

father's consent. The statute contemplates that any owner desiring to have the drain constructed should be able to proceed under the Act, even if one of the owners affected is an infant; and, therefore, the notice required is to the guardian, by nature, of the person of the infant, unless he should chance to have some other duly appointed guardian.

The guardianship of the father is recognised by our statutes. The Infants Act, R.S.O. 1914 ch. 153, takes the father's guardianship for granted. During the lifetime of the father he may be appointed Surrogate guardian, or some other person with the father's consent may be appointed Surrogate guardian, such guardian having authority not only over the person but over the estate of the infant. See sec. 32. Under sec. 28, on the death of the father the mother becomes the guardian of the infant, unless the father has exercised his right of appointing another guardian. The mother or the testamentary guardian appointed by the father would not have any right under sec. 32 over the property of the infant. The statute in question does not require that the person to whom notice was given shall have been constituted guardian of the infant's estate.

The remaining question, that of the sufficiency of the outlet, arises from a misunderstanding of the decision in *McGillivray v. Township of Lochiel* (1904), 8 O.L.R. 446. No doubt, the statute contemplates that every drain shall be carried to an adequate and sufficient outlet. What was held in that case was that a sufficient outlet was in one sense a condition precedent to the validity of proceedings under the statute so as to justify the diversion of water when third parties were concerned. Under the colour of a drainage award certain persons had brought water on to the plaintiff's property. He sought an injunction and damages. It was held that no award under the statute could justify the bringing of this water on to the lands in question. All that the statute authorised was the taking of water to a proper outlet, that is, some place where it would not injure the land of others.

The drainage scheme here is the discharge of these waters into Lake Simcoe. Lake Simcoe is undoubtedly a proper outlet, and the water, once brought there, could injure no one. It is said that to reach Lake Simcoe the ditch would have to be carried across the lands of certain persons without much fall, and at a level little, if any, above the lake level. The argument is, that this last mile of ditch is not a proper outlet; it is not the outlet at all; the outlet is the lake. This mile forms part of the ditch,