

disallowed \$896 of Moore's account against the corporation of the township of March for work performed by him as engineer under the provisions of the Municipal Drainage Act, R. S. O. 1897 ch. 226. The total amount of the account was \$3,189.74, and it was audited in pursuance of sec. 4 of the amending Act 3 Edw. VII. ch. 22 (O.), by the County Court Judge, who certified that, in his opinion, Moore was entitled to be paid \$2,293.74, and disallowed charges to the amount of \$896 as being unreasonable. The County Court Judge gave reasons in writing for his finding, from which it appeared that the main ground for disallowing the charges in question was that the engineer had charged for the services of certain persons, to whom he had delegated parts of the work, a larger sum than he had actually paid these persons. (See 13 O. W. R. 692.)

Leave was given to Moore by the County Court Judge to appeal from his decision, and the appeal came on for hearing before a Divisional Court composed of MULOCK, C.J.Ex.D., CLUTE and RIDDELL, JJ., on the 29th September, 1909.

A. H. Armstrong, for the township corporation, objected to the jurisdiction of the Court, on the ground that the certificate of the County Court Judge was not appealable under "The Judges' Orders Enforcement Act," 9 Edw. VII. ch. 46 (O.)

Featherston Aylesworth, for the appellant, contended that an appeal lay from the decision of the County Court Judge as *persona designata* under sec. 2 of the Act, special leave having been given by him as provided by sec. 4.

The merits of the case were not fully discussed, and at the conclusion of the argument on the question of jurisdiction the judgment of the majority of the Court was delivered by MULOCK, C.J., holding that the certificate was not appealable, as it was not an affirmative order that could be enforced, there being no direction for payment of what the Judge found to be due from the corporation to the engineer.

CLUTE, J., dissented, taking the view that the case came within the purview of sec. 2 of the Act, and that the County Court Judge acted as *persona designata*, from whose decision, as a declaratory judgment, an appeal would lie, as special leave had been given to appeal under sec. 4.

Appeal dismissed without costs.