I am of opinion, therefore, that the office of alderman for St. Patrick's ward, in the city of Toronto, should be allowed and adjudged to the defendant, and that he be dismissed and discharged from premises charged on him, and do receive his costs of defence.

Order accordingly.*

UNITED STATES REPORTS.

COMMONWEATH OF PENN. for use of BENJAMIN KELLOGG, &c., v. ALFRED C. HARMER, et al.

1. The liability of a Recorder of Deeds on a false certificate of search, only extends to the party taking the certificate, and does not entitle a future purchaser to recover against him.
2. The sureties of the Recorder of Deeds are not liable for false searches.

Opinion of AGNEW, J., on demurrer.

The first three causes of demurrer are unimportant as they are all amendable, but the amendments should be made. The remaining four bring into view substantial defects. The first to be noticed is the manner of stating the plaintiffs. Kellogg was the person who obtained the recorder's certificate and made the first purchase under it. He sold to Wm. Mullison who afterwards sold to Anna Shott. Under the act regulating suits on official bonds the suit is in the name of the Commonwealth, and as many persons may be suggested plaintiffs who choose to join, but each must declare and assign breaches for his separate injury. Here, however, the pleader has suggested Kellogg as plaintiff for use of Mullison for use of Shott. Kellogg, in this suit, is the only plaintiff, while the others are merely persons to whom his right of action has passed. This being the suggestion of the plaintiff, it is plain that no injury sustained by either Mullison or Shott can be declared upon, for in this form the last assignee merely takes what Kelogg may recover.

In one point of view this cause is also unimportant because is is clearly amendable by striking out the use and permitting the two last named to come in as plaintiffs in their own behalf, the act referred to giving the right of suggestion at any time before judgment. But this change in the relation of the parties from uses to plaintiffs, discloses the real vice of this declaration. The only damages averred are those arising upon the sale from Mullison to Anna Shott, who it is alleged paid $18,000 for the property upon the faith of the false certificate of the recorder of deeds. The declaration being amended, that is, Anna Shott being suggested plaintiff in her own right the question is at once presented, can she found an action against the recorder for damages upon a certificate of search given to Killogg, an antecedent purchaser?

The question is important, as in this city the custom is to pass the certificates of search of deeds, mortgages and judgments with the title papers, each subsequent purchaser taking the title upon the faith of the former searches down to the date of the certificate, and procuring new searches only for subsequent conveyances and liens. While it is important, still I think it is not difficult of determination. So far as the certificate is the evidence of the state of the public record this custom is well enough. A search once made by the officer under his official responsibility is in all probabilities correct and therefore may be relied upon without a new one. It is not often these searches are incorrect, otherwise actions upon false certificates would be more frequent, their rarity is the evidence of official correctness and fidelity; and therefore the certificate has all the force of evidence in the hands of subsequent purchasers, that it had in those of the first. But when you touch the official responsibility of the officer, you reach a different question. It is then not simply the evidence which the certificate affords, but the duty it involves.

What is this duty? It is, as the keeper of the record, to make searches for deeds and mortgages, and other recordable instruments at the instance of those who may apply therefore and pay him the fee, which the law allows him for the performance of the duty. The duty is specific to make it for him who asks for it and pays for it, and therefore has a right to the responsibility of the officer and to rely upon it. It is he who is deceived by the officer's false search because he alone stands in privity with him, by demanding performance of the duty and making compensation for it. The emoluments of the office constitute the consideration of undertaking the responsibility. Who would accept the office and perform such duties involving such heavy liabilities, if he were to be allowed no equivalent. The officer who makes a search stands, in reference to its correctness, in the attitude of an insurer, and his fee represents the premium. To make him responsible to every new purchaser without a fee would be as inequitable as to hold an insurer liable upon a new risk without a new premium.

But when we come to analyse the transaction, we will find it impossible to carry on the notion of continuing liability. The injury arising from a false certificate of search, undoubtedly falls upon the person who obtains and acts upon it; because the fact which causes his injury, to wit, the undisclosed deed or mortgage precedes his purchase. It is the title *he* purchases which it affected. As it is he who suffers by the unrevealed conveyance of incumbrance, the right of action is personal to himself. It does not run with the land, but passes to his personal representative. If he sell with covenants for title, or for quiet enjoyment, his own liability to his vendee requires him to retain it, to make good his own loss. If not answerable to his vendee because he has given no covenant for title, the rule *caveat emptor* which protects him, also protect the officer who is responsible to him. The action being his own he may also end it by accord and satisfaction or by release.

Carry this further. He can recover for the injury which leads him to accept a worthless title or an incumbered estate. This is clear. His damage is the cost of the worthless title, (the case laid in the declaration) which is the price paid. To-morrow he sells for twice as much; and the next day his vendee sells for three times the first sum, which price will be the real damage. If the first one being paid by the recorder, release him, will that satisfy the injury, or will it be only *pro tanto*, leaving the second to run, and

* See *Regina ex rel. Grayson*, v. *Bell*, 1 U.C. L. J. N.S. 130.