

ch. 89. By the Interpretation Act, R.S.O. 1914 ch. 1, sec. 29 (x), "person" includes any body corporate or politic.

The learned Judge thought it clear that this action fell within the purview of the statute. There was no room for the suggestion that there was malice or that the action of the defendants was merely colourable within the statute.

The Fatal Accidents Act and the Public Authorities Protection Act stand together; there is no conflict between their provisions. If there is a cause of action under the former Act, an action will lie; but, if the defendants are entitled to the protection of the latter Act, that protection must be accorded to them.

It was shewn that the Corporation of the City of Belleville had assumed the defence of the action (see sec. 26 of the Public Health Act, R.S.O. 1914 ch. 218); and it was said that the effect of this was to relieve the defendants from the necessity of incurring any costs in their own defence, and, as they could incur no costs, they needed no security for costs. As to this the learned Judge said that, if there was no liability for costs upon a judgment awarding costs, the plaintiffs' sureties (supposing the plaintiffs to have given security) might escape; but the defendants ought not to be placed in jeopardy as to the possible outcome of the litigation upon this question when the statute entitled them to the security.

The affidavit of the defendants shewing the plaintiffs' insolvency was not sufficient; but leave was given to supplement it; and upon further material supplied insolvency was abundantly established.

The appeal should be dismissed; costs in the cause to the successful party.

FALCONBRIDGE, C.J.K.B.

NOVEMBER 10TH, 1916.

*SWIFT CANADIAN CO. LIMITED v. DUFF AND ALWAY.

Promissory Note—Liability of Endorser—Notice of Dishonour not Given—Waiver—Correspondence—Admission of Liability—Promise to Pay—Mistake of Fact—Onus—Statute of Frauds.

The plaintiffs sued the defendants as respectively maker and endorser of a promissory note.

Judgment by default was entered against Alway, the maker; and the only defence urged by the defendant Duff, the endorser, was that no notice of dishonour was given to him.