

swamps or low miry lands, in order to enable the owners or occupiers thereof to cultivate or improve the same, such several parties shall open a just and fair proportion of such ditch or watercourse according their several interests."

By sec. 8 three fence-viewers are to decide all disputes between the owners or occupants of adjoining lands or lands so divided or alleged to be divided as aforesaid, in regard to their respective rights and liabilities under the Act, and all disputes respecting the opening, making or paying for ditches and watercourses under the Act.

From the facts stated, it appears Roberts desired to have surplus water let off his land. It appears also that Cathcart, to the east, has a good deal of marshy land on his lot, and that it runs down southerly upon a good deal of the north east quarter of Patrick Holland's land. Cathcart has paid for the work done through his lot. The two Hollands have not.

It must always happen, where there are more than two lots lying the one from the other as lots in the same concession, numbering 1, 2, 3, 4, &c., that there must be some of the lots which do not touch or abut upon the other or others of them, and yet all these lots may require to be drained, or to be so grouped together as to constitute an adaptable block for the purpose of draining some one or more of them, though the others may not require the proposed drainage in any way.

The statute does not restrict the question of drainage to the owner or occupier of only the two coterminous lots, as it does when provision is made for fences.

By section 1 the enactment as to fences is—"Each of the parties occupying adjoining tracts of land shall make, keep up and repair a just proportion of the division or line fence on the line dividing such tracts, and equally on either side thereof," every word of which shews that provision is made for the line fence between the immediate occupants on each side of it.

That enactment is very different from the language of sections 7 and 8, before quoted, and the nature of the subject required that it should be different.

In my opinion then, the statute, with respect to the provisions which relate to drainage, does not require that the rights or duties of coterminous occupants can be or shall be alone considered. The interests of all those who are affected by the work may and must, I should think, be jointly considered in the one reference and award.

So far, then, I have no doubt that Roberts, Cathcart, Charles Holland and Patrick Holland, each of them representing different lots, may be brought into the same project, and have their rights severally adjudicated upon in carrying out the joint or general scheme of drainage which the fence-viewers shall decide or do decide to be for their common interest, more or less, although Patrick Holland and Roberts are not between themselves coterminous occupants.

That disposes of the first objection

The second objection is that Patrick Holland had not a joint interest with Roberts in the making of the drain. That is a question of fact with which I have properly nothing to do. The fence-viewers or arbitrators are to decide that. If they decided persons to be jointly interested in a work of this kind who were in no sense so

interested, relief must be had in some way; I do not say by application to a superior court—though possibly the proceedings may be reviewable on *certiorari*,—but by action, if a case of fraud or corruption can be established.

Here it is not said they may not be interested in the work from the juxtaposition of property, but not interested because the drain made does not drain the land of the complainant, and because it has not been cut in the place where the natural flow of water is.

These are matter of detail for the fence-viewers, whose discretion I cannot supersede or control if fairly and reasonably exercised: and I see no reason to doubt it, though the complainant and some others for him deny it.

The fence-viewers are to settle what portion of the work shall be done, "according to their several interests," (sec. 7); and they are to decide all disputes between the parties "in regard to their respective rights and liabilities," (sec. 8); "and if it appears to the fence-viewers that the owner or occupier of any tract of land is not sufficiently interested in the opening of the ditch or watercourse to make him liable to perform any part thereof, and at the same time that it is necessary for the other party that the ditch should be continued across such tract, they may award the same to be done at the expense of such other party; and after such award, the last-mentioned party may open the ditch or watercourse across the tract at his own expense, without being a trespasser." (Sec. 12.)

These enactments enable the fence-viewers fully and equitably to deal with all cases which are brought before them, and I cannot say they have not done so between these parties. It is not likely that Roberts would pay \$80 for doing the work he claims to be repaid for, when he can only get back and has been awarded only \$64 for it, if it were not a work beneficial for himself, at any rate; and it is not likely the fence-viewers would have awarded Patrick Holland to pay the sum if they had not thought the work to be beneficial to him.

I cannot interfere on this ground.

Thirdly, it is said no demand was made on Patrick Holland to do the work through his own land before Roberts did it for him.

Roberts swears Patrick and Charles Holland "neglected and refused up to and after the 20th of August, 1870, to do their portion of the work;" that the ditch was dug in October and November, 1870; "and both the Hollands were frequently at the ditch during the time it was being dug: and that Patrick Holland instructed the men as to the digging of the ditch."

The statute requires a demand in writing to be served on the party to do his work, and a refusal by him before the other party can do it for him—or make him pay for it. Patrick Holland says—"I told one John Walker, one of the parties digging the ditch, not to attempt to enter upon my lands to dig said ditch." It is quite clear, then, that Patrick Holland was determined not to allow Roberts to dig the ditch on his land, and I can quite believe, from this, that he refused to do the work, as Roberts swears.

I do not think I should, if I was quite certain of possessing the power, stay all proceedings because the demand had not been in writing, or even if no demand at all had been made on Patrick Holland to do the work, when it appeared