

that "Time shall be of the essence of this offer": and that the deed should be "prepared at the expense of the vendor."

*Quære*, whether the limitation referred to the completion of the contract, or merely to the acceptance of the offer; and whether the provision as to the deed being prepared at the vendor's expense dispensed with the requirement of the general rule that the purchaser should prepare and tender the deed to the vendor.

Misrepresentation on the purchaser's part, and of there not being a sufficient description of the land within the Statute of Frauds, set up as defences by the vendor, were held not to have been established.

Decree for specific performance was directed.

*Marsh*, K.C., and *W. J. Clark*, for plaintiff. *Watson*, K.C., for defendant.

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Meredith, C.J.C.P., MacMahon, J., Teetzel, J.] [Dec. 10, 1907.

KEECH v. TOWN OF SMITH'S FALLS.

*Highway—Obstruction—Injury to traveller—Knowledge of danger—Negligence—Municipal corporation—Misfeasance or nonfeasance.*

The mere fact that the plaintiff knew that a heap of dirt was standing upon a highway is not sufficient to disentitle him to recover damages from a municipal corporation, for personal injuries sustained by him owing to the heap having been negligently left there unguarded.

*Gordon v. City of Belleville*, 15 O.R. 26, and *Copeland v. Village of Blenheim*, 9 O.R. 19, followed.

It was argued that the municipal corporation in discharging their duty of cleaning the highway, had a right to cause the dirt to be raked into a heap, and that leaving it there unguarded was mere nonfeasance.

*Held*, that the doing of a lawful act in such a way as to endanger the safety of the public was misfeasance—the whole was one act and an unlawful act.

*Rowe v. Corporation of Leeds and Grenville*, 13 C.P. 515, and *Bull v. Mayor of Shoreditch*, 18 Times L.R. 171, 19 Times L.R. 64, followed.

Judgment of the County Court of Lanark affirmed.

*Middleton*, for defendants. *C. A. Moss*, for plaintiff.