

Drainage Laws.

In further discussing the bill, an act to consolidate and amend the drainage laws, we find that it provides, that, upon the petition of the majority of the number of resident and non-resident persons (exclusive of farmers' sons not actual owners) as shown by the last revised assessment roll to be owners of the land to be benefited in any described area within any township, incorporated village, town, or city, to the municipal council thereof, for the draining of the area described in the petition by means of drainage work.

We think this should not be owners as shown by the last revised assessment roll. In our experience, we find that land changes hands so often, and the owners according to the last revised assessment roll, are not the owners at the time of preparing the petition, and, according to the section as it now reads, the actual owner would have no voice in the matter, but the owner, according to the last revised assessment roll, who really is not the owner, and it certainly would be a great injustice not to allow the actual owner to have a voice for or against the work, until he became the owner according to the last revised assessment roll. The owners of the property at the time of preparing the petition for or against the work should be the persons entitled to sign the petition, and where they are not the owners as shown by the assessment roll, they should be required to make a statutory declaration that he or she is the real owner. Agents under power of attorney, executors and guardians of estates should have the same rights as the owner, and the greatest care should be exercised by the council in seeing that the majority of owners of property to be affected have signed the petition before such interference with the rights of the owners of the property should be undertaken. The requiring of a statutory declaration may mean some trouble and inconvenience, but where the majority is allowed the right of binding, the minority in obtaining a very large expenditure there should be no reasonable doubt allowed to exist as to the existence of such majority.

The lands and roads of any municipality, company or individual using any drainage work as an outlet, or for which when the work is constructed, an improved outlet is thereby provided either directly or through the medium of any other drainage work, or of a swale, ravine, creek, or water course, may, under all the formalities and powers contained therein, except the petition, be assessed and charged for the construction and maintenance of drainage works so used as an outlet or providing an improved outlet, the owners of lands and roads thus made liable to assessment shall count neither for or against the petition required unless within the area therein described is a proper and necessary provision. If the upper land owners have dug or require to dig to drain their lands, and if by said work the actual flow of water will be increased; in such cases the upper

lands should contribute to carry the water to a proper outlet without even being asked to sign a petition for the improvement necessary to convey the water so sent down through the lands of the lower owners, and it is quite natural to expect that parties living on the uplands will prosecute the drainage works so long as they have sufficient outlet in to low land, the owners of which at the time may have no objection, but afterwards the upper owners refuse to sign a petition to construct a drain through such lands for the purpose of carrying the water sent down by them, to the injury of the lower parties, to a proper outlet.

It is right that the question of authority of the engineer, and the power of the council, should be made clear beyond a doubt. The petition should in no way influence the engineer. When the engineer receives notice and is presented by the council with a copy of the petition for a drain or other work contemplated, he prepares himself for going on the ground described in that petition, and the use of the petition to the engineer should only be to point out to him the territory and nature of the work contemplated, and not for directing him as to the lands to be assessed. Upon entering upon his duties he is required by statute to take and subscribe an oath or affirmation that he will, to the best of his skill, judgment, and knowledge, honestly and faithfully and without fear, favor or prejudice against any owner or owners, perform the duties assigned to him in connection with the work and make a true report thereon. Now, he is the man who is to lay the foundation for an improvement to lands which will make the owners liable for paying any taxes extending over a period of years, the value of the said improvements, and the incidental expenses connected therewith, and there should be no interference with him or his work on the part of the council, and certainly not by the parties with whose rights he is to deal. The only thing which should guide him outside of his own knowledge and skill is the provision of the statute applying to the case, and this provision should be made so clear that there can be no misunderstanding as to his duties, for, if his guide is imperfect so will be his report, and so will be the foundation of the work, of the court of revision, the appeal to the county judge, and the people will be put to the expense of having the whole matter set aside in the higher courts, and with the various cases which have been tried by the different courts up to the present time, the knowledge and experience of the people in operating and asking for amendments to the drainage laws, the provisions relating to the nature of the petition which is the foundation of the whole work, should be made so clear that the council will thoroughly understand what petitions should be accepted whether it is in proper shape for acceptance. What the duties of the engineer are with reference to the assessing of lands when his report is received;

what the duties of the council are in comparing the petition with the report, and assessment in order to properly determine whether they have sufficient ground for preparing and passing the by-laws.

Section 6 of the bill, provides, that the engineer or surveyor in assessing the lands to be benefited or otherwise liable for assessment under this act need not confine his assessment to the part of the lot actually affected, but may place such assessment on the quarter, half or whole lot containing the part affected, if the owner of the portion is also the owner of such lot or other sub-division.

We think this is not sufficiently definite, as in a great many cases, by simply describing the lot, does not inform you within five or ten acres of the amount of land contained in the said lot, and very often lands most requiring drainage are cut up into small parcels that it is impossible to describe in any other way that part of a certain lot. We very often find in these cases parts of lots are sold for taxes; first one parcel is sold off the corner of the lot in proportion to its length and breadth, and next a parcel following the two sides of the first parcel in the same proportion, or in other ways as the county treasurer may see fit. If the engineer uses the description of part of lot as given in the last revised assessment roll in the municipality in which the land lies, it is very indefinite. We often find where the land is divided into a number of small parcels, the description on the assessment roll is simply part of lot, and this is the only description the assessor can be expected to give, and there are cases reported where the by-law was quashed because the report of the engineer, upon which it was found, and which was embodied in it, described the land to be assessed as part of lot without a more particular description, and we think that the engineer in making his assessment should be obliged to prepare a plan showing the lots, parts of lots, roads and railroads, etc., to be assessed with the measurements of all the limits, and the sub-divisions designated by letters for reference in the assessment. This, of course, would entail greater work on the engineer and greater expense on the drainage area, but this small expense in the early stage of the proceedings may be the means of saving, as past experience shows, a very large amount of costs, loss of time, trouble and annoyance in trying to enforce payment of taxes against the property imperfectly described. This additional expense would only be in the first construction and would simply require that the plan be verified when it would be necessary to make a re-assessment for any subsequent improvement.

It is the duty of municipal councils, who are familiar with drainage laws, to fully discuss the bills sent out to the legislature for expression of opinion and make such suggestions as they might think proper to insert in the bill and state any changes they think would be advisable in order that the bill, as presented at the next session, may be such that the difficulties, which have heretofore existed, will, as far as possible, be removed.