

Without suggesting any impairment of this now well-established rule, and without dissenting from the Chancellor's theory that the parties here are entitled to equal credit, I would have decided that the plaintiff's statement was better corroborated than that of the defendant, and that it was true in fact; and so I am of opinion that the judgment on this branch of the case ought to be set aside, and a verdict entered for the plaintiff against the defendant Kerr

W. N. Douglas, K.C., for the plaintiff. R. McKay, for the defendant company. G. M. Clark, for the defendant Kerr.

Master in Chambers.]

[March 15.

BROWN v. CITY OF TORONTO.

Jury notice—Action against municipal corporation—Misfeasance or non-feasance.

Motion by the defendants to set aside the plaintiff's jury notice in an action against the city corporation to recover damages for injuries caused to the plaintiff "by reason of a hole or depression in the boulevard," at the north-west corner of Elizabeth and Albert streets, "caused by the negligence of the defendants taking up the old sidewalk and not filling in."

Held, a case of non-repair within s. 104 of the Judicature Act. Reference to *Burns v. City of Toronto*, 13 O.L.R. 109; *Keech v. Town of Smith's Falls*, 15 O.L.R. 300, 302; *Sangster v. Town of Goderich*, 13 O.W.R., at p. 421; *Dickson v. Township of Haldimand*, 2 O.W.R. 969, 3 O.W.R. 52; *Smith v. City of Vancouver*, 5 B.C.R. 491; *Goldsmith v. City of London*, 16 S.C.R. 231; *Barber v. Toronto R.W. Co.*, 17 P.R. 293. Order made striking out the jury's notice; costs in the cause.

H. Howitt, for the defendants. S. H. Bradford, K.C., for the plaintiff.

Meredith, C.J.C.P., in Chambers.]

[March 16.

KEMERER v. WATTERSON.

Writ of summons—Service out of jurisdiction—Con. Rule 162 (c), (h)—Place of contract—Place where payment to be made—Assets in Ontario—Garnishable debt—Conditional appearance.

Appeal by the defendant from the order of the Master in Chambers, dismissing a motion by the defendant to set aside the order of a registrar, sitting for the Master in Chambers and the