

I do not think his conduct in either respect amounts to contributory negligence. I think he was, at the time of the accident, exercising reasonable care, having in mind that this hidden board was not known to him: *Butterfield v. Forrester*, 11 East 60; *The Bernina*, 12 P.D. 58, at p. 70.

I accept the evidence of Coral Smith as absolutely reliable.

No case is made as to Clatworthy: the accident is in no way attributable to anything he did upon the highway. His position is the same, in substance, as if the scales had been on his own lands, and a customer in driving away had been injured by a defect in the highway.

Judgment for the plaintiff against the township corporation for \$1,250 and costs; and dismissing the action as against Clatworthy with costs.

MIDDLETON, J., IN CHAMBERS.

DECEMBER 9TH, 1911.

STAVERT v. BARTON.

STAVERT v. MACDONALD.

Parties—Substitution of Plaintiff—Transfer of Cause of Action—Order to Proceed—Motion to Set aside—Validity of Transfer—Locus Standi of Plaintiff—Pleading—Amendment—New Defence as against Substituted Plaintiff—Notice of Trial not Affected—Stay of Trial pending Appeal in Similar Action—Additional Defences—Practice.

An appeal by the plaintiff from the order of the Master in Chambers, ante 265, setting aside the notice of trial given by the plaintiff and permitting an amendment of the pleadings sought by the defendants.

F. R. MacKelcan, for the plaintiff.

G. H. Kilmer, K.C., for the defendants.

MIDDLETON, J.:—The order made by the Master, in his view, rendered it unnecessary for him to determine another branch of the motion, viz., the defendants' application to stay all proceedings until the appeal to the Privy Council in *Stavert v. McMillan* (21 O.L.R. 245, 24 O.L.R. 456), is determined. This motion he gave the defendants leave to renew after issue joined on the amendments. These actions are similar to *Stavert v. McMillan* in some respects, and, if the judgment at the trial is