

SUTHERLAND, J.

MARCH 21ST, 1917.

*OTTO v. ROGER AND KELLY.

Ditches and Watercourses Act—Award of Township Engineer—Objections of Land-owner—Drain Crossing Lines of Railway—Railway Company not Subject to Provisions of Act—Insufficient Outlet—Default of Engineer in Personal Attendance—Action to Restrain Engineer and Contractor from Proceeding with Work—Remedy by Appeal to County Court Judge—R.S.O. 1914 ch. 260, sec. 23—Objections Covered by—Dismissal of Action.

Action by J. R. Otto, the owner of a lot in the 3rd concession of the township of South Easthope, against John Roger, the township engineer, and Thomas Kelly, the contractor for certain drainage or ditching work directed, by an award under the Ditches and Watercourses Act, R.S.O. 1914 ch. 260, to be done in the township, to restrain the defendants from proceeding with the work upon the plaintiff's land and for damages.

The action was tried without a jury at Stratford.

R. S. Robertson, for the plaintiff.

G. G. McPherson, K.C., for the defendant Roger.

W. G. Owens, for the defendant Kelly.

SUTHERLAND, J., in a written judgment, after setting out the facts and summarising the pleadings, referred to the following sections of the Act: 3 (f), 5 (1), 6 (1), 13, 14, 16 (1), (3), 19 (2), (3), 22, 23; and said that the Act was intended to simplify and make as inexpensive as possible local drainage works; and the tendency of legislation with respect to such matters seemed to have been in the direction of preventing litigation and making an award, when once published and after the time for appeal therefrom had elapsed, binding upon parties who had notice of the proceedings and of the award, notwithstanding a failure to comply strictly with the provisions of the Act, or defects in form or substance in the award or the proceedings prior to the making thereof.

The purpose of the action was to prevent further work upon the drain; damages were claimed, but they were admittedly trivial and merely incidental.

The plaintiff contended that, as the award directed the Grand Trunk Railway Company to do certain things and pay certain sums, that in itself made the award a nullity unless the company had agreed to be bound, or the approval of the Board of Railway