

Div. Ct.]

NOTES OF CANADIAN CASES.

[Q. B. Div.]

Joseph Deacon, of Brockville, appeared for the appellant. The respondent appeared in person.

The appellant put in a copy of the award of the fence viewers, certified by the clerk of the village of Merrickville. Upon looking at it and at the Act, the judge entertained grave doubts as to his jurisdiction, and reserved judgment, to be given at the office of the clerk of the Division Court.

MCDONALD, Co. J.—This is an appeal to me, as Judge of the County Court of the United Counties of Leeds and Grenville, from an award of three fence-viewers of the village of Merrickville, in said United Counties. The 3rd section of the Line Fences Act provides, in case of dispute, that there shall be arbitration by "three fence-viewers of the locality." The 7th section provides that "the award shall be deposited in the office of the Clerk of the Council of the Municipality in which the lands are situate." The 11th section provides for appeal to "the Judge of the County Court of the County in which the lands are situate," and for the delivery of a copy of the notice of intention to appeal "to the Clerk of the Division Court of the division in which the land lies." Now in the case in question it is impossible that all these provisions can be complied with. For although it should be urged that the word "locality" in section 3 is wide enough to cover the surrounding country, without regard to municipal divisions, and that the provisions of the 7th section would be complied with by having the award executed in duplicate, and by depositing one of such duplicates in the office of the Clerk of *each* Municipality in which a portion of the lands is situate, I think that such a construction would, as to both the 3rd and 7th sections, be a very strained one, and quite at variance with the reading of the Act as a whole. And, at any rate, there is not any mode that I can perceive of getting around or surmounting the difficulties presented by the provisions of the 11th section, as to the Judge to whom the appeal shall be made, and the Division Court Clerk to whom a copy of the notice is to be delivered. The words are "the Judge of the County Court of the County in which the lands are situate," and "the Clerk of the Division Court of the Division in which the land lies." In the case now under consideration the lands are not situate wholly in one County,

and do not lie wholly in one Division, and I must therefore decide, and do decide, that the provisions of the statute as to appeal do not extend to or cover such case, and that I have not jurisdiction to hear and determine the appeal. I presume that the person who drafted the Act had not in his mind a thought of the possibility of such a contingency occurring, and may mention, in this connection, that Mr. Edmund Reynolds (who has appeared under instructions from Respondent) has drawn my attention to the fact that, by the legislation contained in chapter 12 of the statutes of 1878 (O), provision has been made to meet such a case as this, when the question arises under the Act as to ditching water-courses. I presume if the attention of the Legislature is called to the matter similar provision will be made for a like state of facts under the Lines Fences Act.

It is, in my opinion, a debatable point, whether I have jurisdiction over costs. It is possible that marginal rule 489 of the Judicature Act confers such jurisdiction, but even if it does, I do not think this a case in which costs should be allowed, and I make no order in reference to them.

NOTES OF CANADIAN CASES.

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QUEEN'S BENCH DIVISION.

[Sept. 18.]

WOLVERTON V. TOWNSHIPS OF NORTH AND SOUTH GRIMSBY.

High School District—By-Laws annexing parts of two Municipalities—Repeal.

In 1879, the Township of Grimsby passed a by-law attaching a certain portion of the township to the village of Grimsby for High School purposes. In 1881, the same county similarly annexed another portion. Corresponding by-laws were passed by the village of Grimsby. By 45 Vict., cap. 33, O., the township was divided into two townships of North and South Grimsby. In 1882, the council of the township passed a by-law on the petition of less than two-thirds of the ratepayers repealing the two former by-laws.