damages, and for misdirection, contending that unless the plaintiff had sustained damage he was not entitled to recover, and at any rate not for more than his actual damage from the whole transaction, and that the true estimate of damage was the amount by which the two mortgages exceeded the actual value of the land. He contended also that as the mortgage given to Campbell contained a covenant to pay the money, and as Farrell in his assignment to the plaintiff had also covenanted with the plaintiff that the mortgage debt should be punctually paid, it was incorrect to charge the jury that those covenants did not affect the plaintiff's right to recover substantial damages. He objected also that the plaintiff had no claim to recover his costs in Chancery in the foreclosure suit brought by Speers.

Eccles, Q. C., and *R. A. Harrison*, shewed cause. They cited Consol. Stats. U. C., ch. 126, secs. 1, 9, 10, 11, 20; ch 89, secs. 2 to 13 inclusive, sec. 67; Common Law Procedure Act, secs. 3, 4; *McWhirter* v. *Corbett*, 4 U.C.C.P. 203; *Wallace* v. *Smith*, 5 East 115; *Greenway* v. *Hurd*, 4 T. R. 553; *Umphelby* v. *McLean*, 1 B & Al. 42; The *Queen* v. *Kelk*, 1 Q. B. 660; *Davis* v. *Curling*, 8 Q B. 286; *Cargue* v. *The London and Brighton R. W. Co.*, 5 Q. B. 747, 754; *Kennet and Avon Canal Navigation* v. *Great Western R. W. Co.*, 7 Q. B. 824; *March* v. *Port Dover and Otterville Road Co.*, 15 U C Q.B. 138; *Fletcher* v. *Greenwell*, 4 Dowl 166; *Waterhouse* v. *Keen*, 4 B. & C. 200; *Shatwell* v. *Hall*, 10 M. & W. 523; *Palmer* v. *Grand Junction R. W. Co.*, 4 M. & W. 749; *Atkins* v. *Banwell*, 3 East 92; *Henly* v. *The Mayor &c., of Lyme*, 5 Bing. 91, 107; *Gibbs* v. *Trustees of the Liverpool Docks*, 3 H. & N. 164; *Sutton* v. *Clarke*, 6 Taunt. 29; *Gladwell* v. *Stegall*, 5 Bing. N. C. 733.

M. C. Cameron, contra, cited, *White* v. *Clarke*, 11 U C.Q.B. 137; *Smith* v. *Shaw*, 10 B. & C. 277; *Hodge* v. *Earl of Litchfield*, 1 Bing. N. C. 492; *Joule* v. *Taylor*, 7 Ex. 58

ROBINSON, C. J., delivered the judgment of the court.

The first question to be determined by us is whether the defendant, as a registrar, was entitled under the Statute Consol. Stats. U C., ch. 126, sec. 20, to the protection given to justices of the peace and other officers as to notice of action, and the time within which actions should be brought. No doubt the registrar is a public officer, and if, after carrying out or attempting to carry out any powers given to him by the act, he should be charged with malfeasance, we do not at present see how it could be denied that he would be entitled to the protection given by that act, not merely to justices of the peace, but to every other officer fulfilling a public duty. But we think the statute is not to be extended to cases of mere neglect or malfeasance. Secs. 9 and 10 of the act indicate that, we think, plainly.

The case of *Davis* v. *Curling*, 8 Q B. 286, is different in its nature from the present, and does not support the defendant's claim to notice. The court there said that the defendant, a road surveyor, was charged with the positive act of laying gravel upon the road, and they did not consider that his doing so, and allowing it to remain there incumbering the road, could be reasonably regarded as a mere omission of a duty, as negligence or nonfeasance, and nothing else. They thought that the officer must be regarded as having committed a wrong in executing the authority given to him by the act, and so came within the words of the clause, which gives the protection where a person is sued for an act *committed* by him in pursuance of the statute, or under the authority of the statute.

The principal cases which bear upon this question were cited in the argument of this case. We have looked into them all, and in our opinion none of them goes so far as to hold a notice of action necessary in this case, or that the limitation of time for suing applies. Both points in fact turn upon the same question of construction.

