

D. Armour, for the plaintiff, contended that he could not be required to attend upon payment of ordinary conduct money, or without a special order, the Rules only providing for the examination at Toronto of parties resident in the county of York.

J. M. Clark, for the defendant Dowd, contra.

Held, that, owing to the changes in the Rules since *Comstock v. Harris*, 12 P.R. 17, that case is no longer an authority, and a party residing out of the jurisdiction cannot now be examined in the way that was attempted here. Rules 439, 443, 477.

Appeal allowed with costs to the plaintiff here and below in any event.

Armour, C.J., }
Falconbridge, J. } *LIEZERT v. TOWNSHIP OF MATILDA.* [Dec. 14, 1897.

Municipal corporation—Injury from non-repair of highway—Notice of damage.

Held, that the provisions of sec. 531, sub-sec. 1 of the Consolidated Municipal Act, 1892, as amended by 57 Vict., c. 50, s. 13, and re-amended by 59 Vict., c. 51, s. 30, as to the notice requisite to be given to municipal corporations, in order to hold them liable for accidents arising from non-repair of highways, are applicable only to cases of actions brought against a township, city, town, or incorporated village alone, and not to cases brought against two or more of them, as, in this case, against a township and an incorporated village jointly.

The cause of action is still a several one as regards each corporation, although the statute requires that both shall be joined in the action; and although the plaintiff may have failed against one corporation by reason of want of notice to it, he may still be entitled to recover against the other corporation which had due notice.

I. Hilliard, for plaintiff. *A. Johnston*, for defendants.

Meredith, C.J.] *LIGHT v. HAWLEY.* [Dec. 15, 1897.

Chattel mortgage—Validity of—Security taken in name of trustee—Affidavit of bona fides—Conversion of goods—Measure of damages—Amendment—Adding claim—Pleading

A chattel mortgage to secure a debt was made to a nominee of the creditor, as trustee for him. In an action by an assignee of the mortgage against the assignee for the general benefit of creditors of the mortgagor, for conversion of the mortgaged chattels, it was contended that the mortgage was invalid because the mortgagee could not properly make the usual affidavit of bona fides, as there was no debt due to him.

Held, notwithstanding there was nothing on the face of the mortgage to show the fiduciary position of the mortgagee, that the mortgage was valid.

Brodie v. Ruttan, 16 U.C.R. 209, applied and followed.

At the time the goods were taken by the defendant out of the plaintiff's possession, they were in the hands of the bailiff of the latter for sale under