

means. Indeed we are inclined to concur with what was said by the Court of Appeals of New York in the case last cited, "that a death is the result of accident, or is unnatural, imports an external and violent agency as the cause." We have been cited to a few cases holding a different rule: *Hill v. Insurance Co.*, 22 Hun. 187. This case was overruled by the later case of *Paul v. Insurance Co.*, cited *supra*. *Pollock v. Association*, 102 Penn. St. 230, is a case sustaining the position of the defendant. But while we recognize the high ability of the court in which the case was decided, we are not disposed to follow the rule there adopted. We think the rule established by the Court of Appeals of New York is better calculated to carry out the true intention of the parties where the contract of insurance was entered into, and one too more nearly in harmony with the current of authority bearing on the question. The judgment of the Appellant and Circuit Courts will be reversed, and the cause remanded to the Circuit Court for further proceedings in conformity to this opinion.

## ONTARIO.

### FOURTH DIVISION COURT, COUNTY OF ONTARIO.

WHITNEY v. WHITNEY & ROSE.

*Mercantile Law Amendment Act—Payment by defendant's surety—Form of summons, order and execution.*

A defendant who is surety for his co-defendant, but which does not appear upon the proceedings, is not entitled, as of course, to an order for execution against his co-defendant; but must issue and serve a summons upon his co-defendant and the plaintiff, setting forth the facts, and calling upon him to show cause why execution should not issue against such co-defendant as prayed. Form of such summons, judgment, and execution thereon.

[WHITBY, Nov. 8.]

Application for leave to issue execution by a defendant against his co-defendant for whom, he alleges, he was only a surety, he having paid the judgment herein.

DARTNELL, JJ. This judgment is, on the face of the proceedings, paid and satisfied. To render a transcript to the County Court of any value, the right to execution and the facts must appear upon the proceedings in the the inferior Court. The other defendant and the plaintiff should have an opportunity of controverting

the alleged facts. There must be a summons, in the nature of a "Summons to Revive," served upon him, and an adjudication that he is shown to be entitled to the benefit of "The Mercantile Law Amendment Act."

This was subsequently done, and the above facts duly proved.

The following forms were settled by the Judge.

SUMMONS—(Original style of cause.)

To the above named plaintiff, defendant.

Whereas, on the 28th day of May, 1889, the plaintiff recovered judgment against the defendant in the said Court, holden in and for the said division, for \$ debt and \$ costs; and whereas execution upon the said judgment was duly issued and the defendant, E.R., has paid and satisfied the same; and whereas the said E.R. was surety only for his co-defendant, A.W., and as such is entitled to the benefit of sections 2 and 3 of "The Mercantile Law Amendment Act," and to have execution issued against his co-defendant; and whereas by an instrument in writing, dated the day of

1889, the said plaintiff did assign and transfer to the defendant, E.R., the said judgment and all his right, title, and interest therein; you, the defendant, A.W., and you the above named plaintiff, are hereby summoned to appear at the sittings of this Court, to be held on the 20th day of November, 1889, to show cause, if any you have, why the said defendant, E.R., should not have execution of the said judgment against you and the said A.R., to be levied of you the said A.W., and, in the event of your not appearing, judgment will be entered against you by default.

ORDER.—(Endorsed upon summons to revive.) The plaintiff and the defendant W., having been duly served with the within summons, and the facts alleged therein having been proved to my satisfaction, I do order that this cause be, and the same is hereby revived in the name of E.R., as plaintiff, and the said A.W., as defendant, and let execution issue against the said A.W. in favor of the said E.R.

EXECUTION.—(Style of cause)—(as revived.) Whereas, on the day of , 1889, one, A.W., duly recovered in said Court, holden in and for said division, judgment against the above named plaintiff and defendant for \$ for debt and \$ for costs of suit, which has been satisfied by the plaintiff, who was surety