We do not think that we can hold that registrars are not officers within the act, but what this registrar is charged with is not an act *committed* in carrying the law into effect according to his erroneous idea of his duty, but a negligent omission to do what he had been called upon to do, by a person who had employed his services in his official situation, and paid him for the duty required of him. The late Chief Justice of the Common Pleas rightly stated the distinction, we think, in *McWhirter* v. *Corbet et al.*, 4 U.C.C.P. 208, when he said that though the sheriff in acting upon a writ of *fieri facias* was fulfilling a duty imposed upon him by the court under the common law, yet it was in a private matter, and that if it was intended to be included in the protection to public officers given by statute 14 & 15 Vic., ch. 54, it wanted explanation, by which he meant that the language of the statute did not make the application sufficiently clear.

As to the unfortunate omission in this case giving a good ground of action to the individual who has suffered damage by it, there can be no doubt we think on that point. A case like this must clearly come within the language used by the Court of Common Pleas in England, in their judgment in the case of *Henly* v. *The Mayor of Lyme*, 5 Bing. 107, 108; and it does not appear to us that there is any legal objection to the amount of damages. The jury were in fact not disposed, it would seem, to bear hard upon the defendant. Their verdict shews that, and they were right, for in the multitude of entries to be made by a registrar there is always a possibility of error The mortgage to Spurrill, it has been stated, escaped observation in the searches made, from the accident that the entry in the index was made in a wrong column, being included in entries of lots on the south side of Dundas street instead of on the north side This might well happen, though it cannot be denied that it was an error which implies negligence, and that the person suffering from it has a claim to be made good.

No doubt it was pressed upon the consideration of the jury, as it reasonably might and naturally would be, that notwithstanding the plaintiff had his incumbrance to pay off, of which he had no knowledge, though he had taken the proper means to ascertain the truth, yet that he was after all in fact no loser by the whole transaction, for that he sold the property at last for an advanced price, which saved him from all loss and did even more than that. If the jury, in view of that circumstance, had given even less damages than they did, we should not have been surprised; but they took a reasonable course in giving the moderate amount which they did, though it was probably more than the defendant under the circumstances expected he would have to pay; and we cannot interfere on the ground that in fact the plaintiff sustained little damage, if any, or in fact he did suffer damage just to the extent of the incumbrance of the first mortgage, in this sense, that but for the defendants mistake his bargain would have been so much more profitable to him than it turned out to be.

As to the defendant's costs in the Chancery suit, we cannot tell that the jury allowed them, but must rather infer that they did not, since they gave little more than half the amount of the first mortgage, which had to be paid out of the proceeds of the sale of the property.

Rule discharged.

IN RE ALLAN, &c.

Articled Clerk—Application for admission as an Attorney.—Requisites.

An applicant for a certificate of fitness prior to admission as an attorney and solicitor of the courts of law and equity in Upper Canada must leave with the secretary of the Law Society, not only the documents mentioned in sub. sec. 4 of sec. 3 of Con. Stat. U. C., cap. 35, but also his own affidavit of due service, at least fourteen days next before the first day of the term in which he intends to seek admission.

Where therefore an applicant neglects to make his affidavit of due service until after the first day of the term in which he sought admission, his application failed.

(E. T. 1861.)

Mr. Allan during the present term made application to be admitted an attorney and solicitor of the different courts of law and equity in Upper Canada.

He left his contract of service, affidavit of execution, and with one exception all other papers necessary under the statute, and rules of the law society prior to admission, with the secretary of the Law Society, at least fourteen days before the first day of term.

The exception was his own affidavit of due service which he did not file until after the commencement of term. The question then arose whether or not this affidavit should not have been filed with the other papers mentioned at least fourteen days before the term as a necessary part of his application to be admitted an attorney and solicitor.

The society, in consequence, instead of granting him the ordinary certificate, gave to him a certificate setting forth the special circumstances, which certificate he presented to the court of Queen's Bench. Whereupon the following judgment was delivered by