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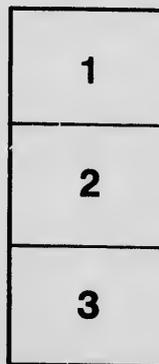
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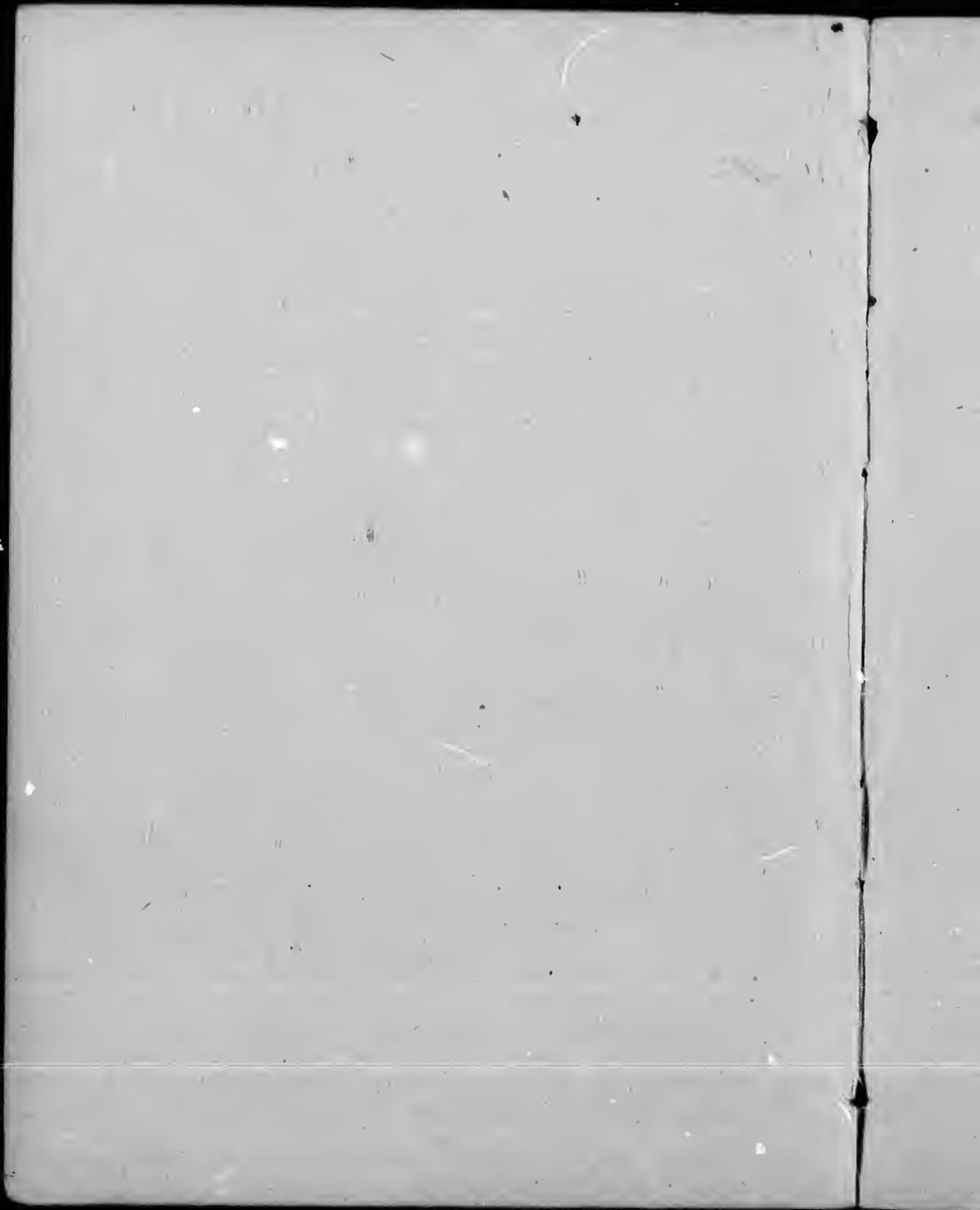
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Ont. Laws, statutes, etc.
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✓
THE

DITCHES AND WATERCOURSES ACTS

OF ONTARIO;

WITH NOTES AND REFERENCES

TO

DECIDED CASES.

✓
BY

MALCOLM GRÆME CAMERON,

(OF OSGOODE HALL, BARRISTER-AT-LAW.

AUTHOR OF "A TREATISE ON THE LAW OF DOWER.")

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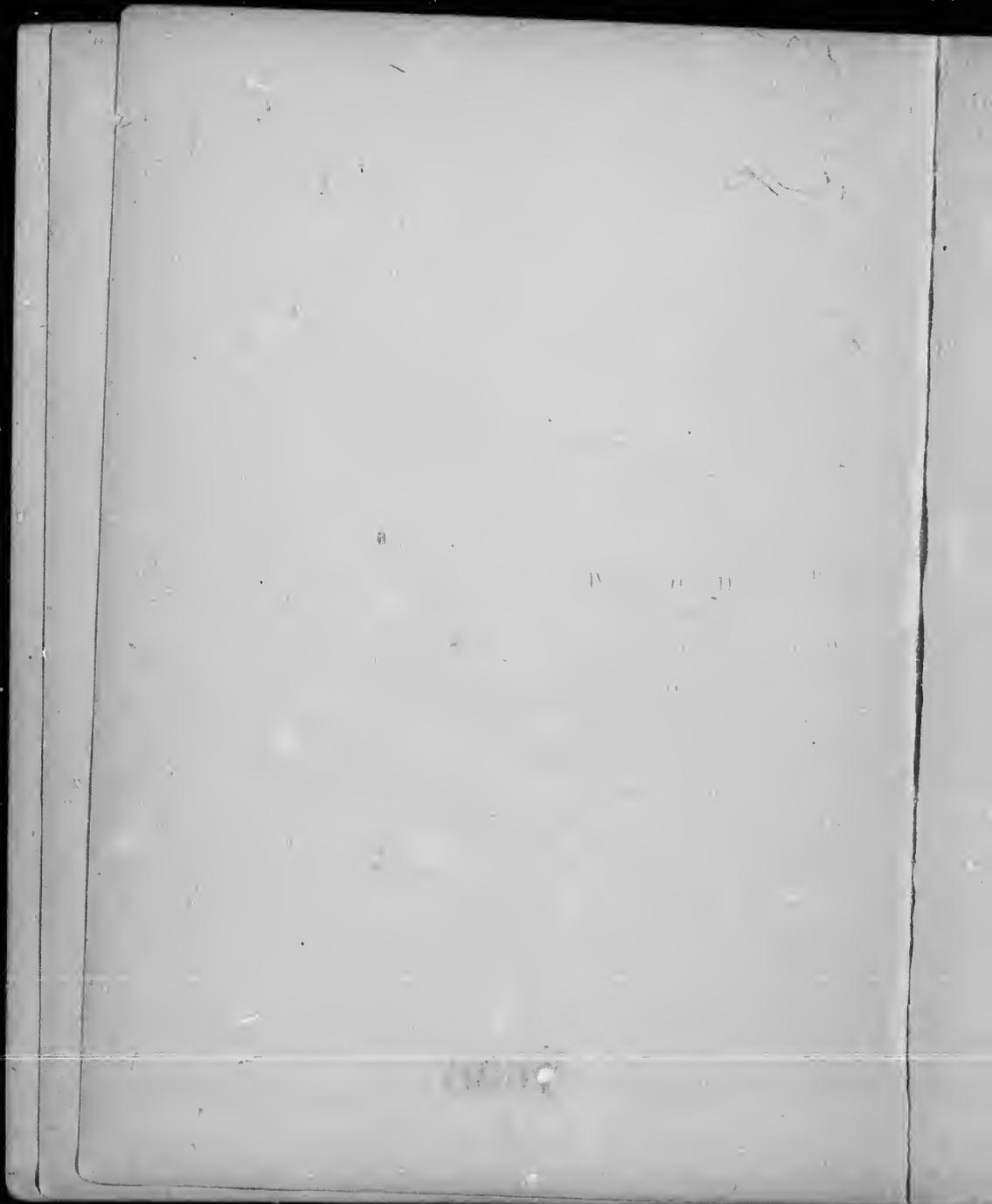
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7636



AN ACT
RESPECTING
DITCHES AND WATERCOURSES.

