

could rely, and who from his general qualifications would be capable of determining what should be done by defendants in this as well as in other matters to the performance of which defendants have obliged themselves, upon the adoption by the council of his recommendation, or requisition, or determination. There is no substantial distinction between his "recommendation" in clauses 11 and 12, his "requisition" in clause 24, and his "determination" in clauses 26, 27, 28. None of these is effective without the approval of the council, and equally, I think, none of them legally compels, though they may morally or reasonably invite, discussion or consideration between the engineer and defendants before he refers them to the council. . . .

[Reference to *Wadsworth v. Smith*, L. R. 6 Q. B. 332, 337.]

2. Subject to the limitation of clause 39, the regulation of the places at which cars are to be stopped seems to me to be a matter within the "speed and service" clause. Subject to such limitation, therefore, plaintiffs had the power, in the manner prescribed by the latter clause, to fix such places. I refer to what was said on this point in the former case between the parties, reported 10 O. L. R. 657, 662-4 (C.A.)

3. I think that the report of the engineer to the council "recommending" that defendants be "requested," and setting forth a list of the points and places at which "they shall be required" to stop their cars, though somewhat informally expressed, is a sufficient "determination" by him of what defendants were to do in this respect. It was more than a mere mental determination. It was his official action, and the only official action he could take to express his determination of what defendants should do. . . . He could not recommend without having first determined, and his recommendation and the language of the report shew that this is what he has done. Nothing further was necessary except for the council to approve of the report, and when they had done so, and the report and approval were communicated to defendants, as they were, it became defendants' duty, under their covenant in the agreement, to comply with what was required.

4. Then, have plaintiffs approved of their engineer's determination? They have done so by resolution, and, though I cannot say that I am entirely free from doubt, I incline to