

Seventeen grounds are set out in the applicant's notice of motion before the learned Referee, but those mainly relied on before us are: (1) that the work for the payment of which the proposed assessment is made was work requiring to be based upon a previous report by an engineer, and there was no such report; (2) an erroneous assessment of all lots in the drainage area for injury liability; (3) the work was done, without authority, before the by-law was passed; (4) misdescription and improper description of parcels; (5) misapplication of funds to the benefit of which the drainage area was entitled; (6) improper inclusion in the total amount, of arrears, and of other items not properly or lawfully chargeable against the drainage area.

Of these it is obvious that the first and third, since they go to the root of the matter, are the most important.

In the beginning, the respondents evidently considered, properly, I think, that the then proposed work was of such a nature as to require the services of an engineer to examine and report. And, accordingly, the council appointed Mr. Baird, an engineer of experience, to take the matter in hand.

He made a report, dated the 11th September, 1906, containing a large number of suggested changes and improvements, the whole to cost \$20,988; but, owing to the heavy cost, the report was not adopted; and the matter was, on the 14th January, 1907, referred back to him for reconsideration, with the request that, in view of the cost, he should consider the advisability of abandoning or postponing all works except the repairs and improvement of pumping station No. 2 and its plant.

He made a second report, dated the 5th September, 1907, in which he said that he had reconsidered his former report in the light of the resolution of the council, and therein made certain recommendations of necessary repairs and improvements, to cost in all \$10,893.29, for which he had, in the usual form, assessed the lands to be benefitted. This report was apparently received and adopted by the council by a by-law provisionally passed on the 2nd October, 1907.

But in the previous month of July the council met at the pumping station, and certain improvements were then suggested, apparently by members of the council and by a Mr. Flook, a contractor, who was required by the council to make an estimate of the cost of the suggested improvements; and the clerk was instructed to correspond with Mr. Baird and ascertain whether he would approve of the suggestions.

And, apparently without obtaining any further report from him, the council employed Mr. Flook to prepare specifications