

It was argued that the plaintiff cried out before he was hurt—but where a council contemplates an illegal act, a motion for an injunction should be made at the earliest possible moment. Had the plaintiff delayed after receiving the information of the council's act and intention, he might well be found fault with if he came for relief after the council had expended money and labour upon the scheme. *Vigilantibus non dormientibus.*

The appeal will be allowed and the defendants directed to pay the plaintiff's costs of action, application to the Local Master, and this appeal.

MIDDLETON, J.

MAY 20TH, 1912.

*HOUSE v. TOWNSHIP OF SOUTHWOLD.

Highway—Telephone Pole Placed by Unauthorised Person on Highway—Resolution of Municipal Council—Invalidity—Liability of Municipal Corporation for Obstruction of Highway by Stranger—Misfeasance—Nonfeasance—Municipal Act, 1903, sec. 606.

Question of law argued (by consent) upon a stated case, before the trial of the action.

The action was for damages for personal injuries sustained by the plaintiff by coming in contact with a telephone pole when driving along the Talbot road. The pole was erected in 1906, by an association which had no statutory or other right to erect poles upon the highway. The township council, on the 5th March, 1906, by resolution purported to grant to the association "the privilege of constructing their telephone lines, as long as they do not cause or have any obstruction in or on the roads and highways of this township."

The action was not brought within the time limited by sec. 606 of the Municipal Act.

J. D. Shaw, for the plaintiff.

Shirley Denison, K.C., for the defendants.

MIDDLETON, J.:— . . . The resolution . . . does not purport to authorise the erection of any pole upon the highway. Moreover, a resolution is not an authorised method of municipal action—a by-law is necessary. . . .

*To be reported in the Ontario Law Reports.