Held, lastly, as regards the claim to the way of necessity which could only pass with the grant of the soil, it was necessary that the owner of the legal estate should be before the Court.

L. Wallbridge, for the plaintiff.

Moss, Q.C., for the defendant.

Ferguson, J.] [June 21.

CARMICHAEL V. SHARP.

Partnership action—Costs.

In this action the plaintiff claimed to have a partnership, which had existed between himself and the defendant, wound up, and to have all the necessary accounts taken, alleging that the latter had not properly carried out an agreement entered into at the time of the dissolution of the said partnership, by which the defendant was to wind up the affairs of the firm, and that he had not duly accounted to him in respect thereto. The defendant alleged that he had accounted, but that the plaintiff had not accounted to him for partnership moneys received. On reference the Master reported that the defendant had received more than his share of the firm moneys, and ordered him to pay the plaintiff the balance due.

Held, on further directions, the defendant must pay the said balance and the costs of the suit.

A. Hoskin, Q.C., for the plaintiff.

Farewell for the defendant.

Proudfoot, J.] [June 22.

DOBELL V. THE ONTARIO BANK.

Bank agent—Guarantee not under seal—R. S. O. c. 121.

In this case the defendant Rochester, on May 3, 1877, entered into a contract to sell to the plaintiffs a certain number of pine deals, which he delivered except 108 standards. On Nov. 20, 1877, being indebted to the defendants, the Bank, for advances, he gave as security a warehouse receipt for 108 standards. Afterwards, both defendants being anxious to realize on these pine boards, offered to deliver them to the plaintiff as a performance of the balance of the above contract of sale. The plaintiffs, however, required a guarantee from the Bank that the pines should be satisfactorily culled, and any deficiency be paid for by the Bank. The Board of Directors of the Bank, thereupon, resolved to submit the lumber to a culler, and if he reported satisfactorily, to give the guarantee. The head-manager notified the local agent of this, and told him to get a culler to examine the lumber. The latter, however, did not do this, but, with the assent of the former, nevertheless gave the guarantee. This document purported to "guarantee on behalf of the Bank" that the said deals should be satisfactorily culled, previous to shipment in the Spring. It was not under seal. On receiving it, the plaintiffs paid the Band for the lumber, but not until the Bank had been informed, at their head office, of the guarantee having been given. The culling did not turn out satisfactory, and the question was, whether the Bank was liable for the deficiency resulting, as well as Rochester.

Held, the Bank was liable on the guarantee, for the plaintiffs were warranted in assuming that the agent giving it had the necessary authority; and if the plaintiffs repudiated it, they ought to refund the money.

Semble, the above guarantee did not come within the description of a guarantee for the act of a thind party, for the Bank were selling, under R. S. O., c. 121, by virtue of being holders of the warehouse receipt, and giving the guarantee was an ordinary transaction, necessary to effect a sale, and was not within the class of cases requiring the sanction of a seal.

McCarthy, Q.C., (*Hogg* with him), for the plaintiff.

Blake, Q.C., for the defendant, the Bank.

Walker, for the defendant Rochester.

Proudfoot, J.; Ferguson, J.] [June 22.

FAULDS V. HARPER.

Equity of redemption—Limitations—Parties—R.S.O., c. 108, sects. 11, 19, 20, 43.

The equity of redemption is an entire whole, and so long as the right of redemption exists in any portion of the estate, or in any of the persons entitled to it, it enures for the benefit of all, and the mortgagee must submit to redemption as to the whole mortgage.

Hence, in this suit, which was one for redemption of a mortgage of land where the mortgagor had died intestate in 1858, leaving