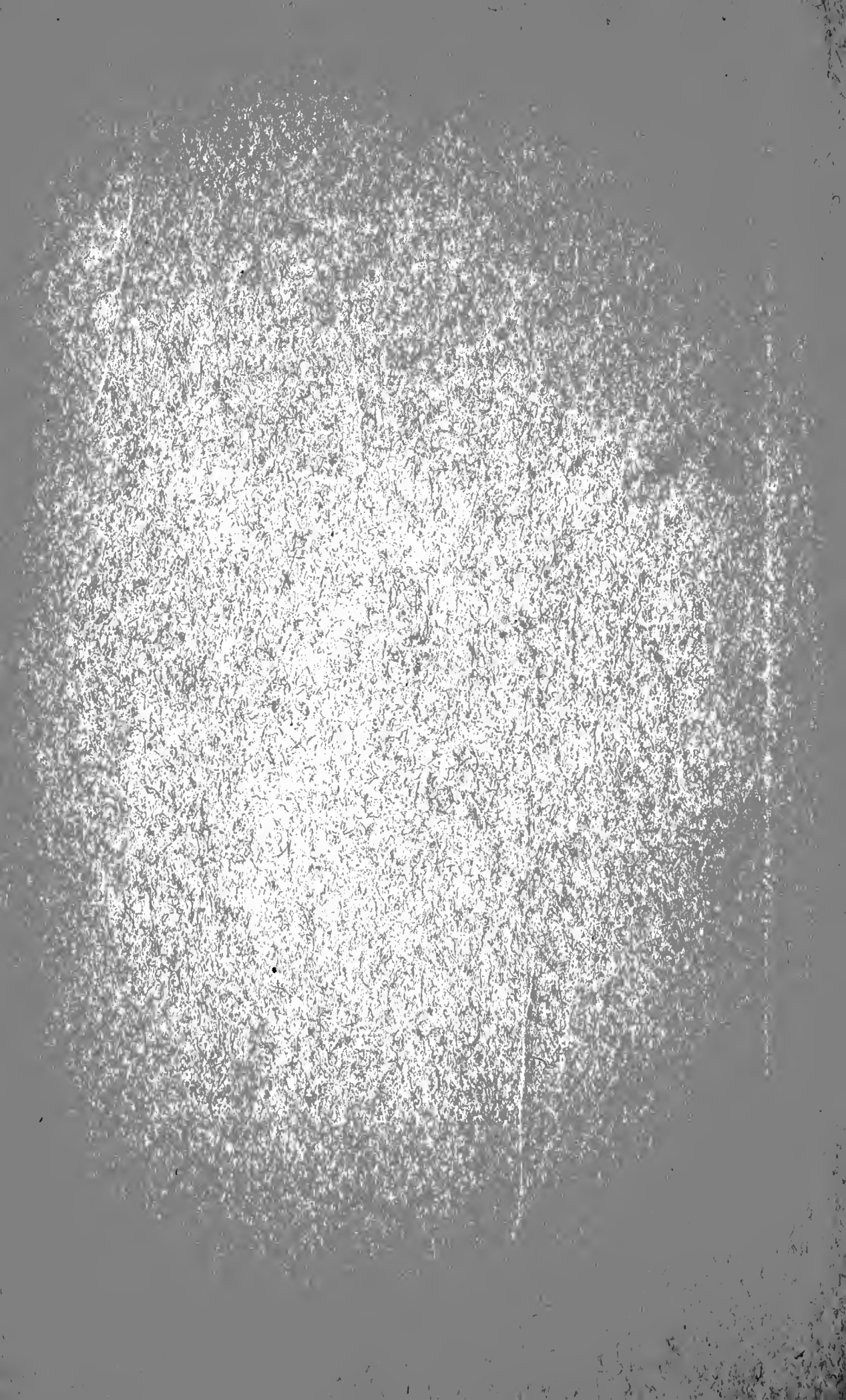

The Sanitary District of Chicago

History of its Growth and Development

AS SHOWN BY DECISIONS of the COURTS AND WORK OF ITS LAW DEPARTMENT

PREPARED BY
C. ARCH WILLIAMS, ATTORNEY
1919

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The Purpose

The Board of Trustees of The Sanitary District of Chicago adopted certain preambles and passed an order, which are hereinafter set forth, directing the preparation of a concise history of the Sanitary District and its works which can be easily read and understood by the taxpayer in the District.

The information herein compiled is to be used in connection with data from other departments for that purpose.

No attempt has been herein made to present a brief or argument of any kind. The first part consists of appropriate portions of opinions of courts of review arranged in logical and chronological order, describing the origin, purpose, powers and achievements of the Sanitary District. The second part sets forth the same history as shown by the records of the Law Department.

This book is printed at the expense of The Sanitary District of Chicago, but no statements as to decisions or other matters contained herein are intended in any way to bind the District or to be treated as admissions against it. The book is designed as a convenience and ready reference to court decisions and matters of record, thereby enabling those who desire information as to the District and its works to learn the facts and the law.

C. ARCH WILLIAMS,

Attorney.

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PART I.

PART II.

PREAMBLES ADOPTED AND ORDER PASSED

June 26, 1919 (Proceedings 1919, pages 829 and 835)

Directing That a Concise History of the Sanitary District Be Prepared

CHICAGO, June 26, 1919.

To the Honorable, the President and Members of the Board of Trustees of The Sanitary District of Chicago.

GENTLEMEN:

Your Committee on Engineering, having had under consideration the history of the growth and development of the Sanitary District and its various works, respectfully recommends the adoption of the following preambles and order:

WHEREAS it appears from the Sanitary District Act passed by the General Assembly of Illinois in 1889, and from the decisions of the Supreme Court of Illinois in regard to said Act and parts thereof, that the boundaries of the Sanitary District are not co-terminus with those of the City of Chicago or any other municipality, nor are the persons or property within its limits the same as those within the limits of the City of Chicago, or of any other municipality; that the Sanitary District was organized pursuant to an affirmative vote of the electors within its limits as a municipal corporation for sanitary purposes, entirely distinct from and independent of the government of the City of Chicago, and of that of every other municipal corporation; that it has municipal authorities of its own, elected by the people within the District pursuant to the requirements of its Charter, whose functions are in no wise connected with any other municipal government; that the Sanitary District law was not forced upon an unwilling community; **Boundaries**

That the preservation of health is one of the paramount objects of government; that it belongs to the police power, subject to the proper exercise thereof by the State Legislature directly or by public corporations to which the legislature may delegate it, and that every citizen holds his property subject to such police power; that the question of the propriety of the organization of this Sanitary District is one which belongs entirely to the General Assembly which created The Sanitary District of Chicago and invested it with power to levy taxes, to issue bonds and to carry on the objects and purposes of the Act, and to construct the works contemplated by the Act by such means and methods as should from time to time be adopted and used by the Board of Trustees in the exercise of sound judgment and discretion in regard thereto; **Police Power**

