers; they must turn to the right on meeting other vehicles or teams, and pass by them on the left side when going in the same direction; and they must keep off the sidewalks in streets, and foot-ways in squares, parks, and commons; and in fine, generally, not go where it would not be proper and allowable to go with a horse and carriage.

If a wheelman meets a horse which is frightened at his compound machine of "man and wheels," he ought to stop and do his best to prevent an accident, the same as the driver of a top carriage would be required to do should he meet a horse afraid of a top carriage; but should a horse become frightened at his vehicle and run away without any fault on his part, he would not be liable for any injuries suffered or any damages incurred, because beyond question the bicycle and tricycle are suitable vehicles to use on a way prepared and intended for public travel in the present state of our civilization. A tricycle is probably entitled to half the road on

meeting animal teams, but whether the same rule should be applied to the bicycle is an open question. The statutes requiring the drivers of carriages or other road vehicles to yield one half the road upon meeting other carriages or vehicles, were passed before the ordinary legislator dreamed that a vehicle no wider than a single wheel could ever be used for the conveyance of man or property. At the time these statutes were passed the ordinary road vehicles varied very little in width, and the objects of the statutes were to secure to travellers equal rights in the highway, and their necessities were the basis of those rights. Now, by a wonderful and new invention, one traveller is provided with a vehicle which needs only a small portion of the road for his reasonable accommodation, and therefore the courts in the interpretation of these statutes may decide that, in the light of the reasons and objects of their passage, a bicycle is only entitled to a reasonable portion of the road.

INDEX.

ACCIDENT,

- no liability for inevitable, 44.
- notice required, 81, 117.

ANIMALS,

- to be guarded and restrained in highway, 58, 59, 66.
- by-laws relating to, 60.
- may be grazed in highway by owner of the fee, 65.
- affected by contagious diseases, not allowed in highway, 74, 75.
- barking dogs poor property, 82.

ASSESSMENT,

- of damages by town or county authorities, 31.
- for the construction of sidewalks, 117, 118.

AWNINGS, liability for defective, 109.

BICYCLES,

- among the marvellous inventions, 122.
- their place in modern travel, 123, 124.
- their treatment in law, 125.
- should not be allowed on sidewalks, 126.
- use in public parks and commons, 126.
- use regulated by public authority, 127.
- how existing statutes interpreted, 128-136.
- the law relative to their use in England and the United States, 128-134.
- the duties of wheelmen, 135, 136.
- different kinds of cycles, 123.

BOUNDARIES of highway to be respected, 64.

BRIDGE, railings required, 34.

CARELESSNESS. (See NEGLIGENCE.)

CATTLE, right to pasture upon highway, 65.
(See ANIMALS.)

CHILDREN, rights of, in highway, 34, 113.

CLEANLINESS NEXT TO GODLINESS, 93.

COLLISION between travellers and vehicles, 46, 47.

COMMONS, 39, 120.

CONSTRUCTION OF ROADS,

Roman method of, 3.

Chinese method of, 6.

Mexican and Peruvian method of, 6, 7.

suitable drainage the first requisite of, 17.

all surface water must be disposed of, 17.

necessity of suitable width, 17, 18, 34.

the road-bed should be raised and crowned, 18.

the road-bed should invite travel at all points, 19.

macadamized roads the best and cheapest, 19.

how they should be made, 19, 20.

earth-roads, and how they should be made, 20, 21.

proper width of road, 17, 34.

COUNTY COMMISSIONERS,

have power to lay out or alter ways, 29.

may lay out in town or from town to town, 29.

roads located by them are public highways, 29.

they constitute appellate tribunal, 30.

their decisions final on questions of public necessity and convenience, 30.

have power to assess damages, 30, 31.

authority to regulate cycle travel, 127.

CROSSWALKS, 121. (See SIDEWALKS.)

DAMAGES,

for land and property taken, 30, 31, 62.

cities and towns liable for bad roads, 32, 34.

master liable for servant's carelessness, 43.

driver liable, if team not in roadworthy condition, 42.

(See DRIVING.)

for fast driving, 42, 43.

for vicious and ill-trained horse, 42, 77.

DAMAGES (*continued*).

