

Held, that the action was properly brought against both defendants, who were both negligent and both liable to the plaintiff, the defendant corporation, under R.S.O., c. 223, s. 606, for non-repair of the highway, and the defendant company, under their special contract with the corporation, while their liability to the public is declared under R.S.O., c. 199, s. 26. Appeal allowed.

Steers, for plaintiff. *H. L. Drayton*, for defendants.

Falconbridge, C. J. K.B., Street, J., Britton, J.]

[July 7.

WILDER v. WOLF.

Sale of goods—Fraudulent second sale after payment by first purchaser—Cheque—Stoppage of—Money in Court.

Wolf sold Wilder a car load of junk, and in part payment therefor, received three cheques for \$50 each. Instead of delivering the car load to Wilder, he sold it to Mehr, who bought in good faith, giving to Wolf his cheque for \$205 in payment. This cheque was drawn on the Bank of Ottawa in Toronto, but was cashed at the Bank of Commerce in Orangeville, on payment being guaranteed by Taylor who endorsed the cheque. Later on, on Mehr's being served with garnishee proceedings by Wilder, and on his discovering the position of affairs, he immediately stopped payment of the cheque, and paid the amount into court. The Bank of Commerce now looked to Taylor, who had guaranteed payment of the cheque, and he paid the amount, and then claimed the money in court to recoup himself.

Held, that, he was entitled to it, for having paid the amount to the Bank of Commerce, he was now in the position of the holder of the cheque. If the money in court were to be paid out to Wilder, then Mehr, who paid it in, would be liable to pay it over again to Taylor, whereas the cheque in the hands of Taylor would be satisfied by the payment out of court to him of the money which Mehr paid in.

DuVernet, for Wilder. *McBrady*, K.C., for Mehr. *Hughson*, for Taylor.

Osler, J.A.]

IN RE CENTRE BRUCE.

[July 14.

Parliamentary Elections—Petition—Copy—Service.

In the printed copy of the petition served upon the respondent the concluding prayer, had, by mistake of a clerk, a pen stroke drawn through it:—

Held, that though the copy was not strictly a "true copy" of the original, yet as the defect was a purely formal one, and could not possibly have misled the respondent, it was not fatal, and leave to amend was given.

Bristol, and *E. Bayly*, for respondent. *Aylesworth*, K.C., for petitioner.