[Assented to 1st February, 1883.]

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as “The Ditches and Watercourses Act, 1883.”

The Acts in force at the time of the passing of this Statute relating to Ditches and Watercourses were R. S. O. cap. 199; 41 Vict. Ont. cap. 12; 43 Vict. Ont. cap. 30, all of which were repealed by this act. *Vide* sec. 22.

Certain Acts not affected.

2. This Act shall not affect the Acts relating to Municipal or Government Drainage.

The Acts relating to Municipal and Government drainage are R. S. O. cap. 33; R. S. O. cap. 30, sec. 51 *et seq*; 44 Out. Vict. cap. 3; 46 Vict. Ont. cap. 18, sec. 570, *et seq*.

It was held in the case of *Miller v. The Grand Trunk Railway Co.*, 45 U. C. R. p. 222, that Railway Companies are not subject to the provisions of "The Ditches and Watercourses Act," R. S. O. cap. 199, except as provided by the sec. 13 of the Act, when they would be benefited by the work done. The ground upon which this decision proceeded was, 1st., because that Act began (sec. 2) by declaring, "this Act shall not affect the Acts relating to Municipal Institutions, or the Acts respecting Drainage, as this Act is intended to apply to individual, and not to public or local interests, rights or liabilities." 2ndly, (to use the words of C. J. Hagarty,) "Because the whole design of the Act seemed to be to provide for the case of individual owners; in its own words, 'to enable the owners to cultivate the same,'" And 3rdly, still using the language of the learned C. J., because "sec. 13 specially meets the case of a municipal corporation, which provides that when that corporation would be benefited by the construction of the ditch or drain, they shall be in the position of an individual under the Act. This especial kind of corporation is to have the benefit of the Act, but only when it may be benefited by the provisions of the Act. The plaintiff here seeks to apply it to a wholly different corporation where the benefit sought may be wholly for the adjoining proprietor." It will be observed that this Act does not exclude from its operation in express terms (as did R. S. O. cap. 199 sec. 2,) municipal institutions and public or local interests, rights, and liabilities, and confine it to individual interests, rights or liabilities. It would appear from a perusal of the above case and a comparison of this section and the corresponding section of the Act repealed by this present one, that the Legislature meant by omitting from this Act the words to which we have referred, to extend the provisions of the statute to all corporations, and this we submit it has done, although the question of its true construction might have been placed beyond all doubt, by the use of a word or two more. It will further be observed, that while the design of cap. 199, as expressed in sec. 3, was to enable

the owners to *cultivate the land*, the design of this Act, as expressed in sec. 3, is to enable them the *better to cultivate* the same.

It will be further observed that sec. 17 of this Act, unlike sec. 13 of cap. 199, does not confine the liability of municipal corporations to cases where they would be benefited by the constructions of the ditch or drain, but places them in the same position as individual owners. It will therefore be seen that the arguments of the learned Chief Justice, in the above case, would be of no force in an action brought under this statute.

In *McGillivray v. Millin*, 27 U. C. R., p. 62., the facts were as follows: The plaintiff owned land south of, and higher than the defendant's land, and the surface water in the spring and fall drained off in a channel of no definite width from the upper part of his lot to the lower, and thence to defendant's land, into a pond from which no exit was proved, and which with the rest of the low land, was usually dry from April to November. The plaintiff had dug a ditch to facilitate the drainage through his own land, and defendant three or four years ago had allowed him to plow a furrow in his land, with the same object. This the defendant afterwards obstructed, and the plaintiff sued. It was held that there was no right of action, for he was not a riparian proprietor, and there was no proof of any easement, and there was no natural drainage at the spot obstructed until the ditch was dug there. It was intimated by the Chief Justice, that the proper remedy was under the "Ditches and Watercourses Act."

See also *Murray v. Dawson*, 19 U. C. C. P. p. 314.

Where there is not a natural watercourse, the proper remedy is under the provisions of this Act.

Owners of adjoining lands to construct ditches in certain proportions.

3. In case of owners of lands, whether immediately adjoining or not (*a*), which would be benefited by making a ditch or drain, or by deepening or widening a ditch or drain already made in a natural watercourse, or by making, deepening or widening a ditch or drain for the purpose of taking off surplus water (*b*), or in order to enable the owners or occupiers thereof the better to cultivate or use the same (*c*), such several owners shall open and make, deepen or widen, a just and fair proportion of such ditch or drain according to their several interests in the construction of the same; and such ditches or drains shall be kept and maintained so opened, deepened or widened by the said owners respectively, and their successors in such ownership in such proportions as they have been so opened, deepened or widened, unless in consequence of altered circumstances the engineer (*d*) hereinafter named otherwise direct, which he is hereby empowered to do upon application of any party interested, in the same form and manner as is hereinafter prescribed in respect of the original opening, deepening or widening; and in case

the engineer finds no good reason for such application all costs caused thereby shall be borne by the applicant, and shall be collected as in this Act provided.

(a) The former statute only applied to the case of owners occupying adjoining land. R. S. O. cap. 199, sec. 3. So that under that statute it was essential that the owner should be the occupant of the land, and that the lands should adjoin each other. The former essential was removed by 43 Vict. cap. 30, sec. 1, which enacted that the word "of" should be substituted for "occupying," and the latter essential was removed by 41 Vict. Ont. cap. 12, sec. 3, which enacted that the word "adjacent" should be added to the word "adjoining." This present statute goes even a little further. By its provisions it is not necessary that the lands should either adjoin or be adjacent to each other.

(b) R. S. O. cap. 199, sec. 3, provided for the deepening or widening a ditch or drain for the purpose of taking off surplus water *from swamps or low miry land*. These words are not in the present statute.

(c) The purpose of such deepening or widening, as set out in cap. 199, was to enable the owners or occupiers to cultivate the swamp or low miry land, while the statute we are considering sets forth as its object the enabling of owners or occupiers the *better* to cultivate or use the same. Really the one covers the other. The change in the language of the latter statute was no doubt owing to the improved condition of the swampy portion of the country.

(d) Formerly it was the Fence Viewers to whom these matters were referred.

Sec. 3 has been amended by 47 Vict. cap. 43. sec. 1 (see *post*, page 53) and the following sub-section has been added thereto:

Proper outlet must be reached.

(2) Every such ditch, or drain, shall be continued to a proper outlet, so that no lands, unless with the consent of the owner thereof, will be overflowed, or flooded, through, or by the construction of any such ditch or drain, and it shall be lawful to construct such ditch, or drain, through one or any number of lots until the proper outlet is reached.

An engineer to carry out this Act to be appointed by every Municipal Council.

4. Every Municipal Council shall, upon the passing of this Act, name and appoint by by-law an engineer (a) to carry out the provisions of this Act, and such engineer shall be and continue an officer of such corporation until his appointment is repealed by by-law and another engineer appointed in his stead, who shall have authority as well to take as to continue any proceeding already commenced under this Act.

(a) By sec. 21 of this Act the word "engineer" shall mean civil engineer, land surveyor, or such person as any municipality by by-law may deem competent to perform the duties required under this Act.

Proceedings to effect an agreement in case of dispute.

