

The judgment of the Court was delivered by GARROW, J.A.:—The facts are very fully set out in the judgment of the learned Referee, in the course of which he says:—

“Dealing with the question of whether or not the old outlet of the Pool drain is sufficient, I am satisfied, as the findings I have already made indicate, that it is not and never has been a proper outlet for the waters which are conducted to it. It may be that the assessment as to waters tributary to the Kintyre creek, in Orford, would be more properly outlet assessment; but, in view of the fact that there is no practical difference in this case in the result between the assessment for outlet liability and assessment for injuring liability, I have not thought it fit to suggest any alteration in the report. Had there been any practical difference so as to necessitate a re-adjustment of the assessment, I might possibly have thought fit to suggest that. But, however one regards it, the result is the same. There are waters brought to the old outlet, and which flow beyond it, causing damage to lands below. These waters occasion injury, and the engineer is justified in relieving them, and in assessing the lands which cause the injury accordingly.”

This seems to epitomise tersely the case with which we are called upon to deal.

Counsel for the appellants addressed us . . . upon certain objections . . . going to the jurisdiction of the council: . . . (1) the proceedings should have been initiated by petition, and not by report without petition; (2) the work proposed is useless to Orford lands, which already have a sufficient discharge by the works already constructed, and for the construction of which the land-owners in Orford have paid their share; (3) the Orford lands discharge into natural watercourses with defined banks, and are, for that reason, not liable for the proposed work; (4) the proposed work does not improve the present outlet, or furnish a sufficient outlet.

There were also objections as to the details of the assessment and upon the merits generally, all of which were very fully dealt with by the learned Referee . . . and I . . . content myself with a general agreement with his conclusions as to them.

Dealing now with the objections to the jurisdiction before-mentioned, and taking them in their order: I am quite unable to follow the learned counsel in his contention that a petition was necessary. The contention necessarily implies that, if there had been a petition, the objection would fail. I could more easily understand an argument that, even upon petition, the