

The validity of the award is attacked upon three grounds: first, it is said that there is not a sufficient outlet; secondly, that the engineer was not duly appointed; and thirdly, that the award affects the land of one William Johnston junior, an infant, who was not duly served with notice of the proceedings.

No attack upon Mr. Fitton's position as township engineer is made upon the pleadings, but it was sought to set it up by way of amendment. I reserved judgment upon the motion for leave to amend until I could ascertain what foundation there was for the attack. I am satisfied that the attack entirely fails, and I think that my discretion ought to be exercised against allowing the amendment sought.

The attack upon Mr. Fitton's appointment is based upon a complete misunderstanding of the situation. By a by-law of the township council, passed in February, 1897, Mr. James Sheridan was appointed township engineer. He was not appointed engineer under the Act in question. The by-law is intituled by-law 268 to appoint township officers for the year 1897, and the appointment is to office "until his successor or successors has or have been duly appointed and qualified or until otherwise relieved by this council." A similar by-law was passed in 1898, to appoint officers for the year 1898; Mr. Patrick Kelly was appointed township engineer. In 1899, a by-law was passed, No. 373, "that C. E. Fitton, P.L.S., be and is hereby appointed engineer under the Ditch and Watercourses Act to perform all the duties required of an engineer by the said Act."

The argument is that Mr. Fitton could not be appointed unless and until the appointment of the previous engineers under the by-laws of 1897 and 1898 had been expressly revoked. I can see nothing in this argument. Mr. Fitton was duly appointed under the Act.

Quite apart from this, Mr. Fitton held office under that by-law until the year 1912, and was certainly the *de facto* engineer of the township, and his actions are not open to question by reason of any possible defect in the mode of his appointment.

Application to amend was also made for the purpose of allowing the award to be attacked upon the ground that an appeal had been had from the award, which the Judge of the County Court ruled was not brought in time. It is said that this ruling was erroneous. If so, possibly proceedings by way of mandamus might have been open to those aggrieved; but it appeared clear to me that this in no way affected the validity of the award. So