HOUSE . . . . No. 646

By Mr. Cooke of Athol, petition of Howard W. Cooke and others (selectmen of the town of Athol) for amendment of the law relative to recovery of damages caused by defects in public ways. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Eight.

AN ACT RELATIVE TO THE RECOVERY OF DAMAGES FOR DEFECTS IN PUBLIC WAYS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter eighty-four of the General
2 Laws is hereby amended by striking out section
3 fifteen, as appearing in the Tercentenary Edition, and
4 inserting in place thereof the following: —
5 *Section 15.* If a person sustains bodily injury or
6 damage in his property by reason of a defect or a want
7 of repair or a want of a sufficient railing in or upon a
8 way, and such injury or damage was caused wholly
9 by the gross negligence of the county, city, town or
10 person by law obliged to repair the same, he may re-
11 cover damages therefor from such county, city, town
12 or person; but he shall not recover from a county,
13 city or town more than one fifth of one per cent of its
14 state valuation last preceding the commencement of
15 the action nor more than four thousand dollars; nor
16 shall a county, city or town be liable for an injury or

damage sustained upon a way laid out and established in the manner prescribed by statute until after an entry has been made for the purpose of constructing the way, or during the construction and repairing thereof, provided that the way shall have been closed, or other sufficient means taken to caution the public against entering thereon. No action shall be maintained under this section by a person the combined weight of whose carriage or vehicle and load exceeds six tons.

SECTION 2. Said chapter eighty-four is hereby further amended by striking out section seventeen, as so appearing, and inserting in place thereof the following: —

Section 17. A county, city or town shall not be liable for an injury or damage sustained upon a public way by reason of snow or ice thereon.

SECTION 3. Section eighteen of said chapter eighty-four, as most recently amended by section one of chapter one hundred and fourteen of the acts of nineteen hundred and thirty-three, is hereby further amended by striking out, in the second to the fifth lines, inclusive, the words "if such defect or want of repair is caused by or consists in part of snow or ice, or both, and in all other cases, within thirty days thereafter," — so as to read as follows: — *Section 18.* A person so injured shall, within ten days thereafter, give to the county, city, town or person by law obliged to keep said way in repair, notice of the name and place of residence of the person injured, and the time, place and cause of said injury or damage; and if the said county, city, town or person does not pay the amount thereof, he may recover the same in an action

of tort if brought within two years after the date of such injury or damage. Such notice shall not be invalid or insufficient solely by reason of any inaccuracy in stating the name or place of residence of the person injured, or the time, place or cause of the injury, if it is shown that there was no intention to mislead and that the party entitled to notice was not in fact misled thereby. The words "place of residence of the person injured", as used in this and the two following sections, shall include the street and number, if any, of his residence as well as the name of the city or town thereof.

SECTION 4. Said chapter eighty-four is hereby further amended by inserting after section eighteen, as most recently amended by section one of chapter one hundred and fourteen of the acts of nineteen hundred and thirty-three, the following new section: —

Section 18A. Within ten days after the receiving of notice by a city or town of such injury or damage, the city council or selectmen shall hold a hearing for the purpose of investigating the validity of the claim, and any such hearing may be adjourned from time to time. Failure on the part of any claimant to appear at such hearing or to give notice of his inability to appear shall debar him from bringing suit to recover damages. Upon such investigation the city council or selectmen may pay such damages to an amount not exceeding five hundred dollars. No suit to recover damages shall be commenced until a hearing has been held as above provided.

SECTION 5. Section twenty-five of said chapter eighty-four, as so appearing, is hereby repealed.