

sion Court against a township local board of health, sued as a corporation, for services performed in a small-pox epidemic.

It appeared that the physician had been appointed medical health officer of the municipality by the council, but that before suing the board he had brought an action against the municipal corporation for his services, in which he failed.

Upon motion by the physician for a mandamus under s. 49 to compel the members of the board to sign an order upon the treasurer of the municipality for the amount of the judgment recovered;

Held, that, although it might be difficult to conclude that a board of health is constituted a corporation by the Act, yet the judgment of the Division Court practically decided that this board might be sued as such, and, not being in any way impeached, it could not be treated as a nullity. As there appeared to be no other remedy, the applicant was entitled to the mandamus.

Shepley for W. J. Derby.

Aylesworth for members of local board of health.

Div'l Ct.]

[March 8.

REID v. COLEMAN.

Partnership — Dissolution — Want of public notice — Credit given to firm after dissolution — No previous dealings with firm — Liability of retiring partner.

The plaintiffs received from their traveller an order for goods from the firm of C. Bros., hotel-keepers. Before they delivered the goods they became aware by means of a mercantile agency that a partnership had existed under the name of C. Bros., and that S. L. C. was one of the of the members of it, and they were at the same time informed that the partnership still existed. They shipped and charged the goods and also goods subsequently ordered to C. Bros. As a matter of fact, however, the partnership did not exist at the time the first order was given, S. L. C. having retired from the business, and the plaintiffs had had no dealings with the firm while it was in existence. No public notice was given of the dissolution; S. L. C. continued to live at the hotel except when he was absent on his own business; the lamp with the name of C. Bros. continued at the door; the liquor license

in the name of C. Bros. continued to hang in the bar-room; the letter-paper with the heading "C. Bros., proprietors," continued to be handed to customers.

Held, that where a known member of a firm retires from it, and credit is afterwards given to the firm by a person who has had no previous dealings with it, but has become aware, as one of the public, that it existed, and has not become aware of his retirement, the retiring member of the firm is liable, unless he shews that he has given reasonable public notice of his retirement; and, as such notice was not given here, S. L. C. was liable, not only for the goods first ordered, but for those subsequently ordered, no notice of the retirement having ever been given.

C. Millar for plaintiffs.

J. M. Clark for defendant, S. L. Coleman.

[March 8.

Div'l Ct.]

MENDELSSOHN PIANO CO. v. GRAHAM.

Partnership — Agreement for participation in profits — Construction of — Relationship of parties — Joint business — Debtor and creditor.

The plaintiffs sued G. and W. for the price of goods sold to the firm of P. W. G. & Co., and the principal question in the action was whether W. was an actual partner in the firm; the evidence failing to show that he was an ostensible partner, and as such liable to third persons.

Held, that the true test to be applied to ascertain whether a partnership existed was to determine whether there was a joint business, or whether the parties were carrying on business as principals and agents for each other.

G. and W. did not intend to create a partnership between them. G. was carrying on business in the name of P. W. G. & Co., as a dealer in pianos and organs, and, being in want of money, applied to W. for a loan; he did not ask W. to become his partner, nor did W. suggest it, but G. proposed to give W. half the profits of his business if W. would lend him \$500.

The money was advanced and the following receipt was given by G.:—

Toronto, 13th February, 1888.

"Received from W. the sum of \$500 to be used for carrying on the business of dealers in pianos and organs, in return for which I hereby agree to give the said W. one half of the profits of said business, after all expenses have been