That The Sanitary District of Chicago was organized as a munici-

pal corporation to secure, preserve and promote the public health, and any subsidiary measure having a greater or less tendency to promote that object or to advance the general scheme proposed through the agency of such organization to preserve and protect the public health is germane to the general subject of the Sanitary District Act, and the object and purpose of The Sanitary District of Chicago; that it appears as a historical fact and a fact abundantly shown by the terms of the Sanitary District Act itself that the scheme contemplated by the Sanitary District Act was formulated mainly, if not exclusively, with reference to sanitary conditions and the needs of the City of Chicago and its environs; that Chicago at the time of the adoption of the Sanitary District Act was a City of probably a million inhabitants, or more, and now has approximately three times that population; that it was and is bordered on the shores of Lake Michigan, which Lake was and is the source of its water supply; that a few miles west of Chicago, and running in a north and south direction, is the DesPlaines River, and at a point opposite the southerly part of Chicago said river turns towards the southwest and runs in that direction to the City of Joliet, below which it is known as the Illinois River; that the territory between Lake Michigan and the DesPlaines River and along the course of that river to Joliet is nearly level, none of it being more than a few feet above the level of the lake, while at Joliet the general surface is quite a number of feet below the level of the lake; that the object of the system of drainage contemplated by the Sanitary District Act was and is to prevent the drainage and sewerage of the City of Chicago and its environs from being carried into Lake Michigan, thereby contaminating the waters of that lake; that the Main Channel of the Sanitary District extends from a point just north of Joliet in a general northeasterly direction to the west fork of the South Branch of the Chicago River at or near Robey Street, which Channel is approximately 28 miles long, from 160 to 200 feet wide and approximately 26 feet deep throughout its entire length; that the rock section thereof extends from Willow Springs to Lockport, and has a capacity of 14,000 cubic feet of water per second; that the work of constructing the Main Channel was begun immediately upon the organization of the District, and was completed in 1898, and on January 17, 1900, was opened and placed in operation by direction of the Governor, as provided in the Sanitary District Act; that since that time it has been continuously operated.

Purpose of District

Channel Opened

That in order to provide for the operation of the Main Channel it was necessary to deepen and widen the South Branch of the Chicago River and the West Fork of the South Branch; that said rivers were not then large enough to carry the water to be withdrawn from Lake Michigan through the Main Channel without creating a dangerous current in such rivers; that this work was commenced in 1896, pursuant to permit from the War Department, and prior to the opening of the Main Channel, obstructions in the South Branch of the Chicago River and the West Fork of the South Branch were removed, and the Channel was widened and deepened to 17 feet

throughout the entire stretch; that in 1900 the Sanitary District made plans for further deepening and widening the South Branch of the Chicago River and the West Fork in order to carry an additional amount of water, which has been known and called "The Chicago River Improvement Project," which work has gone on from time to time, and it is now rapidly nearing completion; that the permit granted contemplated the widening of such rivers at all points to 200 feet and deepening the same to 26 feet, which work required an immense amount of excavation in the bottoms of said rivers, as well as from the banks, the removal of a great many center pier bridges and the installation in their place of bascule bridges of modern type, and in this project the District has expended approximately $12,250,000;

River Improvement

Cost

That the completion of the Main Channel and placing it in operation, prevented the sewerage of the Chicago River from flowing into Lake Michigan, but in order to divert the sewage of the sewers emptying directly into the lake it was necessary to construct intercepting sewers in the City of Chicago, north and south along the shore of Lake Michigan; that these intercepting sewers on the south converge at 39th Street and the sewage is there pumped together with a certain amount of lake water through the 39th Street conduit into the east arm of the South Fork of the South Branch of the Chicago River; that the intercepting sewers on the north converge at Lawrence Avenue pumping station; that they intercept the sewers which emptied directly into Lake Michigan on the North Side of the City; that the sewage coming through the intercepting sewers, converging as aforesaid, is pumped together with a certain amount of water from Lake Michigan through the Lawrence Avenue conduit to the North Branch of the Chicago River; that the intercepting sewers above mentioned were completed about the same time in the year 1907 and placed in operation; that by the works then constructed practically all the sewage and drainage arising from the original limits of the Sanitary District was diverted from the water supply into the Main Channel of the District; that in 1903 the territory of the North Shore Suburbs, including Evanston and that in the Calumet District, was annexed and power granted to the Sanitary District to construct all drains, ditches, adjuncts and additions to its Main Channel necessary to properly care for the drainage and sewage of this additional territory; that it was necessary to divert the sewage and drainage arising in the territory annexed, as well as that arising from the original limits, in order to prevent pollution of the water supply of the entire population of the Sanitary District, and to carry out that purpose the North Shore Channel was constructed and placed in operation in the year 1910; that this Channel extends from the North Branch of the Chicago River at Lawrence Avenue north to Lake Michigan at Wilmette, Illinois; that a lock has been placed at its intersection with the Lake so that boats may pass in and out; that the water for dilu-

Intercepting Sewers

North Shore Channel

tion purposes is taken from Lake Michigan at the intersection of the North Shore Channel with the shore of Lake Michigan by means of pumps; that subsequently intercepting sewers were constructed to divert the sewage of the North Shore Suburbs so as to carry away from Lake Michigan all the sewage arising from the North Shore towns; that the Sanitary District caused the North Branch of the Chicago River to be deepened and widened so that it is navigable from Lawrence Avenue south, which work was completed in 1907;

That it provided for an outlet for the sewage and drainage of the Calumet Region of the Sanitary District; that the District laid out a right of way for and entered upon the construction of the Calumet-Sag Channel, which work is now being prosecuted and this Channel will be opened in the near future; that the Calumet-Sag Channel extends from the Little Calumet River at or near Blue Island westerly to a point at or near Sag, Illinois, on the Main Channel of the Sanitary District; that connected with the Calumet-Sag Channel there are also in process of construction intercepting sewers converging at the easterly terminus of such Channel; that these intercepting sewers extend through the Calumet District, and when completed and placed in operation in connection with the Calumet-Sag Channel, will divert all the sewage arising in the Calumet District from Lake Michigan into the Main Channel of the Sanitary District; that the Calumet-Sag Channel will also, when it is completed, reverse the flow of the Calumet and Little Calumet Rivers at practically all times during the year; that when the Calumet-Sag Channel with its intercepting sewers connected with the North Shore Channel are completed and placed in operation all the sewage and drainage, which would cause any pollution of the water supply for the population of the entire Sanitary District, will be diverted from Lake Michigan through the Main Channel of the District into the DesPlaines and Illinois Rivers, together with such an amount of water as will properly dilute the sewage, oxidize the same and render it innocuous and inoffensive;

Calumet-Sag Channel

that the works of the District completed and now under process of construction constitute a comprehensive method by which the water supply of the inhabitants within the Sanitary District may properly be kept pure and free from pollution; that the result of these works and their operation is indicated by the change in the death rate from typhoid fever and other diseases as compared with the conditions which existed before and after the opening of the Main Channel; and

