

City of Cambridge.
Office of City Solicitor,

July 30th.

1888.

Hon. W. E. Russell,
Mayor.

Dear Sir:-

Your favor of the 27th. inst. received, containing the following questions, viz:-

- "1st. Is Vassal Lane now a public way ?
- 2nd. If not, is there any obligation on the City to keep it in repair ?
- 3rd. In case of injury to a traveller thereon now, do you think you could successfully defend the City against his claim, if such injury arose from a defective condition of the way ?"

After giving them careful consideration, I answer yes, to the first and second, and no, to the third.

In giving this opinion, I assume it to be conceded that this lane in the early settlement of the town was one of the ways to Fresh Pond and across Fresh Pond Meadows; that questions regarding the expenditure of money upon it have arisen in town meetings from time to time

as early as 1710; that on May 11th. 1772, upon the report of a committee appointed at a previous townmeeting to take into consideration the petition of Deacon Henry Prentice to lay out a public way to his farm, the town voted to refer the petition and report to the Selectmen "for them to act as they shall think best touching the premises. Provided the Deacon is content, and will (so) engage for himself (and) his heirs, with a way being laid out and kept in repair so far as Fresh Pond Bridge and no further;" that for a long period of years, (beyond the memory of living persons,) there has been a general, uninterrupted, and continued use of this lane as a way by the public; that previous to the year 1846, as well as after, for many years it has been definitely marked and bounded by fences, and so presumably dedicated by the owner or owners of the land to the use of the public for the purpose of a highway; and that since 1846, its general and continued use by the public has not been interrupted or interfered with.

Before the Statute of 1846, Chapter 203, (Public Statutes Chapter 49, section 94,) an intentional dedication of the way to the public by the owners of the land with the acquiescence of the town, would have created it a highway, and no specific time was necessary to establish such easement. And the use of the public is competent evidence, as bearing upon the question of the acceptance of the dedication by the town.

Hobbs vs. Lowell, 19 Pick. 405.

Hayden vs. Stone, 112 Mass. 346.

And it has always been the law of this Commonwealth that highways may be established by "actual public use, general, uninterrupted, continued for a certain length of time, (twenty or more years,).

In general it must be such as to warrant a presumption of a laying out, dedication, or appropriation, by parties having authority so to lay out, or a right so to appropriate, like that of prescription or ~~non-appearing grant in case of individuals.~~ It stands upon the same legal grounds a presumption that whatever was necessary to give the act legal effect and operation was rightly done, though no other evidence of it can now be produced except the actual enjoyment of the benefits conferred by it." A highway may be proved by long and continued use and enjoyment by the public.

Commonwealth vs. Coupe, 128 Mass. 63.

The Statutes provide that all highways, streets, &c. shall be kept in repair and made reasonably safe for travellers, at the expense of the town or city in which they are situated, where other provision is not made therefor. And that if any person receives bodily injury or damage to his property through a defect or want of repair in a highway, street, &c.; he may recover damages.

Public Statutes, Chapter 52, sections 1,-18.

Respectfully submitted

Chas McArthur
City Solicitor.

CHARLES J. MCINTIRE,
City Solicitor of Cambridge,
NO 3 PEMBERTON SQ. BOSTON.

Bassal Lane

Opinion

CHARLES J. MCINTIRE,
City Solicitor of Cambridge,
NO 3 PEMBERTON SQ. BOSTON.



City of Cambridge.
Mayor's Office.

Cambridge, July 31, 1888.

To the Honorable, The City Council.

Gentlemen:--

The order in reference to the laying out of Vassal Lane, adopted by the Board of Aldermen July 17, and by the Common Council July 24, has this day received my approval. Inasmuch as some public criticism has been made upon the adoption of this order (which criticism I believe to be mistaken and unjust), it seems to me proper, in approving the order, to state publicly my reasons for so doing. The street is at present below grade, out of repair, and neither safe nor convenient for public travel. If the street is a public way, there is a liability upon the City for any accident that may happen to a traveller because of its defective condition. Some doubt exists as to whether the street is a public way or not. If I believed it were not a public way, I should return without my approval this order, because I believe that the owners or the abutters upon a private street should fill it to grade and put it in proper condition before its acceptance by the city. I have asked the City Solicitor for his opin-

ion upon the question of whether this street is or is not a public way, and I attach to this communication his answer, which definitely settles that question, and must govern our official action. In view of the criticism that has been made, it seems to me that as much publicity should be given to this opinion of the City Solicitor as has been given to such criticism. I am,

Very respectfully yours,

Wm. V. Russell.

Mayor.

In Board of Aldermen Sept 11-1888

Read and placed on file - Sent down for concurrence

Attest Walter W Pike City Clerk

Sept 11 1888

Sept 12 1888

Edward J. Manning

Communication 43
- from -
the Mayor relating to
Vassal Lane
July 31, 1888.