

the statute (R. S. O. ch. 51, sec. 75 (2)) requiring appeals from decisions of the Master in Ordinary to be taken to a Divisional Court, therefore, did not apply.

As to the substance of the appeal, the fact that the defendants were by the judgment directing the reference, ordered, upon partition being made, to convey to the plaintiff the lands allotted to him in severalty, did not bring the case within the exception contained in Rule 827 (2) (b), (c), since the defendants could not deposit the deed or give possession until after the proceedings in the action were practically at an end.

No inconvenience would result from this construction of clauses (b) and (c), for in a proper case it would always be open to the respondent under sub-sec. 2 to get an order imposing upon the appellant such terms as might be reasonable to prevent any injury being done to the respondent by the failure of the appellant to conform to the terms of the judgment as to the execution of the conveyance or the delivery of possession in the event of the judgment being affirmed.

Appeal allowed. Costs in the reference.

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DECEMBER 15TH, 1902.

DIVISIONAL COURT.

HOLMES v. TOWN OF GODERICH.

*Municipal Corporation — Ordinary Current Expenditure — Right of Corporation to Borrow Money to Use as Security on Appeal — Costs—Appeal for—Status of Plaintiff.*

Appeal by plaintiff from judgment of ROBERTSON, J. (ante 367), dismissing the action, which was brought by plaintiff, on behalf of himself and all ratepayers of the town of Goderich, to restrain the defendant corporation, their mayor and treasurer, and the Bank of Montreal, from discounting or in any way dealing with a promissory note (or the proceeds thereof) made to the bank to provide funds to pay into Court \$2,000 as security on an appeal to the Supreme Court of Canada by the town corporation in another action brought against them by the same plaintiff. During the course of the present action the money was paid into Court, and the Supreme Court heard the appeal and allowed it with costs, whereupon the \$2,000 security was taken out