> sufficient means caution the public against entering thereon; otherwise the town shall be liable for damages arising from defects therein as in the case of ways duly laid out and established."

This section has been construed to mean that, if a private way in a town is opened and dedicated to the public use, the town will not be liable for an injury caused to a person by a defect therein if it has posted a conspicuous and legible notice, at the point where the person entered the street, that the way is private and dangerous. Smith v. Lowell, 139 Mass. 336 (1885).

All this is somewhat changed once a town has taken it upon itself to make repairs.

Mass. G.L. c.84, §25 provides:

> "If, upon the trial of an indictment or action brought to recover damages for an injury received by reason of a defect or want of repair or want of sufficient railing in any way, it appears that the defendant has, within six years before such injury, made repairs on such way, it or he shall not deny the location thereof."

Under this section it has been held that a town which had made repairs on a way within six years before a plaintiff's injury was bound to keep it in repair. Hayden v. Attleborough, 73 Mass. 338 (1856). In addition, cases suggest that the fixing of potholes may constitute a repair giving rise to municipal liability. Gallagher v. City of Medford, 1988 Mass. App. Div. 59, 61 (1988).

C. Limiting Liability

In Wilson v. Boston, 117 Mass. 509 (1875), it was held that a town was not liable for a defect in a bridge or its approaches, which a railroad corporation was bound to keep in repair, although the bridge was part of a highway and the town had made repairs upon the bridge within six years. Referring to the above section, the court said that, although ordinarily proof of repairs made within six years would be conclusive upon the liability of a town for defects, this would not be the result where other provision had been made for repairs. That the municipality had made some repairs upon the approaches did not relieve the railroad of its obligation, nor impose an additional obligation on the municipality and would not render the municipality liable in the action at hand.

Thus, should a town decide to make repairs to a private way, after complying with the terms of Mass. G.L. c.40, §6N, it would be advisable to post warnings at the beginning of such ways and to obtain not only agreements from abutters to indemnify and hold the town harmless from personal and property injury resulting from any defects in such ways, but also to obtain an