and all that the jury have to say about the alterations effected by the company was that they might have been better; and they also say that the company, with the consent of the corporation, used cars of a size and weight beyond the strength of the bridge to carry.

In the case of municipal corporations governed by the General Municipal Act of the province, there is the mere power without the statutable obligation to repair.

Held, that although the city might and probably should have passed by-laws preventing heavy street cars running as well as heavy traffic of any kind, beyond the capacity of the bridge, the action does not lie for omitting to pass a by-law, nor for mere omission to do anything else, all these omitted duties coming within the scope of the immunity for non-feasance, and are not misfeasance.

Wilson, Q.C., and *L. Crease*, for plaintiff.

Cassidy and *Mason*, for the defendants, the city.

NOTE.—In a subsequent case (*Patterson* v. *Victoria*) arising out of the same accident, and in which judgment is still pending in the Full Court, it is worthy of remark that the jury ascribed the accident to the breaking of a floor beam, discarding the theory of the broken hanger adopted by the former jury.

BOLE, Loc. J.] [Aug. 5.

WULFSSOHN *v.* S. ET UX.

Promissory note—Mortgage—Merger.

Action for $323.90, being principal and interest due on a promissory note, Mrs. S. being the maker and her husband the endorser.

The defendants pleaded that the plaintiff's claim had been merged and extinguished by Mrs. S. giving to the plaintiffs a deed charging certain lands with the payment of the debt and covenanting therein to pay the same to the plaintiffs. There was originally a note for $100 on which Mr. S. was liable to plaintiffs, and Mrs. S.'s title deeds to the lands were deposited with plaintiffs as a collateral security therefor. More money being required a new note was given by Mr. and Mrs. S. for $300 and a mortgage for $300 executed by Mrs. S. at the same time, and the difference between the old $100 note and the new $300 one was paid over to Mr. S. When that note became due it was again renewed by Mrs. S. as maker and Mr. S. as endorser.

Held, that there was no merger, following *Snow* v. *Boycott*, (1892) 3 Ch. 110; *In re Pride*, 6 I.L.J., Ch. 9; *Thorne* v. *Cann*, (1895) A.C. 11; *Liquidation Purchase Co.* v. *Willoughby*, 65 L.J. Ch. 486, (C.A.) and that the liability of Mrs. S. on the note remained unaffected.