- for refusing to yield equal share of road, 45, 47.
- for animal affected by contagious disease, 74.
- for driving without bells in sleighing time, 75.
- for poor horsemanship, 76, 77.
- but not for inevitable accident, 44.
- additional, when new servitude established, 62, 63.

DEDICATION,

- of ways, 28, 70.
- how made, 28, 29.

DEFECTS, what are, 81, 114-116.**DOG,** barking, 83.**DON'T**

- use intoxicating liquor, 73.
- fail to look out for engine, 74.
- drive diseased animals, 74.
- drive sleigh without bells, 75.
- learn horsemanship on highway, 76.
- ride with careless driver, 76.
- drive a runaway horse, 76.
- let horses get beyond control, 77.
- encroach upon highway, 78.
- ride on platform of coach, 78.
- jump off coach in motion, 79.
- injure milestones or guideposts, 79.
- go outside of highway, 80.
- fail to give notice, 81.
- suppose that every accident is caused by a defect, 80, 81.
- convey except subject to ways, 82.
- keep barking dog, 82, 83.

DRAINAGE,

- importance and necessity of, 17.
- proper method of, 17.
- surface drainage of road may be turned upon adjoining land,
32, 68.
- adjoining owner may drain upon road, 68.

DRINKING TROUGHS,

- who may establish and maintain, 37.
- they ought to be at suitable places, 38.

DRIVING,

what is careless driving, 42, 43, 77.

horses and carriages must be roadworthy, 42, 77.

when bells required, 75.

DRUNKENNESS, 73.

EMINENT DOMAIN, 62, 63.

(See USE OF HIGHWAYS.)

ENJOYMENT OF THE ROAD, 95.

how to enjoy road travel, 96.

what may be enjoyed on the way, 99-103.

FARMER,

as a landscape gardener, 91.

as a forester, 91.

his ideal home, 101.

FEE IN HIGHWAYS,

vests in owner of adjoining land, 62.

entitled to the use of land for all purposes not incompatible
with public enjoyment, 62.

reversion of fee, after abandonment, 62.

the rights of the owner as to drains, 64.

as to pasturage, 64-66.

as to the crops, 64, 65.

as to trespass, 64.

as to loafers, 65.

FENCE,

not required by road, 64.

barbed wire not allowed on road having sidewalk, 106.

FOOT-PATHS, 84. (See SIDEWALKS.)

as promoters of health, 84-87.

as avenues to Nature, 87.

as one of the charms of old England, 87.

towns and cities have authority to lay out, 88.

should be alongside the road-bed, 88.

across public commons, not laid out by public authority, no
part of way, 120.

legal foot-paths outside of highway must be kept in repair, 120,
121.

FOUNTAINS, 37.

GRADE, importance of good, 15, 16.

GRASS, wayside, 99.

GUIDEPOSTS,

law as to erection and maintenance, 36.

penalty for neglect to erect same, 37.

HIGHWAY. (See ROADS and ROADSIDE.)

HOME,

neatness and intelligence of, 90-93.

how to be situated, 91.

rural and typical, 101.

HORSE, vicious, 76, 77.

HORSE-CARS, 54.

entitled to right of way, 49.

ICE AND SNOW,

on roads and sidewalks, 80, 81, 107, 114.

falling off roofs, 109.

LAW OF THE ROAD,

the necessity of, 45.

as to meeting, 45.

as to passing, 45.

not inflexible, 46.

effect of deviation from, 46.

the non-observance of, does not excuse the negligence of others,
46.

as to meeting *on the sudden*, 47.

when road unoccupied, either side may be taken, 47.

does not allow leading traveller to obstruct, 47.

as to meeting at junction of two streets, 47.

as to the travelled part of road, 48.

as to light and heavy teams, 48.

as to street-railways, 49.

as applied to pedestrians, 51, 52.

to equestrians, 55.

to rate of speed, 42, 43.

to road-worthiness of vehicle, 42.

to wheelmen, 135.

LIGHTING of streets not required by law, 115.

LOCATION OF ROADS,

- importance of good location, 12, 13.
- the relative value of straight and curved, 14, 15.
- mere straightness should yield to good grade, 16.
- roads should follow the natural streams, 16.

MOUNTAINS, their beauty and value, 102.