5. In case of dispute between owners respecting such proportions any owner shall, before filing with the Clerk of the Municipality the requisition provided for in section six of this Act (Form C or to the like effect), (a) serve upon the other owners or occupants of the lands to be affected a notice in writing signed by him (Form B or to the like effect) naming a day, hour and place convenient to said ditch or drain at which the parties are to meet and, if possible, agree upon the respective portions of such ditch or drain to be made, deepened or widened by each of them (b), such notice to be served not less than six clear days before time of meeting (c), and in case at such meeting an agreement shall be come to between the parties, such agreement shall be reduced to writing (Form A or to the like effect), and shall be signed by all the parties and shall, within four clear days from the signing thereof, be filed with the Clerk of the Municipality in which the land requiring such ditch or drain is situate, and such agreement may be enforced in like manner as an award of the engineer as hereinafter provided (d).

This clause was intended to bring about an amicable arrangement between the different owners. Before proceed-

ing in the manner pointed out by sec. 6 of this Act the owner shall—

(a) 1st. Serve upon the other *owners or occupants* of the land to be affected a notice in writing signed by him, naming a day, hour and place, convenient to the ditch or drain in question, at which the parties are to meet, and if possible agree upon the respective portions of such ditch or drain to be made, deepened or widened, by each of them. A form of such notice will be found on page 32, Form B.

(b) 2nd. The notice must be served not less than six clear days before the time appointed. As to mode of service see sec. 16.

(c) If the parties come to an agreement at such meeting it shall be reduced to writing and signed by all of them, and shall within four days from the signing thereof be filed with the Clerk of the Municipality in which the land requiring such ditch or drain is situate. For Form of agreement see Form A, page 31.

(d) See *post*, secs. 13, 14, 15.

Proceedings in case no agreement is come to.

6. In case the parties at such meeting shall not agree, any owner may file with the Clerk of the Municipality in which the lands requiring such ditch or drain is situated a requisition (Form C or to the like effect) shortly describing the ditch or drain to be made, deepened or widened, and naming the lands which will be affected thereby and the owners respectively, and requesting that the engineer appointed by the

Municipality for the purpose shall attend at the time and place named in the requisition (a), which shall not be less than six clear days from the time of filing the same, and shall also at least four clear days before the time appointed therein serve upon all the persons named in such requisition a notice (Form D or to the like effect) requiring their attendance at the said time and place. (b)

In case the parties cannot come to an agreement under sec. 5, the course to be taken by the owner is as follows:—

(a) 1st. He must file with the clerk of the municipality in which the lands are situated, a requisition signed by himself, describing the ditch or drain and naming particularly the lands which will be affected thereby and the owners thereof, requesting that the engineer appointed by the municipality do attend at the time appointed. (See Form C).

(b) 2nd. Six clear days' notice from the time of the filing of the requisition must be given, and all the parties named in the requisition must be notified at least four clear days before the time appointed for proceeding with the investigation. The notice may be according to the Form D.

Occupant to notify owner.

7. An occupant not the owner of land, notified in the manner provided by this Act shall immediately notify the owner thereof, and shall, if he neglects to do so, be liable for all damages suffered by such owner by reason of such neglect.

The necessity for such a provision as this is obvious; without it the occupant might, by concealing the service of the papers upon him, or by refusing to appear or permit the owner to appear upon the taking of the proceedings under the Act, cause serious and permanent loss to the owner.

Duties of engineer.

8. The clerk shall, after receiving such requisition, forthwith notify the said engineer by registered letter enclosing a copy of the said requisition to him, and the engineer shall attend at the time and place named therein (a); shall examine the premises, and if he deem proper, or, if requested by any of the parties, shall hear evidence, and is hereby authorized to examine the parties and their witnesses on oath, and may administer an oath or affirmation as in courts of law, and if he shall find the making, deepening, or widening of such ditch or drain necessary, he shall, within thirty days from the receipt of the requisition by him (b), make his award in writing (Form E or to the like effect), specifying clearly the locality, description and course of said ditch or drain, point of commencement and termination of same, the portion of said ditch or drain to be done by the respective parties and the time within which said work is to be done, the amount of his fees and other charges and by whom to be paid, and he shall

have power to adjourn the said examination (c), and may require the notification and attendance of other parties whom he deems interested in said ditch or drain, such "other parties" to have at least four clear days' notice of time and place of attendance (d).

(a) The late Statute required the owner to notify the Fence-Viewers. R. S. O. cap. 199, sec. 4, sub-sec. 2.

(b) The award must be made within thirty days from the receipt by the engineer of the requisition, and must specify clearly—

- 1st. The locality of the ditch or drain.
- 2nd. Its description and course.
- 3rd. Its point of commencement and termination,
- 4th. The portion of said ditch and drain to be done by the respective parties.

An award which directed that "A. should open a ditch from the line fence between himself and B. through B.'s farm of sufficient depth to carry off the water at present in the ditch now opened by A. in or about twenty rods in length, and that B. should make and keep open this same portion of ditch, commencing at the line fence and of sufficient length to carry off the water, said ditch to be two and a half feet deep at the line fence and of sufficient width and fall to carry off the water; B. having the right to cover said ditch providing she leaves an open space in the same sufficient to carry off the water," was held to be bad for not sufficiently defining the point of commencement, and course and position of the ditch. *Wilson, J.*, in this case, *Dawson v. Murray*, 29 U. C. R. p. 470, said, "The direction that the defendant is to open a ditch 'from the line fence between the parties through the plaintiff's farm, in all twenty

rods in length,' not specifying the point of commencement or the direction it was to be carried, must be too indefinite.

"The plaintiff herself (*i.e.* B.), might have granted this power and the defendant (A.) could have exercised it reasonably as a general license to do the work anywhere through her farm as might be necessary. But she cannot be compelled to give the defendant so extensive a power which he might use to her injury, and the fence-viewers acting in a judicial capacity should not have imposed a burden on her of so uncertain a nature, or have authorised the defendant to proceed in the work just as he liked. They should have prescribed the direction and extent of it, so that the plaintiff might know to what extent her estate was burdened, and the defendant might know with certainty where he was to work, and what it was he was authorised to do." See also *Murray v. Dawson*, 17 U. C. C. P. 588.

5th. The time within which the work is to be done—It was held in the case of *Murray v. Dawson*, *ante*, that an award which directed two ditches to be made by the parties, one by each and concluded thus, "said ditch to be made before the 1st October, 1865," was bad, because it did not fix the time each party should have within which to perform his share of the ditching. J. Wilson, J., said, "The 12th section requires that the fence-viewers shall decide what length of time each of the parties shall have to make his share of the ditch. The award says 'said ditch is to be made before the first day of October, 1865.' *On reading it, two ditches are spoken of*; one to be made by the plaintiff and another by the defendant, beginning at the same fence. The last ditch spoken of in the award is the defendants. If the time applies to hers, there is no time for the plaintiff to make his; if it applies to the plaintiff's ditch there is no time specified for the defendant to make hers. It does not appear by the award that it is to be one continuous ditch, but rather two ditches, and is bad for not appointing the time for both parties to make it."

A discussion upon the same award, the exact words of which have been already given, when the same objection was taken, is to be found in *Dawson v. Murray, ante*, in which Judge Adam Wilson having taken a different view of the facts, does not agree with his brother Judge who decided the case of *Murray v. Dawson, ante*, holding that the time within which the work was to be done was not sufficiently specified.

He says, page 470, "The award then proceeds: 'said ditch to be made before the first day of October, 1865,' Now I do not see why, if the plaintiff had to make the drain at her own option, the provision as to time does not apply to her as well as to defendant. I think it applies to both of them equally.

"But here I am met by the judgment delivered by Mr. Justice John Wilson, in 17 U. C. C. p. 588, who thought the time was not applicable to both parties, because each of them had to make a separate ditch, 'two ditches being spoken of, one to be made by plaintiff, another by defendant, beginning at the same fence.' In this award I find only one ditch spoken of, that which defendant was to open through the plaintiff's land; and the plaintiff is to make and keep open this same portion of ditch. In my opinion, therefore, on a different statement and view of facts the time specified, is applicable to both plaintiff and defendant."

