

There should, therefore, be judgment for the plaintiffs and \$5,333 damages, with costs.

The case was not one for an injunction, for that would make the defendants' land practically useless for their purposes. The bridge might be raised, and all, or all but one, of the piers removed; but an elevation of the tracks, buildings, etc., so as to leave a free water-way under them was manifestly impracticable. The plaintiffs had sustained but one loss of the character in question in all the years during which they had been making bricks upon their land; and, indeed, in a quarter of a century there appeared to have been but three floods that could have caused them any such injury; and for their loss they could be fully compensated in damages, the payment of which might be a lesser evil to the defendants than even the construction of a new bridge only. Judged by past events the future liability for damages such as the defendants are now required to pay is not appalling; nor is the future outlook of the plaintiffs, especially if both parties take all possible measures for meeting the onslaughts of Don floods.

ROSE, J.

NOVEMBER 27TH, 1920.

PILLON v. EDWARDS.

Husband and Wife—Hotel Property Conveyed to Wife—Action by Husband for Declaration of Trust in his Favour—Evidence—Hotel Conducted by Wife and Partner—Profits Invested in another Property—Absence of Agreement—Statute of Frauds.

Action for a declaration that two properties, an hotel and a dwelling house, were held in trust by the defendants for the plaintiff.

The action was tried without a jury at Sandwich.
 J. H. Rodd and R. S. Rodd, for the plaintiff.
 F. C. Kerby, for the defendants.

ROSE, J., in a written judgment, said that the hotel was bought in 1902. The negotiations for the purchase seem to have been conducted by the plaintiff and his wife, the defendant Zoe Pillon; but in the formal agreement Zoe Pillon was named as the purchaser, and the conveyance, which was executed in 1909, after the whole of the purchase-money had been paid, was to her. The first instalment of the price (\$200) was, as Zoe Pillon swore, and as