Pure Water

WHEREAS, the water of the entire Lake front at and near Chicago and vicinity prior to the opening of the Main Channel was used as a receiving station for the sewage systems of Chicago and adjoining municipalities, thereby rendering its water impure and unfit for use, and creating conditions which were harmful and dangerous to the health and welfare of the people of Chicago and adjoining communities, and the water in the Chicago River and its various branches was allowed to remain in even worse condition than that of the water in Lake

Previous Conditions

Michigan, which conditions have been changed by and through the work of the Sanitary District so that the entire lake front of Chicago and adjoining cities and villages is an asset of which the people can feel justly proud, since it now furnishes opportunities for recreation, pleasure and comfort, a supply of pure water and air, and makes of the cities and towns along the Lake real summer resorts instead of disease germ breeding spots to be shunned as they were in former years; and

WHEREAS, by amendment to the Sanitary District Act the Legislature of Illinois authorized and empowered the Board of Trustees of the Sanitary District to utilize the power made available by the works constructed under the provisions providing that it should be converted into electrical energy and transmitted to the various cities, villages and towns within the District and adjacent to the Main Channel, to be used in the lighting of such cities, villages and towns, or parts thereof, or for the operation of pumping plants and machinery used for municipal purposes, and that it might be disposed of to any other persons or corporations upon such terms and conditions as may be agreed upon by the Sanitary District; provided, however, that it shall be the duty of the Sanitary District to utilize so much of said power as may be required for that purpose to operate the pumping stations, bridges and other machinery of said Sanitary District; and that the Board of Trustees of the Sanitary District under such power and authority has developed and improved the amount and quality of such service from time to time, in connection with which it has expended upwards of $4,500,000.00, and from which it has received a revenue of upwards of $8,725,000.00, realizing therefrom a net profit to the Sanitary District after charging off depreciation and interest on the investment of approximately $2,300,000.00, which is directly in the interest and for the benefit of the taxpayers of and in The Sanitary District of Chicago; also that the District furnishes illumination for Chicago and the Park systems at a saving to the taxpayers of at least two-thirds of former cost; that from time to time through lack of information or otherwise statements have appeared in the public press and elsewhere, which would lead the taxpayers to believe that this project, maintained and operated by the Sanitary District by and under the direction of the General Assembly of Illinois, has not been for the interest of the taxpayers, but has been run for the purpose of profit to the Sanitary District, without thereby correspondingly reducing taxes to be levied by the District for the construction and conduct of its various works. In this connection the Supreme Court of Illinois only recently held that

Electrical Energy

Profit for Taxpayers

> "the Board of Trustees of the Sanitary District are allowed by statute to exercise ordinary business discretion and judgment, and within that discretion and judgment to determine from time to time whether the profits arising from the sale of power and electrical energy should be applied toward the payment of bonds of the District and interest

thereon, or be used for general corporate purposes of the District."

Regardless of the purpose to which they may be applied within the judgment and discretion of the Trustees, such profits would tend to reduce the taxes to be paid by the taxpayers of the District; furthermore, if such power and authority had not been granted by the General Assembly to the Board of Trustees, the surplus power above mentioned would have been wasted, and such waste would have proportionately increased the amount of taxation to be met by the taxpayers of the Sanitary District; and

WHEREAS, from the beginning of the organization of The Sanitary District of Chicago, the construction of its various channels and intercepting sewers, the deepening and widening of the Chicago River and its branches, and maintaining and operating of pumping stations have involved intricate engineering problems, which have demanded the best thought of minds trained in such technical work, and have involved also the constant care and attention of the various Boards of Trustees which have been elected by the people from time to time, and the cost of such works has involved large sums of money, aggregating approximately $100,000,000; and

Total Cost

WHEREAS, the population of Chicago and the surrounding territory comprised within the limits of The Sanitary District of Chicago is rapidly increasing from year to year, making it necessary to anticipate the future and make adequate preparation now for the proper treatment and disposal of the sewage of such territory during the coming years, which will probably necessitate the erection and operation of plants for the proper treatment of sewage, so that by supplementing the maximum diversion of water from Lake Michigan through the Chicago and Calumet Rivers, and the Channels of the Sanitary District, to the amount required by statute and permitted by the Federal Government, all sewage within such District may be kept out of Lake Michigan and its water maintained in a condition, as now, fit to be used by the people of Chicago and its environs; and

Increasing Population

WHEREAS, The Sanitary District of Chicago, comprising its various channels and works hereinbefore mentioned, constitutes an investment and asset of the taxpayers residing within the territorial limits of said District, concerning which they should each and all be fully informed, and it is the duty of such taxpayers to seek information, and inform themselves concerning this great institution and project, which is theirs and theirs alone; and

Asset of Taxpayer

WHEREAS, under our system of government, which includes the election of Trustees of the Sanitary District from time to time, questions of partisan politics enter into the discussions on the platform and in the public press in connection with selecting the personnel of the Board of Trustees of the District, the taxpayers of such District should be made to realize that their investment in this project, the expense of construction of its work and the maintaining of

the same, are in no sense matters of politics, and that, regardless, of the personnel of the Board of Trustees or its agent and employees from time to time, it is of vital importance to the taxpayers of the Sanitary District that this great institution formulated, organized, constructed and operated for the purpose of preserving the health of the people of this community, should be maintained and its works and facilities improved upon from time to time as rapidly as local conditions and scientific improvements will permit, and that mere differences of opinion between members of the Board of Trustees which may be expressed from time to time, and which have to do with purely their own personal views, should not be allowed to prejudice the minds of the taxpayers of the District against the Sanitary District itself, which is all important to the people; and

Works Are Necessary

WHEREAS, the Board of Trustees of the Sanitary District desire that all of the information possible with reference to the achievements and projects of the Sanitary District, and the means and methods employed in connection therewith, should be given to the taxpayers of the District; and, in order to do so it is necessary to make a systematic examination of the books and files of the various departments of the District, especially those of the Engineering and Electrical Departments, and to have the same assembled in logical order and described in plain language, which may be readily understood by any taxpayer who shall read and examine the same; and

Publicity

WHEREAS, it is the desire of the Board of Trustees that such information be assembled and promulgated by the Sanitary District at an early date for the benefit and information of the taxpayers, and for the benefit and information of the members of the Constitutional Convention which shall convene in January, 1920; it is, therefore,

ORDERED, That the Committee on Employment be, and the same is hereby, authorized and directed to at once ascertain whether there are any persons in the various departments of the Sanitary District who are qualified to do the work above described, and to give the time therefor without interference with the regular business and work of the District, and report the same to the Board of Trustees, and if no such persons or person are or is available for such work, to secure the services of some person not connected with the Sanitary District who is qualified and equipped to perform the services desired as above stated, and to ascertain the amount of compensation which such person shall desire for such services, and to report thereon to the Board of Trustees at its first meeting in August, 1919.

Respectfully submitted,

(Signed) WALLACE G. CLARK, Chairman.
H. E. LITTLER.
PATRICK J CARR.
JAMES H. LAWLEY.
MATT. A. MUELLER.
Committee on Engineering.

