

acting in a judicial capacity, and could not determine it without first giving notice to them, and hearing their objections; (2) as expressed by Street, J., that the regulation of the places at which cars are to be stopped is not a matter coming within sec. 26, but is left to be determined by defendants themselves, subject only to the restrictions of sec. 39; in other words, that so long as they stop at cross-streets and midway streets between streets only when the distance exceeds 600 feet, they may stop at such points only as they deem advisable; (3) that the city engineer has not "determined" but only "recommended" that defendants should be required to stop their cars at the points in dispute; (4) that the council have not adopted the engineer's report by by-law but by resolution only, and that they could act in this matter only by by-law.

Some of the most serious of these objections have arisen from the singularly careless and slipshod way in which the council have transacted business of a very important nature; but, upon consideration, I am of opinion that we are not compelled to yield to any of them, and that my brother Street's judgment should be affirmed.

Having regard to the tenor of the whole contract, it appears to me that the engineer does not occupy any judicial or quasi-judicial position between the city and the company in reference to the matters provided for by clause 26. The subject is one which, by the very terms of the clause, the former have retained under their own control, the engineer being the person agreed upon who is to advise them what, in his opinion, is necessary to be done by defendants, though his determination goes for nothing until and unless plaintiffs approve of it. Had the question arisen at the inception of the company's operations, I think it would hardly have occurred to any one to suggest that the engineer was bound to consult with them before determining what service should be supplied. There is nothing to indicate that anything of that kind was in contemplation, and it can make no difference in the rights of the parties and the construction of the contract that what the engineer has now required to be done is something different from what defendants had adopted. The reference of a dispute is not what is contemplated. The agreement says nothing about hearing and determining. On the contrary, the engineer is a person selected by the parties as one upon whose skill and judgment they