

Another defence raised by the city is that the assignment does not come within the terms of sub-sec. 5 of sec. 58 of the Judicature Act, and that, being therefore an equitable assignment merely, the action should have been brought in the name of the assignor. The short answer to this is that all parties are before the Court, and that nothing more is required even in the case of an assignment that is purely equitable.

It is further contended that leaving the documents with the city treasurer was not notice of the assignment to the corporation. I do not deem it necessary to deal with this objection at any length, as it is clearly untenable. The city treasurer was, to my mind, eminently the right official to be served. He is a statutory officer, one of whose duties it is to pay out money, when payable by statute or under a by-law or resolution of the council. The salary of the city solicitor is payable under a by-law, and the responsibility of determining whether it was payable to the city solicitor himself or to his assignee must necessarily rest on the officer whom the statute charges with the duty of making the payment.

There will therefore be judgment against the corporation also, for the sum of \$416.66, the amount of the two instalments falling due between the service of the notice and the issue of the writ. I do not take the notice of 21st December, 1903, into consideration, as I consider it to have been afterwards practically abandoned by plaintiff.

FALCONBRIDGE, C.J.

MARCH 6TH, 1905.

TRIAL.

DOMINION PAVING AND CONTRACTING CO. v. EMPLOYERS' LIABILITY ASSURANCE CORPN.

*Insurance — Employers' Liability — Condition of Policy — Breach — Avoidance of Policy.*

Action to recover the amount which plaintiffs were obliged to pay under the judgment in *Kirk v. City of Toronto*, 4 O. W. R. 496, 8 O. L. R. 730. It was not disputed that the damages recovered in that action came within the terms of a policy issued by the defendants insuring the plaintiffs against claims arising out of the prosecution of their works, but it was alleged that plaintiffs were not entitled to recover by reason of their breach of a condition of the policy as to leaving the defence of any action brought against them to defendants.

G. H. Kilmer, for plaintiffs.

E. E. A. DuVernet, for defendants.