THE SANITARY DISTRICT OF CHICAGO.

THE PURPOSE, ORGANIZATION, BOUNDARIES, PLANS, DEVELOPMENT, WORKS, AND BENEFITS OF THE SANITARY DISTRICT OF CHICAGO AS SHOWN BY THE OPINIONS AND DECISIONS OF THE COURTS OF ILLINOIS AND THE FEDERAL COURTS, AND THE FAVORABLE PRECEDENTS THEREBY ESTABLISHED.

AND BY THE RECORDS AND WORK OF ITS LAW DEPARTMENT, WHICH, WITH CHANGING PERSONNEL, HAS BEEN CONDUCTED AS A UNIT IN PREPARING VOLUMINOUS BUT NECESSARY SPECIFICATIONS, MANY LARGE, COMPLICATED AND IMPORTANT CONTRACTS, THOUSANDS OF BOARD ORDERS AND COMMITTEE REPORTS, OPINIONS AND BRIEFS AS TO THE LAW APPLICABLE TO EVERY BILL OR VOUCHER BEFORE PAYMENTS HAVE BEEN MADE OR REFUSED, AND THE MULTITUDE OF DETAILS INCIDENT TO THE ABOVE MATTERS, IN ADDITION TO BRIEFING, INVESTIGATING AND TRYING HUNDREDS OF CASES.

PART I.

The Sanitary District Act.

The Sanitary District Act, under which The Sanitary District of Chicago was organized is entitled, "An Act to Create Sanitary Districts and to Remove Obstructions in the DesPlaines and Illinois Rivers." It was adopted by the General Assembly of Illinois May 29, 1889.

Section 1 specifies how the District might be organized and the method to be followed. This was done in 1889, and the District's organization has been approved by the Supreme Court of Illinois.

Section II Section 2 directs the courts of the State to take judicial notice of the existence of all Sanitary Districts organized under this Act. It further provides for the calling of an election by the County Judge.

Section 3, as amended, provides for the election of nine Trustees and the terms for which they shall be elected. It also provides that

Section III such Sanitary District shall from the time of the first election, held by it under this act, be construed in law and equity a body corporate and politic and be known by the name and style of The Sanitary District of Chicago; it may sue and be sued, contract and be contracted with, acquire and hold real and personal property necessary for its corporate purposes, and adopt a common seal and alter the same at pleasure.

Section 4 prescribes the powers, duties and compensation of Trustees and the manner and method of conducting the business of the District. It provides that the Board of Trustees shall be the corporate authorities of such Sanitary District and shall exercise all the powers and manage and control all the affairs and property of such District; that said Board of Trustees shall have the right to elect a Clerk,

Treasurer, Chief Engineer and Attorney for such municipality; that the Trustees may prescribe the duties and and fix the compensation of all the officers and employees of such District, but the act specifically fixes the salary of the President of the Board and the Trustees. It further provides that the Board of Trustees shall have full power to pass all necessary ordinances, orders, rules, resolutions, and regulations for the proper management and conduct of the business of such Board of Trustees and of said corporation and for carrying into effect the objects for which such Sanitary District is formed. It provides for the approval of all ordinances, orders, rules, resolutions and regulations, and in case of veto by the President, the procedure which shall thereafter obtain with reference to any of such proceedings to which such veto may have been addressed, including the provision that it shall require a two-thirds vote of all the Trustees to pass any ordinance, order, etc., after it has been vetoed.

Section IV Powers and Duties

Section 5 provides that all ordinances making appropriations shall within one month be published at least once in a newspaper published in the District, and no such ordinance shall take effect until ten days after its publication; and that all other ordinances, orders and resolutions shall take effect from and after their passage unless otherwise provided therein.

Section V Appropriations

Section 6 provides that ordinances, orders and resolutions may be proven by certificate of the Clerk under seal of the corporation.

Section VI

Section 7 specifies that the Board of Trustees shall have power to provide for the drainage of such District by laying out, establishing, constructing and maintaining one or more main channels, drains, ditches and outlets for carrying off and disposing of the drainage (including the sewage) of the District, together with such adjuncts and additions thereto as may be necessary or proper to cause such channels or outlets to accomplish the thing for which they are designed in a satisfactory manner, also to make and establish docks adjacent to any navigable channel made under the provisions of the Act for drainage purposes, and to lease, manage and control such docks, and also to control and dispose of any water power which may be incidentally created in the construction and use of such channels or outlets, but the Board shall not have power to control water after it passes beyond its channels, waterways, races or structures into a river or natural waterway or channel; and it provides further that nothing in this Act shall prevent the State from hereafter requiring a portion of the funds derived from such water power, dockage or wharfage to be paid into the State Treasury for State purposes. It further provides that channels or outlets may extend outside the territory of the District, and that the rights and powers of the Board of Trustees shall be the same as those vested in the Board over that portion of channels or outlets within the District.

Section VII Drains, Docks and Water Power

Section 8 provides that the District may acquire by purchase, condemnation or otherwise any and all real and personal property, right of way and privilege either within or without its corporate limits that may be required for its corporate purposes, and specifies the procedure in the matter of condemnation proceedings, and that when property thus acquired is no longer required for the corporate purposes of the District it may sell, convey, vacate and release the same, subject to the reservation contained in Section 7 relating to water power and docks.

Section VIII Eminent Domain

Section 9 empowers the Sanitary District to borrow money for its corporate purposes, and to issue bonds therefor, but it shall not become indebted in any manner or for any purpose to an amount in the aggregate to exceed three per centum of the valuation of taxable property in the District, to be ascertained by the last assessment for State and County taxes, previous to incurring such indebtedness.

Section IX Bonds

Section 10 provides that before incurring any indebtedness the the Board of Trustees shall provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and to pay the principal as it falls due, and at least within twenty years from the time of contracting the same, with a proviso that the net earnings from water power and docks may be appropriated and applied to the purpose of paying the interest or principal of such indebtedness, or both, and to the extent that they will suffice, the direct tax may be remitted.

Section X Taxation

Section 11 provides that all contracts for work to be done, the expense of which shall exceed $500, shall be let to the lowest responsible bidder upon not less than ten days' public notice by publication in a newspaper of general circulation, published in the District, and that said Board shall have the power and authority to reject any and all bids and readvertise. It further provides that no person shall be employed unless he is a citizen of the United States or has in good faith declared his intention to become such citizen; and that eight hours shall constitute a day's work.

Section XI Bidders: Employees

Section 12 provides that the Board of Trustees may levy and collect taxes for its corporate purposes on property within the District, the aggregate amount of which in any one year shall not exceed one per centum of the value of taxable property within the corporate limits; it provides also the method of certifying the tax levy to the County Clerk and the manner and method of collecting such taxes. It further provides that no part of the taxes thus authorized shall be used by the District for the construction of permanent, fixed, immovable bridges across any channel constructed under the provisions of the Act, and further that all bridges built across such channels shall not necessarily interfere with or obstruct navigation of such channel when the same becomes a navigable stream as provided

Section XII Taxation: Bridges

in Section 24 of the Act; that such bridges shall be so constructed that they may be raised, swung or moved out of the way of vessels, tugs, boats or other water craft navigating such channels; that nothing in the Act shall be so construed as to compel the District to maintain or operate such bridges as movable bridges for a period of nine years from and after the time when the water has been turned into such channel pursuant to law, unless the needs of general navigation on the DesPlaines and Illinois Rivers when connected by such channel sooner require.