7th. The amount of the engineer's fees and other charges, and by whom they are to be paid (For form of award, see Form E., page 35).

(c) The engineer has power to adjourn the examination, but care must be taken that the adjournment must not be so long that he will not be enabled to make his report within the thirty days.

(d) The engineer may require the attendance of any other parties whom he deems interested, and they are to have four clear days notice of the time and place appointed; they are to be served with the notice mentioned in section 6, and contained in Form D, page 34.

Engineer may order opening of ditch across land of a person not interested.

9. If it appears to the engineer that the owner or occupier of any tract of land is not sufficiently interested in the opening up of the ditch or drain to make him liable to perform any part thereof, and at the same time that it is necessary for the other parties that such ditch or drain should be continued across such tract, he may award the same to be done at the expense of such other parties, and after such award the said "other parties" may open the ditch or drain across the tract at their own expense without being trespassers; but causing no unnecessary damage and replacing any fences opened or removed by them.

It was held in the case of *Riddell v. McKay*, 13 U. C. L. J. 92, that the old statute 38 Vict. cap. 26 (R. S. O. cap. 199) only applied where the land belonging to *each* of the adjoining owners was benefited by the work, and an award that one owner should pay for and maintain a portion of a drain and watercourse which was only of benefit to another owner was set aside.

The above clause was no doubt inserted to meet the difficulty. Under the old law a man could not, no matter how great the convenience, indeed, the necessity for the proper cultivation of his land, continue his own drain across his neighbour's land into its natural channel. Now this can be done. But if one of the owners will not be benefited by the work, he is absolved from the payment of any charges in connection therewith.

Where an award directs that a drain shall be constructed through one man's land for the benefit of the land of another, such award shall be considered as the grant of an easement on the land through which the ditch is to be cut, binding privies in estate as well as parties, and so long as the award remains unchanged the nature of the easement and the rights of the parties must be governed by it. An action will lie against the owner of the land through which the drain passes for obstructing it to the injury of the person for whose benefit it is required. Per Richards, C. J., in *Kelly v. O'Grady*, 34 U. C. R. 562.

To an action for trespass on the plaintiff's land the defendant pleaded, justification under an invalid award, alleging that the plaintiff paid half the expense of the award, as by it he was directed to do, and that the defendant in pursuance of it having first duly notified the plaintiff, entered on the plaintiff's land and opened the ditch there as directed by the award, doing no unnecessary damage. It was held that the plea was bad, as setting up a right which the award, being invalid, could not give; but that the facts might be found to support a plea of leave and license. *Dawson v. Murray*, 29 U. C. R. 464.

Award to be filed with clerk.

10. The said engineer shall, when such award is made, file the same and any plan or profile of said work with the Clerk of the Municipality named in section six of this Act, and the award, plan and profile shall be official documents and may be given in evidence in any legal proceedings by certified copies as are other official documents (a), and the Clerk of the Municipality shall forthwith, upon the filing of said award

notify each of the persons affected thereby by registered letter or personal service of the filing of the same (b).

(a) See R. S. O. cap. 62, sec. 28; the section referring to the giving in evidence of official documents.

(b) This notice should specify with particularity the date of the filing of the award, as it is not clear that the engineer must file it within the thirty days.

The above section has been amended as under, by 43 Vict. cap. 47, sec. 1. (See *post*, page 55).

46 V. C. 27, s. 10, amended.

1. Section 10 of the *Ditches and Watercourses Act*, 1883, is hereby amended by adding thereto the following words: "And the Clerk shall keep a book in which he shall record the names of the parties to whom he has sent such notice the address to which the same was sent, and the date upon which the same was deposited in the post office or personally served."

Appeal.

11. Any person dissatisfied with the award and affected thereby may, within ten clear days from the filing thereof, appeal therefrom to the Judge of the County Court of the County in which the lands, in respect to which the proceedings are initiated, are situate, and the proceedings on such appeal shall be as follows:

The award as we have seen by sec. 8 must be made within thirty days from the receipt of the requisition by the engineer. It does not specify when it is to be filed. Sec. 10 provides that the engineer shall, when such award is made,

file the same. As it could not very well be filed before being made we may safely conclude that the Legislature meant that it should be filed on the day it was made.

The above section has been amended as under, by 48 Vict. cap. 47, sec. 2. (See *post*, page 55).

46 V. C. 27, s. 11, amended.

2. Section 11 of the said Act is hereby amended by striking out the word "ten" where it occurs in the second line of the said section and inserting the word "fifteen" in lieu thereof.

Notice of.

(1) The appellant shall serve upon the Clerk of the Municipality with whom the award is filed a notice (a) in writing of his intention to appeal therefrom, shortly setting forth the ground of appeal.

(a) This notice as we have seen (sec. 11) must be served within fifteen days from the *filing* of the report.

To Clerk of Division Court and Judge.

(2) The Clerk of said Municipality shall, after the expiration of the time for appeal (a), forward by registered letter or deliver a copy of such notice, or notices of appeal if there be more than one appeal, to the Clerk of the Division Court of the Division in which the land of the owner filing the requisition as provided in section six of this Act is situate, and such Division Court Clerk

shall immediately notify the Judge of said appeal (b), whereupon the Judge shall appoint a time for the hearing thereof, and if he think fit, order such sum of money to be paid by the appellant or appellants to the said clerk as will be a sufficient indemnity against costs of the appeal (c).

(a) This clause does not mention with certainty the time within which the clerk of the municipality is to forward the notice of appeal to the Clerk of the Division Court. It merely says, "shall after the expiration of the time for appeal, forward, &c." There does not seem to be anything to prevent him retaining the papers for months, although it was, no doubt, intended that the papers should be forwarded to the Division Court Clerk immediately after the expiration of the time for appeal.

(b) The Division Court Clerk is, immediately upon receipt of the papers, to notify the County Judge.

(c) The Judge has power to order security for costs to be given by the appellant to the clerk of the municipality.

Notice of Hearing.

(3). The Judge shall order the time and place for hearing of appeals, and communicate the same to the Clerk of the Division Court (a), who shall notify the engineer and all parties interested (b) in the manner herein provided for the service of other notices (c) under this Act.

(a) No time is specified within which the Judge must proceed after having been notified of the appeal by the Division

Court Clerk. He has his own time in which to order the time and place for hearing of the appeal.

Since the above was written the time for the hearing of the appeal has been fixed by 48 Vict. cap, 47, sec 3, which is as follows :

Time within which appeal to be heard.

3. It shall be the duty of the Judge to hear and determine an appeal under the provisions of the said Act, within one month after receiving notice of the appeal as provided by section 11, but his neglect or omission so to do shall not render invalid the hearing or determining of the appeal after the lapse of that time.

(b) The Division Court Clerk does not appear to be bound to give the notice of hearing of appeals at any certain time. There is no provision for giving a certain number of days' notice to the engineer and the parties interested. In the absence of any such clause a reasonable time should be given.

(c) As to the manner of serving the notices see *post*. sec. 16,

Powers of Judge.

(4) The Judge shall hear and determine the appeal or appeals, and set aside, alter or affirm the award, correcting any error therein, and he may examine parties and witnesses on oath and, if he so pleases, inspect the premises, requiring the attendance with him of the engineer, and may order payment of costs by the parties or any of them and fix the amount of such costs.

The question of costs is in the discretion of the Judge so far as the parties to the appeal are concerned. The municipality not being a party, cannot be ordered to pay any costs. Now in certain cases this may work a great injustice. An owner entitled under the provisions of this statute to call for the making of a ditch or drain in order the better to cultivate his land, is obliged to submit the matter to an official chosen by the municipality, who in many cases is non-professional inexperienced and ignorant; the result being that owing to such inexperience and ignorance, the award is set aside by the Judge, and the owner, who had no hand in the making of it, and who may be strictly right on the merits, is ordered to pay the costs. There is room for an amendment to the statute here. A clause should be added, providing that where the award is set aside owing to the inefficiency of the engineer, the municipality should pay the costs of the appeal; or perhaps a more satisfactory amendment would be, to compel municipalities to appoint as engineers none but professional men.

