

RE MOORE v. TOWNSHIP OF MARCH.

Drainage Referee—Jurisdiction—Claim of Engineer to Payment for Services Preliminary to Drainage Construction Work—Drainage Act. sec. 93—Prohibition—Costs.

Application by the defendants for an order prohibiting the plaintiff and George F. Henderson, Drainage Referee, from proceeding further in a certain action pending before the Referee, under the Municipal Drainage Act, R. S. O. 1897, ch. 226.

T. A. Beament, for the defendants.

H. A. Lavell, K.C., for the plaintiff.

LATCHFORD, J.:—In June, 1907, a number of the ratepayers of the township of March petitioned the municipal council of the township for the draining of certain lands, and the council appointed the plaintiff, a civil engineer, to examine the area proposed to be drained, to prepare plans of the work, specifications, and estimates, and otherwise to perform the duties required to be done by an engineer as prescribed by the Drainage Act. Mr. Moore did the work he was appointed to do, claimed \$3,189.33 for his services, received \$1,950 in promissory notes, and on the 3rd November, 1908, began proceedings against the defendants, under sub-sec. 2 of sec. 93 of the Act, notifying the defendants that he claimed the balance of \$1,239.33 with interest. To this notice the defendants filed an appearance as in an action in the High Court. A statement of claim and statement of defence were delivered. The defendants did not deny employing Mr. Moore, but set up that they had paid all that was due him for his services. A month or two later the plaintiff served the defendants with a notice of motion returnable before the Referee on the 5th March, 1909, to fix a date for the trial of the action. On the return of the motion a question arose as to whether there had been an audit. The Referee fixed the 12th March, not apparently for the trial of the action, but merely to determine whether there had or had not been an audit in conformity with sub-sec. 5 of sec. 5a of the Drainage Act, 3 Edw. VII. ch. 22, sec. 4, and 6 Edw. VII. ch. 37, sec. 2. Counsel for both parties appeared before the Referee on the 12th March. His conclusions are reported in 13 O. W. R. 692. At this time, and indeed until the 18th October, the jurisdiction of the Referee to try the action was not questioned by the defendants. The decision of the Court of Appeal in *Bank of Ottawa v. Township of Roxborough*, 18 O. L. R. 511, had been given on the 5th May. It reversed the judg-