

If a property owner fails to construct the portion of the drain allotted to him within the prescribed time, it is provided that the engineer may, after certain preliminary steps have been taken, let the work, and when it is finally completed the duty is cast upon him of certifying to its completion, the cost of it, the amount which the person who has done the work is entitled to be paid, and as to the person liable to pay that amount. The statute then casts upon the municipality—that was provided for the first time by the Act of 1894—the duty of paying to the person who has done the work, as certified by the engineer, the amount to which he is entitled, and a remedy over is given to the municipality for the recovery of the amount which it has paid on behalf of the property owner, and the question for decision is, what are the rights of the municipality in respect of the sum it is called upon in such circumstances to pay.

Throughout the Act the persons concerned are referred to as owners—sometimes as “owner party to the award”—and provision is made that the owners are to keep the drain in repair according to the directions of the award, and for enforcing that obligation; and in these provisions the persons concerned are referred to either as owner or owner party to the award.

It appears to us that the legislature must have used the term “owner” as meaning the owner for the time being. It would be an extraordinary thing if, after the proceedings had been begun under the Act, and when the arbitration was proceeding, an owner, who had been notified of the proceedings and was a party to them, could, by the conveyance of his lands to some other person, defeat entirely the purposes for which the proceedings had been instituted, and make it necessary to begin *de novo*. Still more extraordinary would it be if it were permissible, after the arbitration had been held and the award had been made, that the property owner might prevent the payment which he had by his default rendered it necessary that the municipality should make becoming a charge on his land, by conveying it to somebody else, and so leave the obligation to rest simply as a matter of duty, for breach of which an ordinary action would lie, and the burden upon the municipality of paying his debt, with only that remedy for recovering the amount paid.

The provisions of the statute (R. S. O. 1897 ch. 285) which are the most material ones to be considered, are secs. 29 and 30.