

sibly deepening the existing ditch on the east side of the road allowance between the townships of Richmond and Tyendinaga, and also a ditch on the land in question, part of lot 2 in the second concession of Richmond, and directs one English, the owner of the south half of lot 2, to deepen the latter ditch five inches and clean out, so as to allow the water to run freely to the road ditch, and imposes on plaintiff the duty of maintaining the latter ditch after being cleaned and deepened by English. After English had finished the plaintiff filled up the ditch. Assuming that the provisions of sec. 28 were applicable, and that he had authority under it to let the work of cleaning out the ditch directed by the award to be done by English, the engineer inspected it, and finding it filled up, assumed to let the work of cleaning out to defendant, who was proceeding to do so when stopped by the injunction in this action.

H. L. Drayton, for defendant.

A. B. Aylesworth, K.C., for plaintiff.

The judgment of the Court (MEREDITH, C.J.; LOUNT, J.) was delivered by

MEREDITH, C.J.—It would appear to be reasonably clear that, but for the provisions of sec. 33, all that the Act deals with is the construction and the subsequent maintenance of ditches, and “construction” is defined by sec. 3 to mean “the original opening or making of a ditch by artificial means,” and that is therefore what McHenry made his requisition for, and all that the engineer had any jurisdiction to deal with. Nor does sec. 33 help the appellant. It no doubt enables a land owner to make a requisition for the deepening, widening, or covering of an existing ditch, but the provision is not one enlarging the meaning of the word “construction” so as to make it include works of that character; it merely applies the Act to such works, and directs that the proceedings to be taken for procuring them to be done under the Act are to be the same as those which are to be taken for the construction of a ditch under the provisions of the Act.

I have searched without finding anything in the Act which empowers the engineer, when one kind of work is asked for, to direct another and different kind in whole or in part to be undertaken, and, with every desire to give to the Act the most liberal interpretation possible, I am unable to see my way to upholding the jurisdiction of the engineer to make the award and under the requisition in pursuance of which he assumed to make it.

The proceeding to let the work as was done by the engineer was unauthorized by the Act. The provisions of