

The report is intended, not merely for the information and benefit of the members of the council, but of the various land-owners in the drainage area whose lands it is proposed to charge. It is a document of very great importance, indeed, in the scheme of proceedings provided by the statute. It may itself be the subject of an appeal to the Drainage Referee, who may set it aside: see secs. 94 (3), 99; and, if set aside, the whole drainage scheme would certainly fall with it.

The provisions of sec. 89 do not help the respondents. They clearly imply an assessment lawfully made, upon the faith of which money has been advanced out of the general fund. There was no lawful assessment here, no assessment indeed at all, and not even a by-law authorising the work to be done. The whole affair was as irregular as it well could be, and quite incapable of cure by the various flounderings, for they are nothing else, through which the council, in a vain effort to extricate itself, subsequently passed.

Nor am I able to see any proper evidence of estoppel on the part of the appellant, even if estoppel could arise in respect of a statutory condition precedent conferring jurisdiction such as this: see Maxwell on Statutes, 4th ed., p. 578 et seq.; *Township of McKillop v. Township of Logan*, 29 S.C.R. 702, p. 705.

We were referred to a number of cases in which it is said that the Court may exercise a discretion on applications to quash by-laws; and, doubtless, that has been frequently said. We were, however, referred to no case under the drainage legislation of the province in which the Court declined to give effect to an objection such as the one in question. On the contrary, there are cases in which the Courts have acted where the objection was in substance much less fundamental; as, for instance where the engineer, although he made a report, had omitted to take the oath as required by the statute: *Township of Colchester North v. Township of Gosfield North*, 27 A.R. 281. The discretion is, of course, a judicial one, to be exercised judicially, and not arbitrarily; and I see no reason at all, in the circumstances, why I should interpose my discretion, if I have one, to shield the respondents in their exceedingly irregular and ill-advised proceedings.

That being my conclusion, I do not think it necessary to discuss the other grounds of attack, further than to say that, as at present advised, I would not have set aside the by-law upon them or any of them alone.

The appeal should be, in my opinion, allowed, and the by-law in question quashed, the whole with costs to the appellant.