

of mortgagor on land for amount of mortgage.

The defendant mortgaged certain land to the plaintiffs, covenanting to pay the mortgage money, and then sold to S., who assumed payment of the mortgage as part of the purchase money. S. then gave a second mortgage to the plaintiffs; and then further mortgaged the land. Default having been made, the plaintiffs sued defendant to recover the amount of his mortgage, and prayed for judgment for the whole amount mortgaged; but neither sale nor foreclosure was asked.

Held, that the plaintiffs were entitled to judgment on the covenant against defendant for the amount of his mortgage, but that defendant was entitled to a lien on the land for the amount of the mortgage as between him and S., which S. had bound himself to pay; and leave was given to defendant to amend and bring the proper parties before the Court so as to enforce his lien.

Muir, for plaintiff.

Cressor, Q.C., for defendant.

Div'l Ct.]

LAMPMAN v. CORPORATION OF GAINSBOROUGH.
Executors and Administrators—Action within six months by person beneficially entitled through death of intestate—Municipal corporations—Evidence of negligence—Contributory negligence.

An action for damages by reason of the death of a person can be maintained under R.S.O. ch. 135, sec. 7, by the persons beneficially entitled, though brought within six calendar months from the death, unless there be at the time an executor or administrator of the deceased.

The action in this case was for damages sustained through the death of deceased by reason of the alleged neglect of defendants in allowing a highway to be out of repair. At the place in question the highway was connected by a bridge crossing a creek which had overflowed and had covered the bridge and embankments on either side with water to the depth of from 4 to 6 inches. The deceased, who was driving along the highway with a horse and wagon, in attempting to cross the bridge was thrown out of the wagon

into the creek and killed. There was evidence of negligence on the defendants' part; and though contributory negligence was set up, it was merely inferential from the way the wagon went over the bridge and the position the horse and wagon were in after the accident. The jury found for the plaintiff.

Held, under the circumstances the Court could not interfere.

German, for plaintiff.

J. K. Kerr, Q.C., and *Aylesworth*, for defendants.

Divisional Court.]

REGINA v. STEWART.

Medical practitioners—Practising medicine—Evidence of—Costs.

The defendant attended a couple of sick persons, for which he received payment, but he neither prescribed nor administered any medicine nor gave any advice, his treatment consisting of merely sitting still and fixing his eyes on the patient.

Held, that this was not a practising of medicine contrary to the provisions of R.S.O. ch. 148, sec. 45, and a conviction therefore was consequently quashed and with costs as against the private prosecutor, as it appeared that he had a pecuniary interest in the conviction.

Hamilton Cassels, for applicant.

Osler, Q.C., contra.

Divisional Court.]

THE MAIL PRINTING CO. v. DEVLIN, et al.

Contract—Election to sue one of two persons—Evidence of.

The defendant D., after some correspondence with plaintiffs as to an advertising contract for the Union Medicine Co., had an interview with plaintiffs as to entering into same. A contract had been drawn up by the plaintiffs in expectation that it would be made by the company, but on ascertaining that the company was not incorporated, it was at plaintiffs' request signed by D., and the entry in plaintiffs' books was "G. A. Devlin, Toronto Union Medicine advertising contract." The first and second payments were made by