Section XIII Special Assessment

Section 13 provides that the Board of Trustees shall have power to defray the expenses of any improvement made by it in the execution of the powers granted by special assessment or by general taxation, or partly by each, as it shall by ordinance prescribed; that it shall constitute no objection to any special assessment that the improvement for which the same is levied is partly outside the limits of the District, but no special assessment shall be made upon property outside of such District, and in no case shall any property be assessed more than it will be benefited by the improvement for which the assessment is levied. It prescribes the same procedure in the matter of special assessments as that provided for cities and villages under the Act of April 10, 1872.

Section XIV

Section 14 provides that where special assessment is authorized, payment may be provided on the installment plan.

Section XV

Section 15 provides that where assessment is made payable in installments the Trustees may issue bonds or certificates not exceeding 80 per centum of the unpaid portion of such assessment at the date of the issue thereof, payable out of such assessment; that the Board of Trustees may call in and pay off said bonds or certificates as fast as there is money received into the treasury from the assessment against which the same are issued, and all moneys received upon such assessment shall be applied to the payment of said certificates or bonds until they are fully satisfied.

Section XVI Compensation for Property

Section 16 provides that whenever the Board passes an ordinance which requires that private property shall be taken or damaged, the the District may cause compensation therefor to be ascertained, and condemn or acquire possession thereof in the same manner as provided under an Act to provide for the exercise of the right of Eminent Domain, approved April 10, 1872; and such proceedings shall be always instituted in the County in which the property sought to be taken or damaged is situated; it is provided further that all damages to property, whether determined by agreement or by final judgment of court, shall be paid out of the annual District tax prior to the payment of any other debt or obligation.

Section 17 provides that when it shall be necessary to make any improvements authorized by the Act, to enter upon any public prop-

erty or property held for public use, such District shall have the power so to do, and may acquire the necessary right of way over such property held for public use in the same manner as above provided for acquiring private property, or may enter upon, use, widen, deepen or improve any navigable or other waters, waterways, or private lake, provided the public use thereof shall not be unnecessarily interrupted or interfered with, and that the same shall be restored to its former condition of usefulness as soon as practicable; provided, however, that no such district shall occupy any portion of the Illinois and Michigan Canal outside of the limits of the county in which such district is situated for the site of any such improvement, except to cross the same, and then only in such a way as not to impair the usefulness of said canal or to the injury of the right of the State therein, and only under the direction and supervision of the Canal Commissioners; that no District shall be required to make any compensation for the use of so much of said canal as lies within the limits of the County in which the District is situated, except for transportation purposes; that the District shall build a suitable bridge with suitable approaches thereto, with a roadway and sidewalks thereon for public travel across its main drainage channel on the line of Crawford Avenue, sometimes called 40th Avenue, in the City of Chicago as extended across such main channel, also on the line of Cicero Avenue, sometimes called 48th Avenue, which lies partly in the City of Chicago and partly in the Township of Stickney as extended across such main channel, and on the line of Harlem Avenue, sometimes called 72nd Avenue, as extended across said main channel, all in the County of Cook. (The General Assembly amended this Act in May, 1919, adding another bridge on the line of California Avenue.) It further provides that none of these bridges should be center pier bridges, but that the same should be of the bascule type, and that such bridges with approaches, roadways and sidewalks thereon shall be thereafter maintained in good order for public travel by any such District as a corporate expense, and no compensation shall be demanded or required to be paid any such District for its land necessarily taken to form part of the street or highway to afford access to any such bridge, or as compensation for any such bridges and their appurtenances aforesaid. It provides also that any such bridge with approaches, roadways and sidewalks thereon lying wholly within the territorial limits of any one municipality shall on completion be turned over to the corporate authorities of any such municipality free of cost, and shall thereupon become the property of such municipality and be maintained in good order for public travel by such municipality.

Section XVII Condemn Public Property

Bascule Bridges

Section 18 provides that in making any special assessments for any improvements which requires the taking or damaging of property the cost of acquiring the right to take such property may be ascertained and included in the assessment as part of the cost for making such improvement.

Section XVIII

Section 19 provides that the District shall be liable for all damage to real-estate within or without the District which shall be overflowed or otherwise damaged by reason of the construction, enlargement or use of any channel, ditch, drain, outlet or other improvement under the provisions of this Act; that actions to recover such damages may be brought in the County where such real-estate is situated, or in the County where such Sanitary District is located; that in case judgment is rendered against the District for damages the plaintiff shall also recover his reasonable attorney's fees to be taxed as costs; provided, however, it shall appear on the hearing of plaintiff's motion to tax such attorney's fees that plaintiff notified the Trustees of such District in writing at least sixty days before suit was commenced, stating that he claims damages and giving the amount of such damage and the cause of damage, and that he intends to sue for the same; and privided further, that the amount recovered shall be larger than the amount offered by the Trustees, if anything, as a compromise for damages sustained.

Section XIX Damages for Overflow

Attorneys' Fees

Section 19-A provides that no person shall be an incompetent judge, justice or juror by reason of his being an inhabitant or freeholder in such Sanitary District in any action in which the Sanitary District may be a party in interest.

Section XIX-A Jurors

Section 20 provides that any channel or outlet construed under this Act, which shall cause to be discharged sewage into or through any river or stream of water beyond or without the limits of the District constructing the same shall be of sufficient size and capacity to produce a continuous flow of water of at least 20,000 cubic feet per minute for each 100,000 of population of the District, and the same shall be kept and maintained of such size and in such condition that the water thereof shall be neither offensive nor injurious to the health of any of the people of the State, but before any sewage shall be discharged into such channel or outlet, all garbage, dead animals or parts thereof and other solids shall be taken therefrom. To this section an amendment was added by Act of June 10, 1895, providing that such District shall at the time any sewage is turned into or through any such channel or channels turn into said channel or channels not less than 20,000 cubic feet of water per minute for every 100,000 inhabitants of said District, and shall thereafter maintain a flow of such quantity of water.

Section XX Capacity of Channel

Section 21 provides that if the Sanitary District shall introduce sewage into any river or stream of water or natural or artificial water course, channel or lake beyond or without the limits of such District without conforming to the provisions of this Act, or having introduced such sewage into such water course shall fail to comply with any of the provisions of this Act, an action to enforce compliance

Section XXI Procedure by Attorney General

shall be brought by the Attorney General of the State, or he may authorize the State's Attorney of any such County to prosecute such action, providing that nothing in this section shall be construed to prevent the prosecution of any action or proceeding by individuals or bodies corporate or politic against such District; and, providing, further for action by the Attorney General upon information furnished and verified by individuals with regard to the Acts complained of. It is further provided, that in order to comply with the provisions of this Act, the District is authorized and empowered to levy and collect such taxes as emergency taxes upon the property of such Sanitary District which may be taxable as may be necessary to carry into effect any order, judgment or decree of court relating to the requisite flowage of water, capacity of the channel or outlet and the construction, maintenance and operation of movable bridges, as required by this Act.

