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## REPORTS AND NOTES OF CASES

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### Province of Ontario.

#### COURT OF APPEAL.

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From Divisional Court.]

[Sept. 14.

IN RE RUBY.

*Partnership—Joint and separate creditors—Administration.*

In the administration by the Court of the insolvent estate of a deceased partner the surviving partner is entitled to rank for a balance due to him in respect of partnership transactions and partnership debts paid by him, when even apart from his claim there would be no surplus available for partnership creditors.

Judgment of a Divisional Court reversed. OSLER, J.A., dissenting.

*R. S. Cassels*, for the appellant.

*Aylesworth*, Q.C., and *J. B. Clarke*, Q.C., for the respondents.

From Divisional Court.]

[Sept. 14.

BOULTBEE v. GZOWSKI.

*Broker—Sale of shares—Undisclosed principal—Marginal transfer—Indemnity.*

A broker who buys bank shares for an undisclosed principal and does not accept the shares himself, but, pursuant to a general power to transfer given by the vendor, transfers them to his principal, is not liable to indemnify the vendor against the statutory "double liability" which the principal fails to pay.

Judgment of a Divisional Court, ante p. 241; 28 O.R. 285, reversed.

*Aylesworth*, Q.C., and *W. Barwick*, for the appellant.

*H. J. Scott*, Q.C., and *R. Boulton*, for the respondent.

From Divisional Court.]

[Sept. 14.

OSTROM v. SILLS.

*Water and watercourses—Surface water—Easement—Lands of different levels.*

The relationship of dominant and servient tenement does not exist between adjoining lands of different levels so as to give the owner of the land of higher level the legal right as an incident of his estate to have surface water falling on his land discharged over the land of lower level, although it would naturally find its way there. The owner of the land of lower level may fill up the low places on his land or build walls thereon, although by so doing he keeps back the surface water to the injury of the owner of the land of higher level.

Judgment of a Divisional Court, reversed.

*Clute*, Q.C., and *J. Williams*, for the appellants.

*C. J. Holman*, and *E. Gus Porter*, for the respondent.