

APRIL 17TH, 1902.

## DIVISIONAL COURT.

McCLURE v. TOWNSHIP OF BROOKE.

BRYCE v. TOWNSHIP OF BROOKE.

*Drainage Referee—Official Referee—R. S. O. ch. 226, secs. 88, 89—  
1 Edw. VII. ch. 30, sec. 4—Arbitration Act, sec. 29.*

The Drainage Referee is an Official Referee within the meaning of sec. 29 of the Arbitration Act.

Appeals by plaintiff in each case from orders of Meredith, C.J., staying proceedings and refusing to direct references to J. B. Rankin, Drainage Referee, as a Referee under sec. 29 of the Arbitration Act. There was pending a drainage matter commenced by notice served and filed pursuant to the Municipal Drainage Act and amendment, 1 Edw. VII. ch. 30, sec. 4, wherein the plaintiffs in these actions were asking for damages and other relief, which would be heard in due course before the Drainage Referee. The plaintiffs alleged that the questions arising in this action, as well as those in the drainage matters, had each to do with the same lands and locality, which required local inspection and investigation, and a special or scientific knowledge, in order that a proper adjudication might be made, and they therefore applied to a Judge in Chambers for an order of reference. The Chief Justice refused the references on the ground that the Drainage Referee is not an Official Referee within sec. 29, and stayed proceedings until the conclusion of the drainage matter, so that thereafter, if necessary, the plaintiffs could proceed in these actions as to questions raised outside the scope of sec. 4 of the Act of 1901.

G. H. Watson, K.C., for plaintiffs.

J. H. Moss, for defendants.

The Judgment of the Court (FALCONBRIDGE, C.J., BRITTON, J.) was delivered by

BRITTON, J.—Before the passing of ch. 30 there would have been no difficulty, as R. S. O. ch. 226, sec. 94, gave the Court or Judge power to refer, but that action has been repealed by sec. 4; and under the Arbitration Act, if the parties agree, the question may be referred to a special referee. Here they do not agree, but I think that the Drainage Referee is a referee within sec. 29. There is no statutory definition of Official Referee, but sec. 141 of the Judicature Act names persons by their office who are Official Referees, and the Drainage Referee is not there named.