

that when an emergency does arise they will be enabled to do everything that reasonable men should do to avoid the accident.

During the trial, whilst the cross-examination of the plaintiff was in progress, it was learned that the plaintiff was under the age of 21 years. Application was made by the plaintiff's counsel to amend by adding the plaintiff's mother a party, as next friend. The mother appeared in Court, and, by a writing duly signed, consented. The learned trial Judge allowed the amendment and the trial proceeded.

It was urged on this appeal that the action was improperly constituted, that it should be dismissed and that the plaintiff should commence *de novo*. We cannot give effect to such a contention. We think the learned trial Judge pursued the proper practice. The bringing the action without a next friend in view of the circumstances was a mere irregularity. The plaintiff had a good cause of action when the writ was issued. He brought it within the time the law allowed. The proceedings went on without question. The plaintiff's age was not made an issue, was not submitted to the jury. It came out incidentally that he was under 21. The irregularity was cured at the trial, rightfully, we think. *Flight v. Boland*, 4 Russ. 298; *Re Brocklebank*, 6 Ch. D. 358.

We think this appeal should be dismissed with costs.

HON. SIR. WM. MULOCK, C.J.Ex., HON. MR. JUSTICE RIDDELL, and HON. MR. JUSTICE SUTHERLAND, agreed.

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HON. MR. JUSTICE SUTHERLAND. FEBRUARY 4TH, 1914.

LAFONTAINE v. BRISSON.

5 O. W. N. 858.

*Vendor and Purchaser—Specific Performance—Agreement for Sale and Exchange of Lands—Mortgage—Dispute as to Terms of—Evidence—Part Performance—Application to Postpone Trial—Absence of Defendant—Costs.*

SUTHERLAND, J., gave judgment for plaintiff for specific performance of an agreement for the sale of certain lands, where the only point in dispute was as to the terms of the mortgage to be given to secure part of the purchase-money.

An action for specific performance.