

set forth that the act was done unlawfully and maliciously. The latter adverb is superfluous—the former was proved.

Now, this case falls under sec. 2, for the reason very plainly stated by Patteson, J., in *Houlden v. Smith*, 14 Q. B. 841, in a passage quoted by Osler, J.A., in *Sinden v. Brown*, 17 A. R. 187. . . . Good faith and honest intention cannot create an authority to act, where the facts before, or known to, the officer shew that the matter is outside of or beyond his jurisdiction.

There is really no discrepancy in any of the cases cited. *Kelly v. Barton*, 26 O. R. 608, 22 A. R. 522, and *Sinden v. Brown*, 17 A. R. 187, are both recognised as of authority and in accord, in one of the latest cases, *Moriarity v. Harris*, 10 O. L. R. 610, which reverses the decision below, cited to me, in 8 O. L. R. 251. . . . *Roberts v. Climie*, 46 U. C. R. 264.

Judgment must, therefore, be entered for the plaintiff with \$100 damages and costs of action.

BOYD, C.

MAY 2ND, 1910.

*EVERITT v. TOWNSHIP OF RALEIGH.

Highway—Non-repair—Iron Pipe Left at Side of Road—Vehicle Upset and Occupants Thrown against Pipe—Upset not Caused by Condition of Road—Negligence—Contributory Negligence—Overcrowded Vehicle—Municipal Corporations—Gas Company—Liability.

Action by husband and wife against the Municipal Corporations of the Townships of Raleigh and Harwich and the Volcanic Oil and Gas Company for damages for personal injuries sustained by the plaintiffs by being upset while driving along the town line between Raleigh and Harwich in a buggy, and thrown, as the plaintiffs alleged, against an iron pipe left by the gas company upon the highway. This happened on a dark night; there were eight persons in the buggy; the horse nearly went into the ditch at the side of the travelled centre road; the driver pulled him round; the wheel clamped, and the buggy upset. The pipe was beyond the ditch, on the part of the road left for pedestrians.

* This case will be reported in the Ontario Law Reports.