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No. 13

DIVISIONAL COURT.

JULY 11TH, 1912.

HOWSE v. TOWNSHIP OF SOUTHWOLD.

3 O. W. N. 1592, O. L. R.

*Negligence—Obstruction on Highway—Telephone Pole Erected by Unauthorised Person—Liability of Municipality—Municipal Act (1903), s. 606.*

Action for damages sustained by plaintiff by collision with a telephone pole on the highway belonging to a company which had no statutory or other right to erect it there.

MIDDLETON, J., *held*, 22 O. W. R. 212; 3 O. W. N. 1295, that the omission of the municipality to remove an obstruction in the roadway placed there by a stranger was mere nonfeasance, and the action not having been brought within 3 months, plaintiff could not recover.

Divisional Court dismissed appeal therefrom with costs.

An appeal from a judgment of HON. MR. JUSTICE MIDDLETON, 22 O. W. R. 212, 3 O. W. N. 1295.

The appeal to Divisional Court was heard by HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B., HON. MR. JUSTICE BRITTON, and HON. MR. JUSTICE RIDDELL.

J. D. Shaw, for the plaintiff.

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

HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B.:—I agree with the learned Judge that the only possible liability would be under sec. 606, arising from failure to repair.

And this is nonfeasance and not misfeasance, and plaintiff's right of action is barred by lapse of time.

Appeal dismissed; with costs if exacted.

HON. MR. JUSTICE BRITTON:—The liability of the township, if any, arose by reason of the highway being in a