

From STREET, J.]

[May 14.]

TOWNSHIP OF ELIZABETHTOWN v. TOWNSHIP OF AUGUSTA.

Drainage—Artificial obstruction—Failure of scheme—New report without examination.

A dam in a stream in the defendant township had the effect of penning back the water in and of preventing logs and other obstructions from making their way down the portion of the stream in the plaintiff township. The plaintiff township initiated a scheme under the drainage clauses of the Municipal Act for the removal of the dam and other obstructions, and an engineer made the necessary examination and report in due form, but this scheme was set aside as unauthorized. After the amendment in 1886 of the drainage clauses by the addition of sub-ss. 18, 19 and 20 to s. 570 of the Consolidated Municipal Act, 1883, the plaintiff township again initiated the scheme and referred it to the same engineer, who, without any further examination, rewrote his report adopting his previous estimates and assessments. Notice was served in due course upon the defendant township and there was no appeal, and the plaintiff township did the work and brought this action for payment of the proportion of the cost assessed against the defendant township:—

Held, that the scheme was authorized by the amending sections, but, per OSLER and LISTER, J.J.A., that the report of the engineer was invalid and the scheme not binding. ARMOUR, C.J.O., and MOSS, J.A., taking the contrary view. In the result the judgment of STREET, J., in favour of the defendants, was affirmed.

Watson, K.C., and W. W. Osborne, for appellants. J. A. Hutcheson, for respondents.

From MACMAHON, J.]

[May 14.]

TRUSTS AND GUARANTEE COMPANY v. TRUSTS CORPORATION OF ONTARIO.

Limitations of actions—Annuity—Will—Charge on land—Arrears—Lunatic.

By a will made in 1872 a testator, who died in the same year, devised land to two sons, "subject to the payment by my said two sons of the sum of \$200.00 per annum, for the benefit of my son Thomas Anson, which said sum, or annuity, or so much thereof as shall be reasonably necessary for the support and maintenance of my said son Thomas Anson, shall be paid yearly and every year, for and during the natural life of my said son Thomas, to the person or persons who may be his guardian or guardians." The son Thomas Anson was of age at the time of the testator's death, but was of unsound mind and he was declared a lunatic in 1898, and the plaintiffs were appointed committee of his person and estate. After the