

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and ROSE, JJ.

A. H. F. Lefroy, K.C., for the appellant.

F. F. Treleaven, for the vendors, respondents.

THE COURT dismissed the appeal with costs.

SECOND DIVISIONAL COURT.

OCTOBER 12TH, 1917.

*OTTO v. ROGER AND KELLY.

Ditches and Watercourses Act—Award of Township Engineer—Objections of Land-owner—Drain Crossing Lines of Dominion Railway—Railway Act, R.S.C. 1906 ch. 37, sec. 251(4)—Insufficient Outlet—R.S.O. 1914 ch. 260, sec. 6—Personal Attendance of Engineer—Sec. 16—Action to Restrain Engineer and Contractor from Proceeding under Award—Remedy by Appeal to County Court Judge—Sec. 21—Curative Provisions of sec. 23—Dismissal of Action—Appeal.

Appeal by the plaintiff from the judgment of SUTHERLAND, J., 39 O.L.R. 127; 12 O.W.N. 45.

The appeal was heard by MEREDITH, C.J.C.P., MIDDLETON, LENNOX, and ROSE, JJ.

R. S. Robertson, for the appellant.

G. G. McPherson, K.C., for the defendant Roger, respondent.

W. G. Owens, for the defendant Kelly, respondent.

MIDDLETON, J., read a judgment in which he said that the plaintiff must fail unless he could successfully attack the award made by the engineer.

The most important ground of attack was, that the engineer did not, as directed by the Ditches and Watercourses Act, go upon the ground and meet the parties before making his award, but sent his assistant, and that the assistant was merely instructed to ascertain certain levels etc., and did not hear the parties or their evidence; so that there was not only no hearing by the engineer himself but no hearing at all. This, if made out upon the evidence,

* This case and all others so marked to be reported in the Ontario Law Reports.