*Award as altered and confirmed to be enforced
as original award.*

(5) The award as so altered or confirmed shall be certified by the Clerk of the Division Court to the Clerk of the Municipality, together with the costs, if any, allowed and by whom to be paid, and such award shall be enforced as the award of the engineer, and the time for the completion of the work thereunder shall be computed from the date of such judgment in appeal.

See ss. 12, 13, 14.

Payment of fees.

12. The municipality shall at the expiration of the time for appeal, or after appeal as the case may be, pay to the engineer his fees, and also pay to the person declared to be entitled to the same, any fees or costs awarded or adjudged to him, and shall, unless the same be forthwith repaid by the person awarded or adjudged to pay the same, place the amount upon the collector's roll as a charge against the lands of the person awarded or adjudged to pay the same, and the same shall thereupon become a charge upon such lands, and shall be collected as ordinary municipal taxes.

For the method in which municipal taxes are collected, see R. S. O. Cap. 180, sec. 91 *et seq.*

Engineer to inspect work on request at expiration of time limited, and may re-let same.

13. The engineer shall, at the expiration of the time limited by the award for the completion of the work, inspect the said ditch or drain, if required in writing so to do by any of the parties interested, and if he finds the said work or any portion thereof, not completed in accordance with the award, he may let the same in sections as apportioned in the award to the lowest bidder therefor, taking such security for the performance thereof within the time to be limited, as

he may deem necessary, but no such letting shall take place till after four clear days' notice in writing of such intended letting has been posted in at least three conspicuous places in the neighbourhood of the work, and notice thereof is sent by registered letter to such parties interested in said award as are non-resident in said municipality, but if the engineer is satisfied of the *bona fides* of the person doing the work, and there is good reason for the non-completion thereof, he may, in his discretion, extend such time.

Under the old law if any person failed to make the portion allotted to him, it was provided that any of the other parties interested might do so for him after first completing his own proportion; and in that case the party so doing the work might recover from the party failing, such sum as three fence-viewers of the municipality nominated for that purpose by a justice of the peace should award.

Under R. S. O. cap. 199, sec. 10, the mode of enforcing the award was as follows: "The person desiring to enforce it, providing the work be not done within the time specified by the award, may do the work which the award directs, and may immediately recover its value and the costs from the owner by action in any Division Court having jurisdiction in the locality." A different method of accomplishing the same result is provided by the above section. If the work be not done according to the award, any of the parties interested may serve a written notice on the engineer requiring him to inspect the work, and if it is not done in accordance with the award, he may let the contract to the lowest bidder; but he shall not do this until certain notice has been given as above set out.

This is the course a person would be bound to take. He would not have the right to bring an action for damages for the non-performance of the relief sought. *Murray v. Dawson*, 17 U. C. C. P. 588. In that case, J. Wilson, J., page 590, says, "in *Berkeley v. Elderkin*, 1 El. & B. 805, the principle is recognized 'that where new rights are given with specific remedies, the remedy is confined to those specially given.' Much that was said by Lord Campbell applies by analogy with great force here. In clearing our forests, much inconvenience was felt in many places from the land being wet, and as the tracts granted to settlers were small, it was frequently impossible to drain one lot without trespassing upon another, or for one man to drain his land without the assistance of others equally interested in draining theirs, while without such drainage the land could never have been cleared and cultivated. In view of this, the Legislature in providing for the rights and liabilities of adjacent proprietors with regard to fences, provided for a simple and cheap system of opening ditches or watercourses by the 8th Vict. cap. 20, ss. 12, 13, 14. This Act imposed the duty on those who were interested in drains to contribute a just share; it gave the right to make ditches across the lands of those who were not interested, and where disputes arose it enabled the parties to apply to the fence-viewers to award concerning their disputes. It provided that if any party neglected or refused upon demand made in writing, to open, or make and keep open, his share awarded to him by the fence-viewers within the time allowed, either party, after completing his own part, might open the part of the party neglecting or refusing, and be entitled to recover not more than two shillings per rod from the party neglecting or refusing to open his share In this view of it, it follows that this plaintiff had his remedy under this statute and no other; that he ought to have demanded of the defendant performance of this award, and if she made default, that he ought to have opened her ditch and compelled her to pay for it under the provisions of this Act. *The*

Vestry of St. Pancras v. Batterbury, 2 C. B. N. S. 477, Cockburn, C. J. at page 486, says: 'Where an Act of Parliament creates a duty or obligation, and gives a remedy for a breach of it by a peculiar proceeding, a question arises whether the remedy so provided is the only one to be had recourse to, or whether it is cumulative.' Here, as in that case, and for similar reasons, we think the Legislature intended that the summary proceeding pointed out should be the only one. To hold otherwise would, we think, open an appalling source of litigation ruinous to all concerned in it, and opposed to the spirit and intention of the Legislature, which we think was to place in the hands of either party interested the right to specific performance of the relief sought, but not damages by suit for non-performance of it."

Inspection of work by engineer on completion.

14. The engineer shall upon receipt of notice in writing of the final completion of the work mentioned in the preceding section inspect the same within one week thereafter, and if approved of, and accepted by him, certify in writing the fact to the Clerk of the Municipality, giving a separate certificate for each portion or section of work let and completed (Form F or to the like effect), and stating the name in each certificate of the person who did the work, as well as the amount he is entitled to receive therefor, and also such extra fees as the engineer is entitled to, by reason of such letting and subsequent inspection, and by whom the same are to be paid.

*Payment of amount certified, and engineer's
extra fees.*

15. The Council shall at their meeting next after the filing of the certificate or certificates mentioned in the preceding section, pay to the engineer his additional fees therein mentioned, and shall, unless the amount or amounts named in the said certificate or certificates including such additional fees, is forthwith paid by the respective parties declared in said certificate or certificates to be liable to pay the same, cause the amount or amounts and fees to be added to the collector's roll, together with ten per cent. added thereto, and the same shall thereupon become a charge against the lands of the party or parties so liable, and shall be collected in the same manner as any other municipal taxes, and when collected shall be paid over to the party or parties entitled thereto.

This section has been repealed by 47 Vict. cap. 43, sec. 2. (See *post*, page 54), and the following substituted therefor:

*Payment of amount due to engineer and other
persons.*

15. The Council shall at their meeting next after the filing of the certificate or certificates

mentioned in the preceding section, pay to the engineer his additional fees therein mentioned, and forthwith thereafter may pay to any person the amount which, according to any such certificate, he is entitled to receive for any work mentioned in said next preceding section (a), and thereafter the said Council shall, unless the amount or amounts named in the said certificate or certificates including such additional fees, is forthwith paid by the respective parties declared in said certificate or certificates to be liable to pay the same, cause the amount or amounts and fees to be added to the collector's roll, together with ten per cent. added thereto, and the same shall thereupon become a charge against the lands of the party or parties so liable, and shall be collected in the same manner as any other municipal taxes, and when collected shall be paid over to any person entitled thereto.

(a) The only difference between these two sections is that the substituted one provides for payment by the municipality in case they see fit, of the amount the person entitled should receive before placing the amount in default of payment upon the collector's roll.

Service of notices.

16. All notices under the provisions of this Act shall be served personally, or by leaving the same at the place of abode of the owner or

occupant, with a grown-up person residing thereat (a), and in case of non-residents (b), then upon the agent of the owner, or by registered letter addressed to said owner at the post office nearest to his last known place of abode.

(a) The grown-up person must be actually residing with the owner or occupant. *Elliot v. Beard*, 2 L. J. N. S. 332.

