

ment of a Divisional Court (24th April, 1908), which had held that an action begun by writ of summons in the High Court to enforce payment of the claim of a contractor to be paid for work done under the Drainage Act was properly dismissed summarily, on the ground that the Drainage Referee alone had jurisdiction. The defendants say the decision of the Court of Appeal has removed the impediment which deterred them until recently from objecting to the jurisdiction of the Referee. The present is a much stronger case against the exclusive jurisdiction of the Referee than the Roxborough case. There the claim arose out of a dispute between a contractor, who assigned his claim to the plaintiffs, and the municipality for which he constructed certain drainage works. In the present case the construction of the drain has not yet been begun. So far as material, sec. 93, as amended by 1 Edw. VII. ch. 30, sec. 4, enacts as follows: "All proceedings to determine the claims and disputes arising between . . . individuals and a municipality . . . in the construction, improvement, or maintenance of any drainage work under the provisions of this Act or consequent thereon . . . shall hereafter be made to and shall be heard or tried by the Referee only." The work done by Mr. Moore was undoubtedly a necessary preliminary to the construction, if not to the improvement and maintenance of the drain; but there has been no "construction of any drainage work."

Section 93 confers a new jurisdiction, and upon settled principles is to be strictly construed: Best, C.J., in *Kite and Lane's Case*, 1 B. & C. 101, at p. 107. The claim of the plaintiff has not arisen in the construction, improvement, or maintenance of the drainage work, but in matters wholly preliminary to such construction.

If, as was held by the Court of Appeal in the Roxborough case, the section in question does not refer to the claims of contractors or workmen to be paid for work performed by them in the actual construction of the drainage works, still less does it refer to such a claim as that set up by the plaintiff.

I think the defendants are entitled to prohibition, and with costs. On the question of costs the remarks of Lopes, L.J., in *The Queen v. County of London*, [1895] 1 Q. B. at p. 458, are pertinent: "It is difficult to understand on what principle a litigant who successfully impeaches the jurisdiction of a Court into which his adversary has improperly dragged him is to be deprived of the costs of a proceeding which the conduct of his adversary has rendered imperatively necessary."