Re PRICE AND CITY OF HAMILTON.

Telephone Company's Exclusive Right to Use Streets—Quashing By-Law.

John J. Price, a ratepayer, moved to quash by-law number 297 of the City of Hamilton granting to the Bell Telephone Company the exclusive right within the city for five years to use streets and public lands in the city for the purpose of placing in, on or over the same, poles, ducts and wires, for the purpose of carrying on a telephone business, and agreeing that it would not give to any other company or person for such period any license or permission to use such streets or lands for any such purpose. The applicant contended that the by-law was illegal, *ultra vires* of the corporation, and created a monopoly in restraint of trade and commerce. Motion dismissed with costs.

WILLIAMSON v. TOWNSHIP OF ELIZABETHTOWN.

Municipal Audit—Action for Auditor's Account.

Judgment in action tried without a jury at Toronto. Action to recover $399.14 for services rendered by plaintiff as an auditor. The plaintiff claimed, under section 16 of the Act to make better provision for keeping and auditing municipal and school accounts. The plaintiff was appointed by the provincial municipal auditor to audit the books of defendants. Judgment for plaintiff as prayed with costs.

DOYLE v. DRUMMOND SCHOOL TRUSTEES.

Award Forming New School Section—Setting Aside Without Costs.

Judgment in action tried without a jury at Ottawa. Action by a ratepayer of public school section No. 8, of the Township of Drummond, County of Lanark, to set aside the award of arbitrators appointed by the county council of Lanark, forming a new school section (No. 5) out of territory comprised in sections 8, 9, and 13 of that township. The defendants are the school boards of the three sections and the individuals who were elected trustees of the proposed new section. At the trial the award was held invalid, and the question of costs only reserved. Held, that none of the defendants is blameable for any of the errors which made the award invalid, and none of them endeavored to support it, either in their statements of defence or at the trial, but submitted themselves to the judgment and protection of the court. There is, therefore, nothing upon which to exercise a judicial discretion in favor of plaintiff against any of the defendants. Judgment setting aside award without costs. Re Southwold school sections, 3 O.L.R. 81, referred to.

DICKSON v. TOWNSHIP OF HALDIMAND.

Action for Damages—Misfeasance in Condition of Highway—Time Within Which Action Should be Brought.

Defendants appealed from judgment of Boyd, C., who tried the action without a jury at Cobourg, in favor of plaintiff for $350 damages. Action for misfeasance in the condition of a highway. There was an open ditch by the side of the road, and a stone wall to protect the road; the plaintiff fell against the wall and into the ditch and was injured. Defendants contend that the negligence proved, if any, was nonfeasance (the want of a guard), and the action was not brought in time under the Municipal Act, and also contended that there was contributory negligence, the plaintiff having frequently passed the place where he fell, and knowing the condition. The court held that the finding of the Chancellor that there was no contributory negligence was well supported by the evidence; that it was not the duty of plaintiff to look for danger at every place, even if he knew the highway was dangerous; that all he was bound to do was to use care proportionate to the danger. The Chancellor found that the cause of the injury was the stone wall, and there was evidence to support that finding. That was clearly misfeasance. The defendants had built a wall which was dangerous and caused the injury. They might have put up a guard, but their not doing so did not make the cause of the injury nonfeasance. The cases of Rowe v. Corporation of Leeds and Grenville, 13 C.P. 515, and Bull v. mayor of Shoreditch, 19 Times L.R. 64, governed the case. Pearson v. County of York, 41 U.C.R. 378, is not a satisfactory decision, and the others should be preferred. At the present it must be held that an act of misfeasance is not one to which the statutory limit applies, though that is a question which may have to be considered by a higher court. Appeal dismissed with costs.

COOK v. TOWN OF COLLINGWOOD.

Alleged Defective Highway—Action for Damages—Should be Brought Within Three Months.

Judgment in action for damages by reason of alleged defective highway, tried at Barrie without a jury. The plaintiff, George Cook, on the evening of 2nd December, 1902, between six and seven o'clock, was going to his own house in Collingwood, and in crossing a temporary bridge over a ditch on Hurontario street, he stepped off the bridge and fell into a trench made by workmen for the defendants for the purpose of supplying water to a house recently erected on that street, and was injured. Plaintiff alleged that the trench was negligently made and that defendants were guilty of negligence in leaving it unguarded. Held, upon the evidence, that plaintiff had not succeeded in showing that this accident was, in any way, caused by the negligence of defendants. Even if they were negligent by reason of not guarding the trench, the action would be barred, not having been commenced within three months from 2nd December, 1902. See Pearson v. County of York, 41 U.C.R. 378.

CANADA CO. v. TOWN OF MITCHELL.

Petition for Construction of Cement Walk—Reference to Clerk—Notice—Preparation of Clerk's Report to Council

Judgment on appeal by plaintiffs from judgment of Falconbridge, C.J., (2 O.W.R., 732), after trial at Stratford, without a jury, dismissing the action without costs. A petition had been presented to the council of the defendant corporation for the construction of a cement sidewalk on Ontario street in the town. A resolution was passed granting the prayer of the petitioners, and instructing the clerk to ascertain and determine whether the petition was sufficiently signed. The clerk reported that it was so, and the board of works was instructed to proceed with the work. The plaintiffs, whose property fronted on Ontario street, contended that they had received no notice of the work proposed, and that the method of the clerk in preparing his report as to the amount for which they should be assessed was an erroneous one, and that the assessment, amounting to $300, was therefore unauthorized. Held, that the conclusion was right. Appeal dismissed with costs. Cross-appeal on question of costs dismissed without costs.

EMERSON v. MELANCTHON SCHOOL TRUSTEES.

Neglect of Trustees to Heat School Room—Illness of Teacher—Action for Damages.

Plaintiff appealed from judgment of Street, J., (3 O. W. R. 12) in action tried at Orangeville. The action was by Emma Emerson, a public school teacher employed by the defendants for the year beginning January 6th, 1902,