NATURE,

- importance of an acquaintance with, 85, 86.
- her teachings necessary for the expansion of the mind, 86.
- the love of, a blessing, 97.

NEGLIGENCE OF PARTY,

- on icy walks, 114.
- in walking, 51, 52.
- in driving, 42, 46, 47, 77, 112.
- in going out of road, 80.
- in riding, 50, 51, 77, 78.
- party in fault liable, 46.
- of servants, 43.
- party, as affected by driver's negligence, 76.
- of stage-coach proprietors, 54-56.
- in driving animals in road, 59.

NOTICE required in case of accident, 81, 82, 117.

OMNIBUSES, 54.

ORNAMENTAL GROUNDS, 40.

PARKS, 39.

PASSENGERS, in omnibuses, stages, and horse-cars, 54-56.

PEDESTRIANS,

- may walk on road, 51.
- had better walk on sidewalk, 51, 105.
- must look out at crossings, 52.
- may travel on the Lord's day, 53.

PRIVATE WAYS,

- how established and discontinued, 70.
- as ways of necessity, 70.
- by whom to be kept in repair, 71.

PRIVATE WAYS (*continued*).

the law of the road applies to, 72.

rights of the owner of the way and of the fee, 71, 72.

PUBLIC SPIRIT, necessary and beneficial, 89, 90.

RAILINGS to be kept up, 34.

RAILWAYS,

street, 49.

engine, 74.

REPAIRS,

should be continual, 22.

clay and sand pits may be taken for, 32.

surface water may be drained upon adjoining land, 32.

obstructions may be removed, 33.

trees may be cut down or trimmed, 33.

soil may be dug up and carried away, 33, 34.

railings to be kept up, 34.

when whole width of road should be repaired, 119.

ROADS,

a means of civilization, 1, 9-11.

Macaulay, Bushnell, and Carlyle on, 1, 2.

ancient road from Babylon to Memphis, 2, 12.

Roman roads, their rise and decay, 3-5, 13, 14.

Carthaginian roads, 2, 3.

Chinese roads, 6.

ancient roads of Mexico and Peru, 6-8.

roads of the Middle Ages and after, 5, 8, 9.

location of, 2, 12-16.

importance of good location, 13.

two ways of location, straight and curved, 14, 15.

importance of good grade, 16.

public have right to use whole width, 120.

construction of, 3, 6, 17-21.

new roads, 28, 30.

supervision of, 5, 23, 24.

enjoyment of, 96-104.

repairs of, 22-27, 32.

laying out of, 28-31.

the law of, 45-49.

use of, by adjoining owners, 62-69.

ROADS (*continued*).

public use of, 42-44.

purposes for which used, 5, 7-61.

ROADSIDE,

how to be kept, 94.

trees by, 100.

flowers by, 98.

grass by, 99.

SERVANTS, masters liable for acts of, 43.

SHADE-TREES,

appropriations for, 39.

where to be planted, 39.

penalty for injury to, 40.

improvement societies may plant and care for, 39, 40.

by roadside, 93, 100.

enjoyment of planting, 90, 92.

on the farm, 93.

SIDEWALKS. (See CROSSWALKS and FOOT-PATHS.)

part of highway, but distinct, 105.

may be used by footmen, 105.

by adjoining owners, 110.

by travellers, 110, 112, 113.

not by wheelmen, 126.

not by gymnasts, 112.

what pedestrians may take along with them, 116.

should be alongside the highway, 88, 106.

should not be fenced with barbed wire, 106.

may be constructed by adjoining owners, 106.

may be constructed by public authority, 117.

not to be obstructed, 106, 107, 118.

must be kept safe and convenient, 107, 108, 118.

adjoining owners not liable for defects not caused by them,
107, 109.

cities and towns liable for defects and obstructions, 108, 109, 111.

individual and corporate liability necessary, 111, 112.

what are defects, 114-116.

snow and ice to be removed, 107, 114.

use regulated by public authority, 116, 117.

notice required in case of accident, 117.

SIDEWALKS (*continued*).

- when safe and convenient, 117.
- when assessments may be made for construction, 117, 118.
- assessment a lien on estate, 119.
- assessment of one half expense not unconstitutional, 118.
- how assessment should be made, 119.

