

[Jan. 15.]

RAY ET AL. v. ISBISTER ET AL.

Partnership—Bills of exchange and promissory notes—Endorser—Res judicata—Practice—Judgment against firm—Action thereon against alleged partner.

An action was brought against a firm as makers and an individual as endorser of a note, and was dismissed as against the endorser on the ground that he had endorsed at the request of the holders for their accommodation judgment being granted against the firm;

Held, reversing the judgment of STREET, J., 24 O.R. 497, that the dismissal of this action was an answer to a second action seeking to make the endorser liable as partner by estoppel.

The practice to be followed in proceeding against an alleged partner on a judgment against the firm considered.

Osler, Q.C., for the appellant.

Aylesworth, Q.C., for the respondents.

[Jan. 15.]

ARTHUR v. GRAND TRUNK R.W. COMPANY.

Water and watercourses—Surface water—Diversion of watercourse—Railways—Arbitration and award—Damages—Continuing damage.

If water precipitated from the clouds in the form of rain or snow forms for itself a visible course or channel, and is of sufficient volume to be serviceable to the persons through or along whose lands it flows, it is a watercourse and for its diversion an action will lie.

Beer v. Stroud, 19 O.R. 10, considered.

Where such a watercourse has been diverted by a railway company in constructing their line without filing maps or giving notice the landowner injuriously affected has a right of action and is not limited to an arbitration.

For such diversion the landowner, in the absence of an undertaking by the company to restore the watercourse to its original condition, is entitled to have the damages assessed as for a permanent injury.

Judgment of the Queen's Bench Division, 25 O.R. 37, affirmed.

Osler, Q.C., for the appellants.

Clute, Q.C., and *J. W. Gordon* for the respondent.

[Jan. 15.]

IN RE MERSEA AND ROCHESTER.

IN RE GOSFIELD NORTH AND ROCHESTER.

Drainage—Municipal corporations—Drainage Trials Act—54 Vict., c. 51 (O.)—55 Vict., c. 42, ss. 583, 584, 598.

Drainage works in which several minor municipalities were interested were done by the county. Subsequently repairs being necessary, one of the minor municipalities having obtained a report as to the expenditure required passed