time in a part of the highway used by foot passengers; that several persons had tripped over it; that the deceased had left her house on a certain evening to go to another house the direct route to which would be by the highway in question; that she came to the other house apparently suffering great pain, and stated that she had tripped on the stone and hurt herself; that about the time she would in the ordinary course have been passing the place in question a witness saw a young girl whose description answered to that of the deceased lying beside the stone, who stated to him that she had fallen on the stone and hurt herself; and that the girl died from peritonitis, resulting, in the opinion of the doctor who attended her, from an injury such as would have been the result of a fall upon a stone;

Held, affirming the judgment of MACMAHON, J., that the statement of the deceased to her friends at the house to which she came, and, assuming that the indentity had been proven, her statement while lying near the stone, were not admissible in evidence as part of the res gestæ, these being at most statements made in reference to the accident after it had happened, and after the deceased had had time for consideration, distinguishable therefore from those involuntary and contemporaneous exclamations made without time for reflection which alone are properly admissible as part of the res gestæ. *Regina* v. *McMahon* (1889), 18 O.R. 502, applied.

Held, however, reversing the judgment of MACMAHON, J., that the identity of the deceased with the person seen by the witness lying near the stone was established; that, excluding her statements, there was ample evidence to justify the conclusion that the deceased had received injuries by falling on the stone; and that as the highway was by reason of the presence of the stone in a dangerous condition and out of repair the defendants were liable.

Masten and *McBurney*, for appellant. *Hill*, for the Town of Niagara Falls. *Griffiths*, for the Township of Stamford.

Trial—Boyd, C.] [Dec. 28, 1903.

ELGIN LOAN AND SAVINGS CO. *v.* NATIONAL TRUST CO.

Company—Shares—Deposit of certificates—Bailment—Trust—Detention—Excuse—Trustee Act—Winding-up direction of Master—Jurisdiction—Detinue—Measure of damages—Price of shares.

The plaintiffs became the holders of 525 shares in the capital stock of a coal company and of 50 shares in a steel company, and deposited the certificates for the shares with the defendant trust company for safe keeping. The defendant trust company executed and delivered to the plaintiff loan company a document under seal by which they acknowledged the receipt of the certificates, and agreed to hold in their safe deposit vaults to the order of the loan company any dividends received in respect thereof, and guaranteed to the loan company that the certificates would be kept