SNOW. (See ICE AND SNOW.)

STAGE-COACHES, 54.

SUNSHINE, the value of, 96, 103.

TREES, 39. (See SHADE-TREES.)

TRICYCLES, 122. (See BICYCLES.)

USE OF HIGHWAYS,

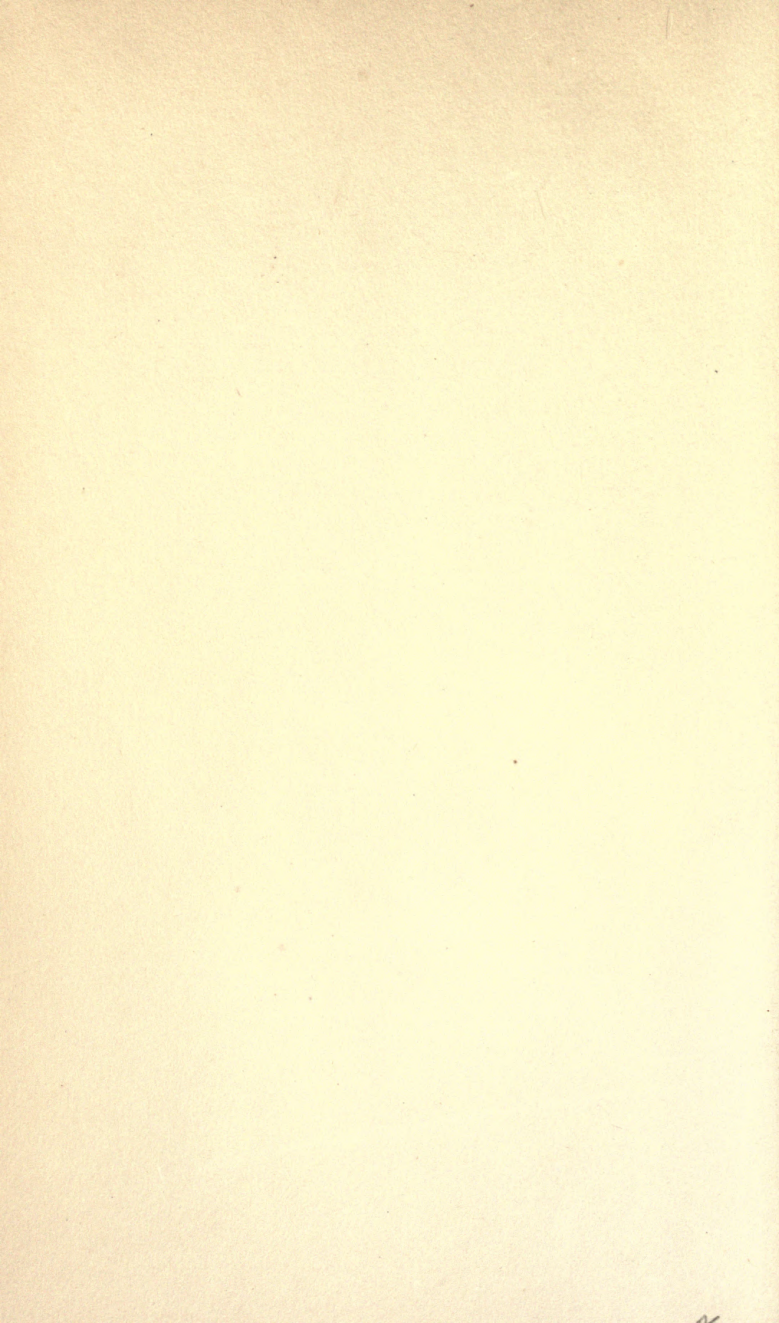
- by the public, 42.
- by adjoining owners, 62.
- purposes for which they may be used, 57-59.
- traveller must use due care, 42.
- must drive at moderate speed, 42.
- masters liable for servants' negligence, 43.
- towns and cities have authority to make by-laws, 60, 127.
- how the use of road may be enjoyed, 95.
- public spirit as to, 89.

VEHICLE, kind allowed in highway, 59, 116.

VELOCIPEDES, 59, 116.

WAYS, 70-72. (See PRIVATE WAYS.)

WELLS, 37.



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