Repeal Provision

Section 22 provides that the right shall be reserved to the State to alter, amend or repeal the Act or impose any conditions, restrictions or requirements it may see fit.

Section 23 provides that if any channel is constructed under the provisions of the Act, by means of which any of the waters of Lake Michigan shall be caused to pass into the Desplaines or Illinois Rivers, such channel shall be constructed of sufficient size and capacity to produce and maintain at all times a continuous flow of not less than 300,000 cubic feet of water per minute and be of a depth of not less than 14 feet, and have a current not exceeding three miles per hour, and if any portion of any such channel shall be cut through a territory with a rocky stratum, which such rocky stratum is above a grade sufficient to produce a depth of water from Lake Michigan of not less than 18 feet, such portion of such channel shall have double the flowing capacity above provided for and a width not less than 160 feet at the bottom, capable of producing a depth of not less than 18 feet of water; that if the population of the district drained into such channel shall at any time exceed 1,500,000, such channel shall be made

Section XXIII Dimensions of Channel: Capacity

and kept of such size and in such condition that it will produce and maintain at all times a continuous flow of not less than 20,000 cubic feet of water per minute for each 100,000 of population of such district and a current of not more than three miles per hour, and if at any time the general government shall improve the Desplaines or Illinois Rivers so that the same shall be capable of receiving a flow of 600,000 cubic feet of water per minute, or more, from such channel, and shall provide for the payment of all damages which any extra flow above 300,000 cubic feet of water per minute from such channel may cause to private property so as to save harmless the District from all liability therefrom, then the District shall within one year thereafter enlarge the entire channel leading into said Desplaines and Illinois rivers from said District to a sufficient size and capacity to produce and maintain a continuous

flow throughout the same of not less than 600,000 cubic feet per minute, with a current of not more than three miles per hour, and such channel shall be constructed upon such grade as to be capable of producing a depth of water of not less than 18 feet throughout such channel and shall have a width of not less than 160 feet at the bottom. In case the channel is constructed in the Desplaines River as contemplated in this section it shall be carried down the slope between Lockport and Joliet to the pool commonly known as the Upper Basin of sufficient width and depth to carry off the water the channel shall bring down from above. The district constructing a channel to carry water from Lake Michigan of any amount authorized by this act may correct, modify and remove obstructions in the Desplaines and Illinois Rivers wherever it shall be necessary so to do to prevent overflow or damage along said river, and shall remove the dams at Henry and Copperas Creek in the Illinois River, before any water shall be turned into the said channel. It further provides when and under what circumstances the Canal Commissioners shall cause such dams or dam to be removed.

Remove Obstructions

Section 24 provides that when the channel is completed and the water turned therein to the amount of 300,000 cubic feet of water per minute, the same is declared to be a navigable stream, and when the general government shall improve the Desplaines and Illinois Rivers to connect with such channel, said general government shall have full control over the same for navigation purposes, but not to interfere with its control for sanitary or drainage purposes.

SectionXXIV Channel Is Navigable

Section 25 provides that the District shall have the right to permit territory lying outside its limits and within the same County to drain into and use any channel or drain made by it upon such payments, terms and conditions as may be mutually agreed upon; and the District is given full power and authority to contract for the right to use any drain or channel which may be made by any other sanitary district and to raise the money called for by any such contract in the same way and to the same extent as the District is authorized to raise money for any other corporate purpose; and where the united flow of any sanitary districts thus co-operating shall pass into any channel constructed within the limits of the County wherein such districts are located, and which passes into the Desplaines and Illinois Rivers, such united flow shall in no case and at no time be less than 20,000 cubic feet of water per minute for each 100,000 of the population of the districts co-operating; provided, however, that nothing in this Act shall be so construed as to diminish, impair or remove any right of any city, village, township or corporation, body politic or individual situated on the Desplaines or Illinois Rivers or their tributaries within the valleys of the same, to use the channel for drainage or otherwise not inconsistent with the rights of the district constructing the same as expressed in this Act.

Section XXV Outside Territory to Drain into Channel by Agreement

Rights of Others

Section XXVI Water Works: Duty Imposed

Section 26 provides that whenever in a sanitary district there shall be a city, incorporated town or village which owns a system of water works which supplies water from a lake or other source which will be saved and preserved from sewage pollution, by the construction of the main channel, drain, ditch or outlet, and the turning of the sewage of such city and district therein, and there shall be in such sanitary district any territory bordering on any such city, incorporated town or village within the limits of another city, incorporated town or village, which does not own any system of waterworks, at the time of the creation of such sanitary district, then upon application by the corporate authorities of such latter named city, incorporated town or village, the corporate authorities of such incorporated town or village having such system of water works should furnish water at the boundary line between such municipalities by means of its waterworks to the corporate authorities asking for the same in such quantities as may be required to supply consumers within said territory, at no greater price or charge than it charges and collects of consumers within its limits for water furnished through meters in like large quantities.

Cicero Case

Section 26 was passed upon by the Supreme Court of Illinois in the Case of Chicago vs. Cicero, 210 Ill., 290, in which case the Court held that the title of the original Sanitary District Act is broad enough to authorize Section 26, directing the method by which water shall be distributed from a city owning waterworks in such district to a bordering municipality; that the power of a city to maintain and operate a system of waterworks is derived wholly from statute and the Legislature may place such reasonable conditions upon the exercise of such power as it deems just, although it cannot deprive the city of its property without due process of law, nor impair the obligations of the city's contract; that this section, requiring one city to sell water to the residents of another city at the same price charged to consumers within its own limits does not take the property of the first mentioned city (Chicago) without due process of law.

Section XXVII Opening Channel

Section 27 provides for the procedure with reference to turning in the water and for the construction of the channel, including the appointment of Commissioners by the Governor to inspect the channel, meeting of the Commissioners, examination of report to the Governor, and in case of defect in construction the procedure to be followed by the Commissioners; and this section further provides that if any channel is constructed under the provisions of this Act which shall discharge the sewage of a population of more than 300,000 into or through any river beyond or without the limits of the district constructing it, the same shall be constructed in accordance with the provisions of Section 23 of the Act, and if any such channel receives its supply of water from any river or channel connecting with Lake Michigan it shall be construed as receiving its supply of water from Lake Michigan.

AMENDMENTS TO THE ACT

The Sanitary District Act was amended by an Act of the General Assembly in force July 1, 1893, which provides that the District shall have the right and power to appoint and support a police force, the members of which may have and exercise police powers over and within its right of way and for a distance of 1½ miles on each side of its main drainage channel, such police powers as are conferred upon and exercised by the police of organized cities and villages, and such police force when acting within the limits of such city or village shall act in aid of the regular police force of such city or village, and shall then be subject to the direction of its chief of police, city or village marshal or other head thereof.