(b) The meaning of this word has been declared by 48 Vict. cap. 47, sec. 4. (See *post*, page 56), which enacts as follows:

Interpretation "Non-resident."—*Service of Notice*.

4. A "non-resident" within the meaning of section 16 of the said Act, shall include a person who does not reside within the municipality in which the lands which he owns are situate and in respect of which proceedings are taken or to be taken under the provisions of the said Act; and where the place of abode of a non-resident is not known, notices under the provisions of the said Act requiring to be served on such non-resident may be served in such manner as the Judge of the County Court may direct.

Municipal corporations to have same rights as persons.

17. Every Municipal corporation shall have, and exercise all the rights and privileges of this Act, and may be made parties to the said agree-

ment or award, and shall be considered as owner of the highway for the purposes of this Act, and shall in all respects be in the same position as an individual owner.

See note to sec. 2.

Persons desiring to use ditch or drain after construction.

18. In case any person during or after the construction of the ditch or drain herein provided for, desires to avail himself of such ditch or drain for the purpose of draining other lands than those contemplated by the original proceedings, he may avail himself of the provisions of this Act, as if he were or had been a party to such original proceedings; but no person shall make use of the ditch or drain constructed under the provisions of this Act, unless under agreement or award pursuant to its provisions as to the use of lands of others, as to the enlargement of the original ditch or drain so as to contain additional water therein, and as to the time for the completion of such enlargement.

The above section has been amended as under by 48 Vict. cap. 47, sec. 5. (See *post*, page 56.)

46 V. C. 27, s. 18, amended.

5. Section 18 of the said Act is herereby amended by adding after the word "enlargement,"

in the tenth line thereof, the words "if such be necessary."

Drain may be continued into adjoining municipalities.

19. Notwithstanding any of the lands through which the drain is required, are situate in a municipality adjoining the one in which the original proceedings were commenced, the engineer shall have full power and authority to continue such ditch or drain in and through so much of the lands in such adjoining municipality as may be found necessary, and all proceedings authorized under the provisions of this Act are to be had, taken, and carried on in the municipality where commenced; but in such case the Clerk of said municipality shall forward to the Clerk of such adjoining municipality a certified copy of the award, as made, confirmed, or altered, and shall also forward to him a certified copy of every certificate of the engineer which affects or relates to the lands in such adjoining municipality, and to the owners thereof; and such Municipal Council shall, unless the amounts are forthwith paid by the parties declared by said certificate liable to pay the same, have and take all proceedings for the collection of the sums so

certified to be paid, as though all the proceedings had been taken and carried on in such adjoining municipality.

Scale of fees.

20. The fees to which the engineer shall be entitled under this Act shall be such as shall be fixed by by-law or resolution of the Council and in case no such fees are fixed by the Council the same shall be his legally authorized fee for similar work, or such less amount as may be agreed upon, and the fees to witnesses and for the service of papers authorized by the Division Court Clerk, shall be the same as those allowed to witnesses and similar services in the Division Court.

“Engineer,” meaning of.

21. The word “engineer” in this Act shall mean civil engineer, land surveyor, or such person as any municipality by by-law may deem competent to perform the duties required under this Act.

R. S. O. cap. 199, 41 Vict. cap. 12 and 43 Vict. cap. 30, repealed.

22. Chapter one hundred and ninety-nine of the Revised Statutes of Ontario, chapter twelve of the Acts passed in the forty-first year of the

reign of Her Majesty, and chapter thirty of the Acts passed in the forty-third year of the reign of Her Majesty are hereby repealed; but all works commenced, and all proceedings had and taken thereunder, may be continued to completion as though this Act had not been passed.

FORM A.

Township of

Whereas it is found necessary that a ditch or drain should be made (deepened or widened) on Lot No. _____ in the concession of the Township of _____ and it is necessary to continue the same through lot number _____ in the _____ concession of the township of _____ (if more than one lot describe them).

Therefore we _____ owners of the land hereinafter described, do agree each with the other as follows:—

That I, _____ owner of _____ (describe lot) agree that I will make (deepen or widen) and maintain that part of such ditch or drain commencing at stake number one planted (describing the locality of said stake) and thence

to stake number two, and that said portion of said ditch or drain shall be (*describing depth and width*) and I, _____ owner of (*giving the name of each person, the land owned by him, the portion of work assigned, its depth, width, etc.*), and each of us agrees to have our said respective portions completed on or before the day of _____ A.D. 18

Dated,
Witness.

} (Signed by the Parties.)

FORM B.

Township of

To

Sir,—As the owner of lot number _____ in the _____ concession of the Township of _____ I require to construct a ditch or drain through said lot, and find it necessary to continue the same through your land, being lot number _____ in the _____ concession of the Township of _____ under the Ditches and Watercourses Act, 1883, and request that you will attend at _____ on _____ the _____ day of _____ 18 _____ at the hour _____ of _____ o'clock, in the _____ noon, with

the object of agreeing, if possible, upon the respective portion of such ditch or drain to be made, deepened or widened by the several parties interested.

Dated this day, 18
 Yours, &c.

— — —
 FORM C.

To
 Clerk of the municipality of the
 of
 Sir,—As the owner of lot number in
 the concession of the Township
 of I require to construct a ditch or
 drain through said lot, and it will be necessary to
 continue the ditch or drain through the following
 lands on lot number in the
 concession of the Township of owned
 by Lot number in
 the concession of the
 Township of owned by
 (describe each lot through which
the ditch or drain must be continued, and the name
of the owner of each parcel), and having failed to
 agree upon the respective portions to be made
 by each, I (or we) require the engineer appointed

by the municipality for the purpose, to attend at the locality of said proposed ditch or drain on the _____ day of _____ 18 ____ at the hour of _____ o'clock in the _____ noon, examine the premises, hear the parties and their witnesses, and make his award under the provisions of the Ditches and Watercourses Act, 1883.

Dated

(Signed by Party or Parties.)

FORM D.

To

Take notice that the engineer appointed by the municipality for the purpose will attend at lot number _____ in the _____ concession of _____ on _____ the _____ day of _____ A.D. 18 ____ at the hour of _____ o'clock in the _____ noon, to examine the site of the proposed ditch or drain and make his award therein; and you as the owner of (*describe the lot*) which may be affected thereby, are requested to attend (with any witnesses you may desire to have heard) at said time and place.

Dated

Yours, &c.

FORM E.

I, _____ the engineer appointed by the
 Municipality of the Township of _____ in the
 County of _____ under the provisions of
 the Ditches and Watercourses Act, 1883, having
 by the requisition of _____ owner (or owners)
 of lot number _____ in the
 concession of the Township of _____ filed with
 the clerk of the said municipality representing
 that he (or they) required a ditch or drain on
 said lot, and that it would be necessary to con-
 tinue the ditch or drain through the following
 lands on lot number _____ in the
 concession of the Township of _____ owned by
 _____ etc., did attend at the time and place
 named in said notice, and having examined the
 locality of said ditch or drain, and heard the
 parties and their witnesses (if any), find and
 award as follows:—

That _____ lot number _____ in the
 concession of the Township of _____
 would be benefited by, and requires a ditch or
 drain (or the deepening or widening of a ditch or
 drain, if already made), to enable the proper
 cultivation or use of the said land, and I find
 that said ditch or drain will require to be ex-

tended across the land of _____ being
 lot number _____ in the
 concession of _____ and across the land of
 being _____ lot number
 in the _____ concession of the Township of
 (and so on, giving the name of each
 owner and lot to termination of said ditch or drain),
 and I award the making of said ditch or drain
 (or the deepening or widening as the case may
 be), as follows :—.....shall commence at
 stake number one planted (*describe with reason-
 able certainty where planted*), and shall open up
 and maintain a ditch or drain (*describe width
 and depth*), to stake number two planted (*describe
 where planted, distance and direction from first
 stake*), and said portion shall be made and com-
 pleted within (*name time within which to be com-
 pleted*). That _____ shall commence at stake
 number two, above described, and shall open up
 and maintain a ditch or drain (*describe width and
 depth*) to stake number three planted (*describe
 where planted, distance and direction from stake
 number two*), and said portion shall be made and
 completed within (*name time, etc.*) That
 _____ shall, etc., (*and so on to the termination
 of said ditch or drain*).

