

assessed for benefit, contend before the referee that he was not liable to such assessment, the matter having been concluded by the confirmation of the by-law.

A municipality constructing a drain cannot let water loose just inside or anywhere within an adjoining municipality without being liable for injury to lands in such adjoining municipality thereby.

Where a scheme for drainage work proves defective, and the work has not been skilfully and properly performed, a proper route not chosen, and it is not continued to a proper outlet, and is left unfinished for a long time in an adjoining municipality where it is carried to find an outlet, so that the water is turned loose and comes upon lands therein, the municipality constructing it are not liable to persons whose lands are damaged in consequence of such defects and improper construction as tortfeasors, but are liable under s. 591 of the Municipal Act for damage done in construction of the work, or consequent thereon.

The referee has no jurisdiction to adjudicate as to the propriety of the route selected by the engineer and adopted by by-law, the only remedy, if any, being by appeal against the project proposed by the by-law.

A tenant of land may recover damage suffered during his occupation from construction of drainage work, his rights resting upon the same foundation as those of a freeholder.

*Wilson, Q.C., and Smith, Q.C., for the appellants.*

*Christopher Robinson, Q.C., for the respondent.*

Ontario.]

[Oct. 9.

ALLISON v. McDONALD.

*Mortgage—Collateral security—Joint debtors—Discharge.*

Two partners borrowed money, giving as security a mortgage on partnership property, and a joint and several promissory note. The partnership having been dissolved, the mortgagee gave the members of the firm who continued to carry on business, and who had assumed the liabilities, a discharge of the mortgage, on his undertaking to pay back the money borrowed, which he failed to do, but mortgaged the property again, and finally became insolvent and absconded. An action having been brought against the retiring partner on the note,

*Held*, affirming the decision of the Court of Appeal (20 A. R. 695), which reversed the judgment of the Divisional Court (23 O.R. 288), that the plaintiff could not compel the retiring partner to pay the mortgage debt without being prepared on payment to reconvey the lands mortgaged, which he had incapacitated himself from doing. His action, therefore, was rightly dismissed.

*Held*, also, that the relation between the partners was changed by the terms of dissolution into that of principal and surety, and the trial judge having found as a fact that the mortgagee had notice of such terms his discharge of the continuing partner, the principal, released the surety (the retiring partner).

Appeal dismissed with costs.

*Aylesworth, Q.C., for the appellant.*

*John A. Robinson for the respondent.*