Police Force

The Sanitary District Act was further amended by an Act in force July 1, 1901, providing that the district which has used or may thereafter use any navigable stream or river for a portion of its channel, or as an adjunct thereto or auxiliary to its main channel, may for the purpose of widening, deepening or improving the same, for purposes set forth in the act, acquire by purchase or under the Eminent Domain Laws of the State, or otherwise, sufficient land for the purpose of such improvement by widening and deepening such stream.

River Improvement

Section 2 provides that when it may become necessary by reason of widening, deepening or improving such river to construct bridges, the district may construct such bridges as such improvements may require.

Bridges

Section 3 provides that nothing in the Act shall be construed as depriving any city, village or town wholly or partly within the limits of the district of any power now exercised in the operation of said bridges and any bridges built under the provisions of this Act to supply or replace a public street or highway bridge now or hereafter existing shall after the construction of said bridge be operated and controlled for municipal purposes by said city, village or town within which it is located.

Control of Bridges

ORGANIZATION OF THE SANITARY DISTRICT

After the adoption of the original Sanitary District Act, and pursuant to its terms, proceedings were followed as therein required by filing petitions with the County Judge of Cook County, and subsequent hearings had by the Commission created, as a result of which the Commission fixed the boundaries of the proposed district, describing the same by sections and by metes and bounds, after which an order was entered by the County Court requiring the question of establishing a district be submitted to the people at the election of November 5, 1889. There were 70,958 votes in favor of it and 242 votes against it.

Referendum

One frequently meets intelligent citizens in Chicago who have no definite idea of the territory embraced within the Sanitary District, nor of the nature and character of the District as such, nor of its particular purpose and work. Many think it is an arm of the County Government; others, that it is a department of the City Government, and others, that it is a Bureau connected with the State Government. It is safe to say that a majority of the voters within the District are not acquainted with the facts.

Some Facts

Mr. Brown, in his book on "Drainage Channel and Waterway," after describing the original territory and boundaries of the District in detail, re-states them as follows:

Brown's History

"Compared with the boundaries of the City of Chicago, those of the Sanitary District were as follows: On the north they were identical—along North Seventy-first Street. Beginning at the northwest corner of the city limits the boundary line of the Sanitary District followed that of the city southward along an irregular line to the intersection of Irving Park Boulevard and West Seventy-second Street. At this point the boundaries separated, that of the district continuing south along the line of West Seventy-second Street to Thirty-ninth street, taking in the town of Cicero. The course was then westward two miles along Thirty-ninth Street, south four miles and east again to West Seventy-Second Street, including Summit and the bend in the Desplaines river where the usual spring overflows occurred. A turn again to the southward along West Seventy-second Street, along which the boundary ran for two miles, brought it to Eighty-seventh Street. The boundary continued eastward along Eighty-seventh Street to the lake shore. The eastern boundary of the Sanitary District was located in Lake Michigan three miles from shore, thus giving the District control over the discharge of sewers into the lake."

Drainage Channel and Waterway by Brown

"Considerable territory west of the city limits was included in the Sanitary District, but the so-called Calumet region in the southern part of the city was excluded. A statement made by A. V. Powell, civil engineer, before the Commission on September 24, contains the reasons, substantially, for its exclusion. He called attention to the fact that the basin drained by the Calumet river had an area of 825 square miles, and that three-fifths of it was in Indiana. The rim of the basin on the south had an average elevation of 250 feet above Lake Michigan, except at the Sag. The tributaries of the Calumet river ran through valleys which gave a rapid discharge to the rainfall. The head of the Little Calumet river was in La Porte County, Indiana, ten miles southeast of Michigan City. The river ran in a westerly direction until it crossed the State line in Thornton township, and then northwest. The Grand Calumet received its water from a limited area adjoining the lake shore. Except in flood times it had no current. Its length was about twenty miles. The Grand Calumet and Little Calumet united near the south line of the City of Chicago to form the Calumet river which emptied into Lake Michigan at South

Chicago. The land on either side of the Calumet river was low, averaging not more than 4½ feet above the lake, and the greater part of it, some fifteen square miles, lying within the city limits, was subject to overflow in flood time.

"No sewers emptied into Lake Michigan south of Fifty-sixth street to the Indiana state line. The total population having sewerage facilities and discharging sewage into the Calumet river was 1,500. The only sewer emptying into the Calumet river was in Ninety-second street. Pullman had a separate system of sewerage. There were no manufactories upon the line of the Calumet river that produced filth. The only filth-producing establishment within the basin was one slaughterhouse at Hammond. This was twelve miles from Lake Michigan. **Former Condition**

"Whenever a general system of sewerage should become necessary for this district, it would be entirely practicable to adopt the separate system, either in conjunction with the territory adjacent to the State of Indiana, or without it, and treat the sewage by land purification . . .

"The Sanitary District of Chicago is eighteen miles long from north to south, and about nine and one-half miles wide on a line passing through the court house in Chicago. Its extreme width is about fifteen miles. The District contains about 185 square miles."

By an amendment to the Sanitary District Act in force July 1, 1903, the territorial limits of the District were extended to include a considerable area in the northeast corner of Cook County, and another area in the southern part of Cook County; and by an amendment to the Act in force July 1, 1913, seven sections of land in Township 40 and twenty sections of land in Township 39, and in addition thereto any portion or portions of the incorporated Villages of Franklin Park, River Grove, Melrose Park, Maywood, River Forest, Forest Park, Riverside and Bellwood which may not have been included in the description by sections, were added to the territory of the Sanitary District. Since then more territory within Cook County has been added to the District. **The District**

It is well to state here that these amendments to the Act adding additional territory from time to time were not secured upon motion of the Sanitary District Trustees or any of them, but were brought about through the activities of citizens within the territory thus added to the District, and in each case the amendment to the Act provided for a referendum, if desired, before it became a law.

The Act, in force July 1, 1903, above referred to, under Section 2 thereof, empowers the Trustees of the District to provide for the drainage of the additional territory added by the amendment by laying out, establishing, constructing and maintaining one or more channels, drains, ditches and outlets for carrying off and disposing of the drainage (including the sewage) of such District, together with such adjuncts and additions **Act of 1903**

thereto as may be necessary or proper to cause such channels or outlets to accomplish the end for which they are designed in a satisfactory manner, and that the Board of Trustees of the District shall have the right to use what is known as the Calumet Feeder of the I. & M. Canal and lands adjacent to said Feeder belonging to the State of Illinois for the site of any such channel within the limits of the County in which the District is situated in such manner as the District may elect. It also had the right to construct a channel across said I. & M. Canal, without being required to restore said Canal or said Feeder to its former usefulness; that if by reason of said abandonment a stagnant stream or pool of water shall remain upon the deposits of Chicago sewage accumulated in such I. & M. Canal by reason of its years of usefulness to the City of Chicago as a sewage outlet, said Sanitary District shall fill up said Canal to a depth sufficient to remove such condition and prevent the spread of pestilence and disease throughout the territory in which the Canal is abandoned; and the other powers and jurisdiction of the District over and in connection with the added territory shall be the same as those vested in it over territory included within the limits of the District as originally organized; that before said Calumet channel is connected with the present main sanitary channel, gates of suitable pattern for shutting off the flow of water in the Calumet channel shall be installed at or near the connection of said Calumet channel with the Calumet river and thereafter maintained for use in case of emergency, and for the protection of the property and lives of residents in the Illinois Valley, and shall maintain the same proportion of dilution of sewage through such auxiliary channels as it may construct and join to its main channel as is now required by the act creating said sanitary district.