That my costs attendant upon the examination,
 and making of this award are
 and shall be borne and paid as follows : (*give the*

names of the persons to be charged therewith, and the portion to be borne by each).

Dated this day of A.D. 18

Witness }
 } (Signature of Engineer.)

FORM F.

To

Clerk of the Township of

I hereby certify that

has

completed certain work which under my award dated the day of A.D. 18 , one

was ordered and adjudged to perform, and which the said having failed to do was by me subsequently let to the said

for the sum of and the said is entitled to be paid the said

amount.

I further certify that my additional fees are and that said amount and said fees are and that said amount and said fees are chargeable on (*describe property to be charged therewith*) and shall unless forthwith paid be added to the Collector's Roll (*with interest*) as provided in the fifteenth section of the Act respecting Ditches and Watercourses, 1883. 18

Dated this day of A.D.

Engineer for

CHAPTER 199.

An Act respecting Ditching Water-
courses.

Short title, s. 1.	To be filed with Clerk, s. 8.
Application of Act, s. 2.	To be a lien on land, s. 9.
Duty of adjoining owners as to ditches, s. 3.	How enforced, s. 10.
Proceedings in case of dis- pute, s. 4.	Fees payable on, s. 11.
Notice to owner, s. 4 (1).	Appeals from, s. 12.
Notice to Fence-viewers, s. 4 (2).	Act applies to Municipal Cor- porations, s. 13.
Occupant to notify owner, s. 5.	Subsequent parties, s. 14.
Duty of Fence-viewers, s. 6.	Agreement may be regis- tered, s. 15.
Award :--	Forms, s. 16.
What to contain, s. 7.	

HER MAJESTY, by and with the advice and
consent of the Legislative Assembly of the
Province of Ontario, enacts as follows :—

Short Title.

1. This Act may be cited as “*The Ditches and
Watercourses Act.*”

Certain Acts not affected by this Act.

2. This Act shall not affect the Acts relating to Municipal Institutions or the Acts respecting Drainage, as this Act is intended to apply to individual, and not to public or local interests, rights, or liabilities. 38 V. c. 26, s. 2.

Owners to construct ditches in certain proportions.

3. In case of owners occupying adjoining lands which would be benefited by making a ditch or drain, or by deepening or widening a ditch or drain already made in a natural water-course, or by making, deepening or widening a ditch or drain for the purpose of taking off surplus water from swamps or low miry land, in order to enable the owners or occupiers thereof to cultivate the same, such several owners shall open and make, deepen or widen a just and fair proportion of such ditch or drain, according to their several interests in the construction of the same; and such ditches or drains shall be kept and maintained so opened, deepened or widened, by the said owners respectively, and their successors in such ownership, in such proportions as they have been so opened, deepened or widened, unless in consequence of altered circumstances the Fence-viewers hereinafter named

otherwise direct, which they are hereby empowered to do upon application of any party interested, in the same form and manner as is hereinafter prescribed in respect of the original opening, deepening or widening; and in case the Fence-viewers find no reason for such application, all costs caused thereby shall be borne by the applicant. 38 V. c. 26, s. 3.

Disputes to be referred to Fence-viewers.

4. In case of dispute between owners respecting such proportion, the following proceedings shall be adopted:—

Notice to owner or occupier of adjoining land.

1. Either owner may notify (Form 1) the other owner or the occupant of the land of the owner so to be notified, that he will, not less than one week from the service of such notice, cause three Fence-viewers of the locality to arbitrate in the premises.

And to Fence-viewers.

2. Such owner so notifying shall also notify (Form 2) the Fence-viewers not less than one week before their services are required.

Contents of notice.

3. The notices in both cases shall be in writing, signed by the person notifying, and shall specify the time and place of meeting for the arbitration, and may be served by leaving the same at the place of abode of such owner or occupant, with some grown-up person residing thereat, or in case of a non-resident, by leaving such notice with any agent of such owner.

When Judge to appoint Fence-viewers.

4. The owner notified may, within the week, object to any or all of the Fence-viewers notified ; and in case of disagreement the Judge herein-after mentioned shall name the Fence-viewers who are to arbitrate. 38 V. c. 26, s. 4.

Occupants to notify owners.

5. An occupant not the owner of land notified in the manner above mentioned, shall immediately notify the owner ; and if he neglects so to do, shall be liable for all damage caused to the owner by such neglect. 38 V. c. 26, s. 12.

Duties of Fence-viewers.

6. The Fence-viewers shall examine the premises, and if required by either party, they shall hear evidence, and are authorized to examine

the parties and their witnesses on oath, and any one of them may administer an oath or affirmation as in Courts of Law. 38 V. c. 26, s. 5.

Awards—Contents of.

7. The Fence-viewers shall make an award (Form 3) in writing, signed by any two of them, respecting the matters so in dispute, which award shall specify the locality, quality, and description and cost of the ditch or drain it orders to be made, and the time within which the work shall be done; and shall state by which of the said parties the costs of the proceedings shall be paid, or whether either party shall pay some proportion of such costs.

What to be considered.

2. In making such award the Fence-viewers shall regard the nature of the ditches or drains in use in the locality, and generally the suitability of the ditch or drain ordered to the wants of the parties; and the Fence-viewers may, if they think necessary, employ a Provincial Land Surveyor for the purpose of taking levels, or of making a plan for the parties to follow in making the ditch or drain, or for other purposes.

Estimates exceeded—Supplementary award.

3. If the expense of the ditch or drain exceeds the expense as estimated by the Fence-viewers, the same Fence-viewers may be again notified in the same manner herein provided, and shall attend, and, if they see fit, make a supplementary award respecting such expense which award shall have the same effect, and may be dealt with in all respects as if it were part of the first award. 38 V. c. 26, s. 6.

Fence-viewers may order opening of ditch across another person's land.

4. If it appears to the Fence-viewers that the owner or occupier of any tract of land is not sufficiently interested in the opening up the ditch or water-course to make him liable to perform any part thereof, and at the same time that it is necessary for the other party that such ditch should be continued across such tract, they may award the same to be done at the expense of such other party; and after such award, the last mentioned party may open the ditch or water-course across the tract, at his own expense, without being a trespasser. 40 V. c. 8, s. 59.

Deposit of award to be evidence—Notification of award.

8. The award and any plan made as above provided for, shall be deposited in the office of the Clerk of the Municipality in which the lands are situate, and the award and plan shall be official documents, and may be given in evidence in any legal proceedings by certified copies, as are other official documents, and notice of their being made shall also be given to all parties interested. 38 V. c. 26, s. 7.

Award to be a lien on the land.

9. The award shall constitute a lien and charge upon the lands respecting which it is made when it is registered in the Registry Office of the County or other Registration Division in which the lands are.

Registration of award—Rev. Stat. c. 111.

2. Such registration may be in duplicate or by copy, proved by affidavit of a witness to the original, or otherwise, as in the case of any instrument which is within the meaning of "*The Registry Act.*" 38 V. c. 26, s. 9.

Enforcing award.

10. The award may be enforced as follows :—
The person desiring to enforce it, provided the work is not done within the time specified by the award, may do the work which the award directs, and may immediately recover its value and the costs from the owner by action in any Division Court having jurisdiction in the locality : but the Judge of such Division Court may, on application of either party, extend the time for making such ditch to such time as he may think just. 38 V. c. 26, s. 8.

Fence-viewers' and witnesses' fees.

