

The plaintiff is not corroborated in this—and defendant denies it, so far as having the matter brought to his notice by either plaintiff or by the stenographer or anyone in defendant's office. As to what took place in October—plaintiff says he knew he was late—and when defendant suggested issuing a writ, the plaintiff said, "no use," that the defendant looked up the law, and came to the conclusion that the 3 months' limitation did not apply, and that then, plaintiff said, "if you go on you do so at your own risk, I will not be responsible."

The defendant's account of it is that when plaintiff wanted the writ issued he raised the question of expiration of time—or that it might have been suggested by plaintiff—that he did look up the law and he came to the conclusion that it was a case of misfeasance—and so the action was not barred; that he told plaintiff so, and plaintiff then directed the issue of the writ, and it was done. A special case was agreed upon, which was heard by Mr. Justice Middleton, and the action was dismissed. See 22 O. W. R. 212.

This was affirmed by a Divisional Court. See 22 O. W. R. 797.

In May, 1912, the plaintiff determined to look for damages from defendant by reason of defendant's negligence in not commencing the action in time. The plaintiff employed Mr. Martin as his solicitor in this action. Correspondence followed, and the position taken by defendant is shewn in his letter of 4th June, 1912, to the plaintiff.

The writ issued herein on the 24th August, 1912. Since the issue of the writ the costs of the action, including the appeal, were taxed against the plaintiff at \$148.66, and on the 10th October, 1912, the plaintiff paid to the sheriff in full of amount of execution for these costs, and for the sheriff's fees, in all, the sum of \$170.

The plaintiff's alleged causes of action are: (1) That the defendant neglected to commence the action against the township until the plaintiff's right of action had become barred by the provision of the Municipal Act, and (2), that the defendant without consulting with the plaintiff and without any instructions from the plaintiff entered an appeal to a Divisional Court from the decision of the trial Judge.

I am of opinion, and so find, that the plaintiff is mistaken in saying that the defendant was actually retained and instructed on the 16th August, 1911, to issue the writ without further instructions from plaintiff.