

R.S.O. 1914 ch. 198, secs. 75, 77), and there was nothing to prevent the council going beyond the complaint of Holland. Any complaint that the engineer went beyond his mandate should come from the council; and the council had approved and adopted the report, thereby ratifying and adopting the engineer's interpretation of his instructions.

The appointment of an engineer may be ratified by the adoption of his report: *Tilbury East v. Romney* (1895), 1 Clarke & Scully 261; *Township of Camden v. Town of Dresden and Township of Chatham* (1902), 2 Clarke & Scully 308, 313, 314, affirmed in the Court of Appeal, *Re Township of Camden and Town of Dresden* (1903), 2 O.W.R. 200.

The adoption of the engineer's report was a ratification of his making the report, and therefore equivalent to previous instructions. A subsequent ratification has a retrospective effect and is equivalent to a prior command: *Broom's Legal Maxims*, 8th ed., p. 673; *Macleane v. Dunn* (1828), 4 Bing. 722; *Wilson v. Tumman* (1843), 6 M. & G. 236, 242. The ratification can be only of an act which the party had the power to command at the time it was done: *Ashbury Railway Carriage and Iron Co. v. Riche* (1875), L.R. 7 H.L. 653; the ratification will not be effective if the statute requires a previous express mandate.

It was admitted that the council could command such a survey and report as were made in this case; and there was nothing in the statute requiring an express direction before the report was made.

Reference to *Re Johnston and Township of Tilbury East* (1911), 25 O.L.R. 242; *Re Stephens and Township of Moore* (1894), 25 O.R. 600, 605.

The appeal should be allowed and the case sent back to the Referee to deal with it on the merits. The respondent should pay the costs of the appeal—all other costs to be dealt with by the Referee.

CLUTE, J., agreed with RIDDELL, J.

MULOCK, C.J.Ex., and SUTHERLAND, J., agreed in the result.

KELLY, J., was of opinion that, in the circumstances of the case, the by-law should not have been quashed.

*Appeal allowed.*