

LEGAL DEPARTMENT.

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EDITOR.Appeals Against Awards under the Ditches
and Watercourses Act.

Important changes were made in reference to appeals against engineers' awards by the Ditches and Watercourses Act, 1894. Section 22 provides that any owner dissatisfied with the award of the engineer, and affected thereby, may, within fifteen clear days from the filing thereof, appeal therefrom to the judge, etc. By section 3 of the said act, the word "judge" here means the senior, junior or acting judge of the county court of the county in which the lands are situated, in respect of which the proceedings under this act are taken. Subsection 2 of said section enacts that the appellants shall serve upon the clerk of the municipality in which proceedings for the ditch were initiated, a notice in writing of his intention to appeal from the award, shortly setting forth therein the grounds of appeal. Then subsection 3 of said section provides that the said clerk shall, after the expiration of the time for appeal forward by registered letter or deliver a copy of the notice or notices of appeal, and a certified copy of the award, and also the plans and specifications, if any, to the judge, who shall forthwith, upon receipt of the registered letter or documents aforesaid, notify the clerk of the time he appoints for the hearing thereof, and shall fix the place of hearing at the town hall or other place of meeting of the council of the municipality in which proceedings for the ditch were initiated, unless the judge, for the greater convenience of the parties, and to save expense, shall fix some other place for hearing. This subsection also provides that the judge may, if he think proper, order such sum of money to be paid by the appellant or appellants to the said clerk as will be a sufficient indemnity against the costs of appeal, and the clerk, upon receiving notice from the judge, shall forthwith notify the engineer whose award is appealed against, and all parties interested, in the manner provided for service of notices under the said act. Subsection 5 enacts that the clerk of the municipality, to whom notice of appeal is given, shall be the clerk of the court, and shall record the proceedings. The two last mentioned subsections contain important departures from the former enactment. The division court of the division in which the lands are situate or its clerk have now nothing to do with appeals filed against awards made under the existing Ditches and Watercourses Act. By subsection 6 of said section 22 the judge is required to hear and determine the appeal or appeals within two months after receiving notice thereof from the clerk of the municipality, and in the appeal may set aside, alter or affirm the award, and correct any errors therein. Should the

award be altered or affirmed, the costs of the appeal shall be in the discretion of the judge. But if the award be set aside, the judge shall have power to provide for the payment of the costs mentioned in the award, and also the costs of appeal, and may order the payment thereof by the parties to the award, or any of them, as to him may seem just, and he may fix the amount of such costs. By subsection 9, the judge is entitled to charge for the trial of appeals under the act, and for the inspection of the premises, the sum of \$5 per day, which charge is to be considered part of the costs of the appeal. By subsection 10, the award, as so altered or affirmed, shall be certified by the clerk, together with the costs ordered, and by whom to be paid, and shall be enforced in the same manner as the award of the engineer, and the time for the performance of its requirements shall be computed from the date of such judgment in appeal. Immediately after the hearing the clerk shall forward *by registered letter*, to the clerk of any other municipality in which lands affected by the ditch are situate, a certified copy of the changes made in the award by the judge, which copy shall be filed with the award, and each clerk shall forthwith, by registered letter, notify every owner within his municipality of any change made by the judge, in the portion of the work and material assigned to such owner. In all appeals the judge has the same powers for compelling the attendance of witnesses, and their examination upon oath of all parties or other persons, as belong or might be exercised by him in the division or county court, and the clerk of the municipality has the like powers as the clerk of a division court as to the issuing of subpoenas to witnesses, that is to say, on the application of any party interested in the appeal, the clerk has authority to issue a subpoena under his hand and the seal of the municipality, and as many copies for service as the applicant may require. On service on him of one of these copies, and on payment of the fees mentioned hereafter, the witness is bound to attend at the time and place named in the copy to give evidence as to the subject matter of the appeal. The fees to be allowed to witnesses and to be paid to them at the time of their being served with the copy of subpoena by the party causing the issue of same, shall be according to the scale of fees allowed to witnesses in any action in the division court, viz., 75c. per day if within, and \$1.25 per day if without the county in which the appeal or appeals is or are to be heard, and 10c. per mile (one way) from the place of residence of the witness to the place of hearing, or if the witness travels by railroad, the price of a return ticket between the two places.

Said a Pine street lawyer to his young clerk: "Why weren't you at the office earlier this morning?" "Beg pardon, sir, but I'm a Reformer. I believe that the office should seek the man."—*Texas Siftings*.

The Drainage Act 1894.

At the current year's session of the Ontario Legislature, the drainage clauses of the Municipal Act and amendments thereto received a thorough overhauling. From the mass of previous legislation on the subject, and in the light of many years experience and inquiry, and no doubt also of the report of the Ontario drainage commission, was evolved "The Drainage Act of 1894." It cannot be denied that this act is a vast improvement on all former legislation of the kind. The extracting of the drainage clauses from the Municipal Act, their consolidation and formation into a separate act, is an advantage and convenience which will be duly appreciated by those municipal officers who are so often called upon to guide and direct parties desirous of obtaining the construction of drainage works, under the provisions of the said Act.

Since it is of the utmost importance that municipal officers and councillors should be reasonably familiar with the drainage laws, it is our intention to devote a series of articles to the discussion and consideration of the "Drainage Act 1894," noting and pointing out the most important changes made thereby in the old law as it existed in the drainage clauses of the Municipal Act. In the outset it may be mentioned that the word "municipality" when used in the said act does not include a county municipality, but does include a township, town, city, and incorporated village. The first necessary preliminary step to be taken prior to the passing of a by-law providing for the carrying out of drainage works under the said act, is the preparation, signing, and presenting of a petition to the municipal council, signed by the majority in number of the resident and non-resident persons (exclusive of farmers sons not *actually* owners), as shown by the last revised assessment roll to be the owners of the land to be benefited in any described area within the municipality, for the draining of the area described in the petition by means of such drainage works as are therein described, and are authorized to be entered upon, and carried out by the said act, (see subsection 1 of section 3). The wording of the parent section of the Municipal Act (569) rendered it doubtful as to *what majority* was sufficient to procure the action of the council on the petition under this section. It was judicially remarked that four concessions in a township may be interested in different degrees in a work which would drain all the lands in these concessions, but it might be of more importance to the owners of the lands in one of those concessions than to all the owners of the lands in the other three to procure the construction of the work. As at present advised, we do not see that a majority of the resident owners in the one concession would not comply with the terms of the act. In a later case it was held that a petition should include a majority of the persons whom the engineer finds to be