

was practically to allow the plaintiff to claim damages for breach of contract for himself as trustee and for the Manitoba Construction Company as cestui que trust. Defendant appealed from this order. It had previously been determined by the Full Court that the company did not appear to have acquired any interest, or incurred any liability, in respect of the contract sued on.

*Held*, that, even if the plaintiff could be treated as a trustee for the after formed company, it could not come in as beneficiary and claim damages against the defendant for breach of the contract.

Plaintiff contended that the case was analogous to those in which a trustee may enter into a valid contract for a cestui que trust not in existence at the time, such, for instance, as a trust created in favour of an unborn child which may afterwards be enforced by it.

*Held*, that, as the contract in question was not a unilateral contract on the part of the defendant, merely beneficial to the company without any obligation on its part, as are most of the contracts made in favour of an unborn child or other non-existing cestui que trust, this contention failed.

Appeal allowed and order allowing the amendments referred to set aside with costs.

*Phippen and Minty*, for plaintiff. *Aikins*, K.C., for defendant.

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Full Court.]

[June 9.

BELL v. WINNIPEG STREET RY. CO.

*Negligence—Contributory negligence.*

This was a judgment dismissing an appeal from the judgment of PERDUE, J., delivered Feb. 24, 1904, which was as follows:—

Action for damages for an injury caused to plaintiff by alleged negligence on the part of the defendants' servants. Plaintiff was a passenger on a street car of the defendants proceeding westwards on Portage Avenue in the city of Winnipeg. He had a seat near the front entrance of the car, which was crowded at the time, there being a number of passengers standing in the passage and others in the vestibule with the motor-man. When the car stopped at Young Street, the plaintiff proceeded to get out by the front entrance, having to work his way through the crowd and past another passenger who was stand-