

HENDERSON, DRAINAGE REFEREE. MARCH 12TH, 1909.

REFEREE'S OFFICE.

MOORE v. TOWNSHIP OF MARCH.

*Municipal Corporations—Drainage—Services of Engineer—Remuneration—Audit by County Court Judge—Municipal Drainage Act, sec. 5a.—Jurisdiction—Absence of Written Request by Municipal Council—Condition Precedent—Delegation by Engineer of Clerical Work to Assistants—Ascertainment of Value of Assistants' Services—Quantum Meruit.*

Action by an engineer employed by the council of the defendant municipality to make a report on a scheme for the improvement of the Carp river, under the provisions of the Municipal Drainage Act, for remuneration for services rendered and for moneys disbursed in that connection.

H. A. Lavell, Smith's Falls, for plaintiff.

A. H. Armstrong, Ottawa, for defendants.

THE REFEREE:—Before this action was commenced, the plaintiff's account was submitted for audit to Judge MacTavish, Judge of the County Court of Carleton, under the provisions of sec. 5a. of the Act. During the course of the audit it transpired that there had been no written request of the municipal council, or of any person assessed, filed with the clerk of the municipality, as required by that section, and counsel for the plaintiff then objected to the jurisdiction of the County Court Judge. The learned Judge thought fit to complete the audit, subject to the objection as to his jurisdiction, and duly certified the result. It therefore becomes necessary to decide upon the validity of this proceeding, as, if the audit had been properly had under the Act, the plaintiff would be bound by it, and could recover no more than the amount of the certificate.

I am of the opinion, however, that the written request is an essential pre-requisite to the jurisdiction of the County Court Judge, and that, as it was wanting, the audit was ineffective. It is perhaps not improper that I should add that I understand that Judge MacTavish agrees with this opinion, and that he would not have entered upon the audit had he known of the absence of the written request.