

accede to the argument that this provision is retroactive, particularly as the Legislature has declared that the Act shall come into force on the 1st July, 1913.

It remains, therefore, to see whether, on the findings, this action is for nonfeasance or misfeasance. It appears to me plain that the cause of action was a piece of wrong-doing, "misfeasance;" the act of placing and keeping this long chain within 4 or 5 feet of the ground was a source of danger—a menace to the public from the time of its installation. Nothing was out of repair; there was nothing to be repaired; what was needed was a structural change by which the danger would be altogether taken away out of reach and touch of those who use the streets.

Besides this conclusion, which is decisive of the case, I am impressed with the plaintiff's argument that this electric light danger is not a matter within the purview of the Municipal Institutions Act, in the clauses relating to the liability to repair roads and bridges.

Judgment should be entered, with costs of action, for the \$500 payable to the adult, and \$1,500 to be paid into Court for the benefit of the infant, payable out to him on attaining majority or otherwise if otherwise ordered.

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STEWART V. BATTERY LIGHT CO.—FALCONBRIDGE, C.J.K.B., IN CHAMBERS—Nov. 11.

*Evidence—Motion for Foreign Commission—Examination of Plaintiffs Abroad—Nature of Action—Refusal of Motion.*]—Appeal by the plaintiffs from the order of HOLMESTED, Senior Registrar, in Chambers, ante 195, in so far as it dismissed a motion for an order for the examination on a foreign commission of some of the plaintiffs. The learned Chief Justice said that, after much consideration and with some doubt, he was of the opinion that, under all the circumstances of the case, the Registrar's order ought to be affirmed. Appeal dismissed; costs of appeal to the defendants in any event. Grayson Smith, for the plaintiffs. W. G. Thurston, K.C., for the defendants.