

The judgment of the Court (MEREDITH, C.J., BRITTON, J., TEETZEL, J.), was delivered by

MEREDITH, C.J.:—We have come to a conclusion different from that of the Judge from whose judgment the appeal is brought, as to the important question of municipal law which arises in this action.

We are unable to adopt the construction placed by the Judge upon the provisions of the Ditches and Watercourses Act, which led to his determining that defendants were not entitled to a charge upon the land of plaintiff for the amount paid by them for the cost of the construction of a drain which Maggie Gaul, from whom plaintiff derives title to the land, was by the award made under the Act required to construct, and which she failed to make as directed by the award, and which was afterwards constructed under the provisions of the Act by a contractor to whom the work had been let by the engineer.

The whole Act, and particularly the section upon which the question arises, is very badly drawn, and it is no wonder that opinions should differ as to the proper construction to be given to it.

We are influenced a good deal in coming to the conclusion which we have reached by a consideration of the scope and purpose of the Act, and the consequences of giving effect to the argument of counsel for plaintiff, which prevailed in the Court below.

The Act provides for the making of drains, where a small number of persons are interested, and the cost does not exceed \$1,000.

It provides machinery for enabling a person who desires to have a drain constructed under the Act to bring the provisions of it into operation. All the persons who are interested, and through whose lands the drain is to pass, or whose lands are benefited by it, are required to be notified. If they fail to agree as to the construction of the drain and the proportions in which they are to contribute to its construction, the engineer of the municipality is called in, and if, after hearing the parties, he determines that the drain should be made, his duty is to make an award providing for the construction of it, and determining the portions of it which are to be made by the different owners, or those of them who he determines ought to be called upon to make any part of it at their own expense.