

D. C.]

IN RE BELL AND CODLING.

[D. C.]

Applying the rules which I hold should govern Fence-viewers in such matters, I must quash the award, which is also bad on the face of it for want of sufficient description as to the starting point and course of the projected drain—"commencing at station 'O' at the boundary line," when there is no plan or map and no further reference to designate the starting point, is not sufficient. The respondent is directed to commence her work at "station 'O' on former award." Nothing can be more uncertain and inaccurate than this. It is most important that everything should be set out very accurately in these awards. The description should be as complete and certain as possible, so that the commencement, the course and termination of the work could easily be ascertained from the award itself or the plans accompanying it.

Apart from the merits of this case, or the regularity of the proceedings, there is some doubt on my mind as to whether the Fence-viewers have any jurisdiction at all in such a case as the present.

By section 3 of R. S. O. cap. 199, (as amended by 43 Vict. cap. 30), secs. 3, 7, 8, 9 and 10, to justify such proceedings adjoining or adjacent lands must be benefitted by one or other of the three things therein specified, viz :

1. By making a ditch or drain.
2. By deepening or widening a ditch or drain already made in a natural water-course.
3. By making, deepening or widening a ditch or drain for the purpose of taking off surplus water from swamps or low miry lands to enable owners or occupiers to cultivate the same.

As to No. 1. Is the appellant benefitted in any way, whatever, by having a drain continued across his farm, that was made to drain Lot 28, and not in any way for his benefit? The conclusion I came to at the hearing was what I have before stated. This finding excludes it from the first head. Secondly was the work ordered, "a deepening or widening a ditch or drain already made in a natural water-course." It certainly was not, and the case is thus excluded from the second head. Neither can it be contended that it comes under the third head. If it therefore cannot be classed as a work under either of the three specified heads, the Fence-viewers have no jurisdiction unless subsection four enlarges the meaning and operation of section three, which it appears to do when it de-

clares that "if it appears that the owner or occupant of any tract of land is not sufficiently interested to make him liable to perform any part thereof, and that it is necessary for the other party that the ditch shall be continued across such tract, they may award the same to be done at the expense of such other party, and after such award such other party may do the work at his own expense without being a trespasser." This provision was enacted a couple of years after the passing of the law as it appears in section three (both being consolidated in the revised statutes as cap. 199), and probably was intended to include within the scope and operation of the first Act a class of cases otherwise excepted. This point, however, has not been argued before me, and I express no opinion concerning it, as it is not necessary in deciding this appeal that I should do so.

It is much to be regretted in view of what has already been done under the other two awards, and the heavy expenses incurred in the present proceedings, that the Act gives me no power to correct and amend the award, and continue and modify the proceedings *to the extent required* to make everything legal and attain the ultimate object in view in commencing these arbitrations. I must set aside the award and direct the payment by the respondent to the appellant of such costs herein as I may hereafter tax and certify in due course.

*Award set aside.*