

HON. MR. JUSTICE BRITTON.

MARCH 19TH, 1913.

## HOWSE v. SHAW.

4 O. W. N. 971.

*Solicitor—Negligence—Failure to Issue Writ Against Municipality in Time—Evidence—Lack of Instructions—Damages—Mistaken Opinion of Solicitor as to Law.*

BRITTON, J., dismissed with costs an action against a solicitor for negligence in not issuing a writ against a municipality for damages for non-repair of a highway within three months, holding that defendant had received no instructions to proceed from plaintiff who from his municipal experience was as well aware of the statutory limitation as was defendant.

Action against a solicitor for negligence, tried at St. Thomas, without a jury.

Gordon Waldron, and G. G. Martin, for plaintiff.

Colin St. C. Leitch, for defendant.

HON. MR. JUSTICE BRITTON:—On the 27th June, 1911, the plaintiff while driving upon a highway in the township of Southwold was thrown from his "rig" and quite severely injured. The plaintiff attributed his accident to a defective roadway. He was well versed in municipal law, having, as he stated, been for 7 years a member of a township council, and also for 2 other years a member of a county council. He knew that it was necessary, if he intended to hold the township liable for his injury if occasioned by non-repair or highway, to give the township notice, within 30 days of the time of the happening of the accident and to bring his action within 3 months.

On the 25th July, 1911, Wm. Bole, of West Lorne, at the request and on behalf of the plaintiff wrote out, signed, and delivered to the plaintiff to be mailed, a notice in the words and figures following:—

"West Lorne, Ont.,

"July 25th, 1911.

"To the Reeve of the Township of Southwold:

Dear Sir:—Take notice that on June 27th I was severely injured by being thrown from my rig owing to defective highway just east of Shedden, and as a result of such injuries, I claim damages to the amount of five hundred dollars. If so I can, I will wait on your council, when next you meet, if