

DIVISIONAL COURT.

JULY 11TH, 1912.

* HOWSE v. TOWNSHIP OF SOUTHWOLD.

Highway—Telephone Pole Placed by Unauthorised Person on Highway—Liability of Municipal Corporation—Injury Sustained by Traveller—Municipal Act, 1903, sec. 606—Misfeasance—Nonfeasance—Stated Case.

Appeal by the plaintiff from the judgment of MIDDLETON, J., ante 1295, upon a stated case.

The appeal was heard by FALCONBRIDGE, C.J.K.B., BRITTON and RIDDELL, JJ.

J. D. Shaw, for the plaintiff.

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

FALCONBRIDGE, C.J.:—I agree with the learned Judge that the only possible liability would be under sec. 606 of the Municipal Act, 1903, arising from failure to repair. And this is nonfeasance, and not misfeasance, and the plaintiff's right of action is barred by lapse of time.

Appeal dismissed; with costs, if exacted.

BRITTON, J., gave brief reasons in writing for the same conclusion.

RIDDELL, J., agreed in the result, on the ground that the case stated did not contain any allegation of any act or omission of the defendants which resulted in or allowed the erection of the offending pole.

Appeal dismissed.

MCLEAN v. DOWNEY—SUTHERLAND, J.—JULY 9.

Negligence—Injury to Scow—Damages.]—Action for damages for injury to the plaintiffs' sand-scow by the defendants' negligence, as alleged. The plaintiffs delivered sand in their scow at the defendants' dock on the St. Mary's river, under a contract with the defendants. While the scow was at the dock in the course of unloading, she listed to one side, and was left in that position when the defendants' men who had been unloading stopped work at 6 in the evening. The next morning she

*To be reported in the Ontario Law Reports.