11. The Fence-viewers shall be entitled to receive two dollars for every day's work under this Act. Provincial Land Surveyors and witnesses shall be entitled to the same compensation as if they were subpoenaed in any Division Court. 38 V. c. 26, s. 13.

Appeal.

12. Any person dissatisfied with the award made may appeal therefrom to the Judge of the County Court of the County in which the lands are situate ; and the proceedings on such appeal shall be as follows :—

Notice of.

1. The appellant shall serve upon the Fence-viewers and all parties interested, a notice in writing of his intention to appeal, within one week from the time he has been notified of the award, which notice shall be served as other notices mentioned in this Act.

To Clerk and Judge.

2. The appellant shall also deliver a copy of such notice to the Clerk of the Division Court of the Division in which the land or a portion thereof lies, and the Clerk shall immediately notify the Judge of such appeal, whereupon the Judge shall appoint a time for the hearing thereof, and, if he thinks fit, order such sum of money to be paid by the appellant to the said Clerk as will be a sufficient indemnity against costs of the appeal.

Notice of hearing.

3. The Judge shall order the time and place for the hearing of the appeal, and communicate the same to the Clerk, who shall notify the Fence-viewers and all parties interested, in the manner hereinbefore provided for the service of other notices under this Act.

Powers of Judge.

4. The Judge shall hear and determine the appeal, and set aside, alter, or affirm the award, correcting any error therein, and he may examine parties and witnesses on oath, and, if he so pleases, inspect the premises, and he may order payment of costs by either party, and fix the amount of such costs.

No appeal.

5. His decision shall be final; and the award, as so altered or confirmed, shall be dealt with in all respects as it would have been if it had not been appealed from. 38 V. c. 26, s. 14.

Liabilities of Municipal Corporations.

13. In case any Municipal Corporation would be benefited by the construction of such ditch or drain, such Corporation shall be in the same position as an individual owner under this Act. 38 V. c. 26, s. 10. 40 V. c. 8, s. 60.

Persons desiring to use ditches or drains after construction.

14. In case any person during or after the construction of the ditches or drains herein pro-

vided for, desires to avail himself of such ditches or drains for the purpose of draining other lands than those contemplated by the original proceedings, he may avail himself of the provisions of this Act, as if he were or had been a party to such original proceedings; but no person shall make use of the ditches or drains constructed under the provisions of this Act unless under agreement or award pursuant to its provisions as to use of the land of others, as to enlargement of the original ditch or drain, so as to contain additional water therein, and as to the time for the completion of such enlargement. 38 V. c. 26, s. 11.

Agreements as to ditches may be registered and enforced.

15. Any agreement in writing (Form 4), between owners respecting such ditch, may be filed or registered, and enforced as if it was an award of the Fence-viewers. 38 V. c. 26, s. 15.

Forms.

16. The forms in the Schedule hereto are to guide the parties, being varied according to circumstances. 38 V. c. 26, s. 16.

SCHEDULE OF FORMS.

FORM 1.

(Section 4.)

NOTICE TO OPPOSITE PARTY.

Take notice, that Mr. _____, Mr. _____ and Mr. _____ three fence-viewers of this locality, will attend on the _____ day of _____ A.D. 18____, at the hour of _____, to view our properties, being Lots (or parts of Lots) *One* and *Two* in the _____ Concession of the Township of _____, in the County of _____, and arbitrate respecting the ditch in dispute upon our said Lots.

Dated this _____ day of _____, A.D. 18____.

A. B.,

Owner of Lot 1.

To C. D.

Owner of Lot 2, (or as the case may be).

FORM 2.

(Section 4.)

NOTICE TO FENCE-VIEWERS.

Take notice, that I require you to attend at
 on the day of , A.D.
 18 , at o'clock to view my
 property, and that of Mr. being Lots (or
 parts of Lots) Nos. *One* and *Two* in the
 Concession of the Township of , in the
 County of , and arbitrate on the ditch
 required on said Lots.

Dated this day of , A.D. 18 .

A. B.,
 Owner of Lot 1.

FORM 3.

(Section 7.)

AWARD.

We, the Fence-viewers of (*name of the locality*),
 having been nominated to view and arbitrate

between (*name and description of owner who notified*) and (*name and description of owner notified*) upon a ditch required on the property of (*name of owner notified*), which ditch is to be made and maintained on said property; and having examined the premises and duly acted according to *The Act respecting Ditching Watercourses*, do award as follows: A ditch shall be made and maintained by the said _____ commencing at (*state point of commencement and then give course and point of ending*). The ditch shall be of the following description (*state kind of ditch, depth, width, &c.; if a plan has been made by Provincial Land Surveyor, describe course, kind of ditch, &c., by reference to plan*). The work shall be commenced within _____ days, and completed within _____ days from this date; and the costs shall be paid (*state by whom to be paid, and if by both, in what proportion*).

Dated this _____ day of _____, A.D. 18 .

Witness: _____
(*Signatures of Fence-viewers*).

CHAPTER 43.

An Act to amend the Act respecting
Ditches and Watercourses.

[Assented to 25th March, 1884.]

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

46 V. c. 27, s. 3, amended.

1. Section 3 of *The Ditches and Watercourses Act, 1883*, is hereby amended by adding the following sub-section thereto :

Proper outlet must be reached.

(2) Every such ditch, or drain, shall be continued to a proper outlet, so that no lands, unless with the consent of the owner thereof, will be overflowed, or flooded, through, or by the construction of any such ditch or drain, and it shall be lawful to construct such ditch, or drain, through one or any number of lots until the proper outlet is reached.

Sec. 15, repealed.

2. Section 15 of the said Act is hereby repealed and the following substituted therefor:—

Payment of amount due to engineer and other persons.

15. The council shall at their meeting next after the filing of the certificate or certificates mentioned in the preceding section, pay to the engineer his additional fees therein mentioned, and forthwith thereafter may pay to any person the amount which, according to any such certificate, he is entitled to receive for any work mentioned in said next preceding section, and thereafter the said council shall, unless the amount or amounts named in the said certificate or certificates including such additional fees, is forthwith paid by the respective parties declared in said certificate or certificates to be liable to pay the same, cause the amount or amounts and fees to be added to the collector's roll, together with ten per cent. added thereto, and the same shall thereupon become a charge against the lands of the party or parties so liable, and shall be collected in the same manner as any other municipal taxes, and when collected shall be paid over to any person entitled thereto.

CHAPTER 47.

An Act to amend the Ditches and Watercourses Act, 1883.

[Assented to 30th March, 1885.]

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

46 V. c. 27, s. 3, amended.

1. Section 10 of *The Ditches and Watercourses Act, 1883*, is hereby amended by adding thereto the following words: "And the Clerk shall keep a book in which he shall record the names of the parties to whom he has sent such notice, the address to which the same was sent, and the date upon which the same was deposited in the post office or personally served."

46 V. c. 27, s. 11, amended.

2. Section 11 of the said Act is hereby amended by striking out the word "ten" where it occurs in the second line of the said section and inserting the word "fifteen" in lieu thereof.

Time within which appeal to be heard.

3. It shall be the duty of the Judge to hear and determine an appeal under the provisions of the said Act, within one month after receiving notice of the appeal as provided by section 11, but his neglect or omission so to do shall not render invalid the hearing or determining of the appeal after the lapse of that time.

Interpretation "non-resident"—Service of notice.

4. A "non-resident" within the meaning of section 16 of the said Act, shall include a person who does not reside within the municipality in which the lands which he owns are situate, and in respect of which proceedings are taken or to be taken under the provisions of the said Act; and where the place of abode of a non-resident is not known, notices under the provisions of the said Act requiring to be served on such non-resident may be served in such manner as the Judge of the County Court may direct.

46 V. c. 27, s. 18, amended.

5. Section 18 of the said Act is hereby amended by adding after the word "enlargement," in the tenth line thereof, the words "if such be necessary."

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