A. C. Kingstone, for the plaintiff.

E. E. A. DuVernet, K.C., for the defendants, the city corporation.

BOYD, C. (after setting out the facts):—The jury were entitled, in dealing with the facts, to utilise their knowledge of the world and of the usages of the day, and to invoke the aid of what had passed before their own eyes and at their own doors. See Regina v. Sutton, 4 M. & G. 542, and Pearce v. Brooks, L.R. 1 Ex. 215, 219. The answers of the jury shew that the defendants were notified of this source of danger within less than six months before the plaintiff was injured, and took no steps in the way of amendment. They find that the lad was exercising reasonable and proper care with regard to the pole—when the danger was latent.

The damages were certainly assessed on a very moderate scale, at $1,500 for the lad and $500 for his father.

The defence raises legal questions: first, that no notice of action was given and no action brought within three months after damage; and, further, by way of application to amend at the trial, that the action is barred by sec. 13 of the Public Authorities Protection Act, 1 Geo. V. ch. 22 (1911), and sec. 29 of the Public Utilities Act, 3 & 4 Geo. V. ch. 41 (1913).

This amended defence should not be allowed. First of all, the Public Authorities Protection Act does not apply to a municipal corporation (see sec. 17); and next, the Public Utilities Act (if it applies, which I do not consider), was not in force when the action was begun. The writ issued on the 22nd March, 1913; the Act received the Royal assent on the 6th May thereafter.

Dealing with the defence on the record: it rests upon the Municipal Institutions Act, 3 Edw. VII. ch. 19, sec. 606, which provides that an action lies against a municipal corporation in case of accident sustained by default to keep the highway in repair. That by a line of decisions is restricted to cases wherein the default is attributable to nonfeasance. Cases of misfeasance were held to lie beyond the statute and untouched by its preliminaries as to notice and time of suing. True it is that, owing perhaps to the many subtle distinctions which have been drawn between nonfeasance and misfeasance, the Legislature has, by 3 & 4 Geo. V. ch. 43, sec. 2, limited the time for bringing actions occasioned by municipal default, whether the want of repair was the result of misfeasance or nonfeasance; but I cannot