

MIDDLETON, J.

NOVEMBER 17TH, 1914.

*HEALY v. ROSS.

Ditches and Watercourses Act—Award of Township Engineer—Construction of Drain—Appointment of Engineer—Validity—De Facto Engineer—Amendment of Pleadings—Appeal from Award—Time—Ruling of County Court Judge—Land of Infant Affected by Award—Notice of Proceedings Given to Father of Infant—“Guardian of an Infant”—R.S.O. 1897 ch. 285—Infants Act, R.S.O. 1914 ch. 153, secs. 28, 32—Sufficiency of Outlet.

Action to restrain the defendants from proceeding with the construction of a drain under an award made by the defendant Fitton pursuant to the Ditches and Watercourses Act, and for a declaration that the award was illegal and made without jurisdiction, and for damages.

The action was tried without a jury at Toronto.

S. S. Sharpe, K.C., for the plaintiffs.

J. M. Ferguson and J. T. Muleahy, for the defendants.

MIDDLETON, J.:— . . . The lands affected by the award are mainly low-lying and swampy lands, in the township of Mara, upon the shores of Lake Simcoe. The elevation of these lands above the lake level is so slight that it is difficult and perhaps impossible to devise an entirely satisfactory scheme of drainage. Upon the requisition made, the defendant Fitton, an entirely competent engineer and a man of much experience in drainage matters, did his best to solve the difficult problem presented. Other drains had been constructed, and these are not at the present time sufficient. The new work directed by the award in question consists in part of a drain through some cleared land adjoining an elm swamp, to take the place of an old drain which passes through the swamp, overgrown and choked, and quite inadequate. The new drain starts from a point on the borders of lot 24, where it leaves the course of the old drain and reaches Lake Simcoe by a route which is deemed preferable, because, in the first place, it is shorter, and, in the next place, it goes through open land where there is less danger of obstruction, the outlet being not far distant from the outlet of the old drain upon the shores of the lake.

*To be reported in the Ontario Law Reports.