Use Calumet Feeder

I. & M. Canal

Valley Protection

It further provides for the construction of a lock or locks of improved design, the same to be provided with double gates to prevent accident and to be maintained by the District; also that the District shall provide at each lock a site of at least 20 by 30 feet, upon which the Canal Commissioners may erect a suitable office building, and the District shall furnish free of expense for the use of the Canal Commissioners an additional strip of land for suitable roadway for approaches whereon may be located and operated docks, shops, barns and other buildings controlled by the Canal Commissioners.

Locks

Section 3 of this amendment provides that the District shall permit all water craft navigating or proposing to navigate the I. & M. Canal to navigate the water of all such channels of said District promptly without delay, and without payment of tolls or lockage charges, and that the rules of the United States Government regulating navigation in the Chicago River shall govern navigation on the channels of the District; provided, however, that the speed of all vessels passing through the earth section shall not exceed eight miles per hour.

Watercraft

Section 4 provides that the District shall have no power to levy and collect any special assessment or special tax upon any part of said added territory to defray or pay any part of the cost of the work heretofore done by said Sanitary District, or any main channel hereafter constructed in said added territory.

No Special Tax

WATER POWER DEVELOPMENT

Section 5 provides that the Sanitary District is authorized to construct all such dams, water wheels and other works north of the Upper Basin of the I. & M. Canal as may be necessary arising from the water passing through its main channel or appropriate to develop and render available the power and any auxiliary channels now or hereafter constructed by the District.

Water Power

Section 6 provides that the power made available by the works constructed under the provisions of this Act shall be converted into electrical energy and shall be transmitted to the various cities, village and towns within said District and adjacent to the main channel of said District, and may be used in the lighting of said cities, villages and towns or parts thereof or for the operation of pumping plants or machinery used for municipal purposes, or for public service, or may be disposed of to any other person or corporation upon such terms and conditions as may be agreed to by the said District; provided, however, that it shall be the duty of such District to utilize so much of such power as may be required for that purpose to operate the pumping stations, bridges and other machinery of said District.

Electrical Energy

Power for District Works

Section 7 provides that for the purpose of meeting the expenditures arising from the exercise of the powers conferred by Sections 5 and 6 as above, the District is authorized to levy and collect in each year for three years, in addition to the taxes which the District shall then by law be authorized to levy and collect, a tax not exceeding one-fourth of one per cent of the value of the taxable property within the corporate limits of the District.

Additional Tax for Three Years

Section 8 provides that the District shall at its own expense in all respects comply with the provisions of the Acts of Congress of March 22, 1822, and March 27, 1827, as construed by the courts of last resort of the State of Illinois and the United States in reference to the I. & M. Canal, so far as it affects that portion of said Canal vacated or abandoned by the terms of the Act.

Acts of Congress

Section 9 provides for referendum.

Referendum

Additional Power

The General Assembly of Illinois at its recent session (1919) amended Section 6 before mentioned, and also amended the Utility Act so that arrangements for furnishing current to the cities, towns and villages within the District were materially facilitated.

More Water Power

Also during the recent session of the General Assembly a companion bill was passed with the State Waterway Bill, which authorizes and empowers the Sanitary District to bid or contract with the Waterway Commission for additional water power rights.

Mr. Brown

Mr. Brown in his book on "Drainage Channel and Waterway," Pages 375-376, aptly summarizes the information shown in the reports of the various Commissions which investigated the sewage situation at and around Chicago prior to 1889, which led up to the creation of The Sanitary District of Chicago, when he says:

"The first official step toward the enactment of the present drainage law was taken in the passage of a joint resolution introduced in the House by Thomas H. Riley of Will County, on May 26, 1887. This resolution provided for the appointment of a committee of five, consisting of the Mayor of Chicago, ex-officio, two members of the House to be appointed by the speaker, and two members of the Senate, to be appointed by the president of the Senate, whose duty should be to examine and report to the next session of the Legislature the subject of the drainage of Chicago and its suburbs. 'If such commission shall find upon investigation,' said the resolution, 'that the most practicable solution of the problem is in the construction of a waterway for the sewage from Chicago to the Desplaines river at or near Joliet, the commission shall report what requirements should be made as to the construction of such waterway and the dilution of such sewage for the protection of the health and comfort of the people along the Desplaines river at and below Joliet.' The commission was required to serve without pay, its expenses to be paid by the City of Chicago. The resolution passed the House at once and the Senate on May 31.

Reports of Commissions

"The committee held many public meetings and had many conferences with the people living in the Desplaines and Illinois river valleys during the two ensuing years. As a result of this interchange of opinion, a careful study of the necessities of Chicago and the interests of the inhabitants of the valleys, and by the aid of the best legal counsel, the committee reported on February 1, 1889, an Act creating the Chicago Sanitary District. 'The commission,' it said, 'has diligently studied the subject submitted to it in all its sanitary and commercial aspects. It has visited and surveyed the territory sought to be improved. Conferences have been held with representatives from all the leading cities, towns and villages affected. An earnest spirit has been manifested to aid in the solution of this important problem. All plans proposed for meeting the demands of the river and valley communities and the pressing needs of Chicago have been carefully examined by this commission. The plan agreed upon

by the commission, as set forth in detail in the bill which accompanies this report, is believed by the commission to be the most feasible, practicable and satisfactory method for all the varied interests involved.'

"While the bill was pending in the Legislature and when before the committee of the whole, arguments for and against it were heard from prominent citizens of Chicago and towns in the interior of the State. A delegation of citizens was sent from Joliet to Springfield to urge the passage of the bill, and resolutions advocating its passage were adopted by the business men of Marseilles and forwarded to the House.

"After many amendments in the nature of concessions to the valley people, the bill passed the House on April 11 by a vote of 92 to 42. After further amendments it was concurred in by the Senate on May 21, by a vote of 32 to 18. The Senate amendments were adopted by the House on May 24 by a vote of 97 to 39, and the bill received the signature of the governor on May 29. It was in force on July 1, 1889."

Act Passed

It can readily be seen from what has been stated that the Sanitary District Act was not a measure drawn by one or two members of the House at the request of some of their constituents and introduced and passed as a matter of local interest and of no concern to the majority of the members of the General Assembly. It represents the result of years of study by engineers, lawyers, public officials and public spirited citizens who desired to bring about the organization of an institution like The Sanitary District of Chicago, with powers and facilities to clean up the situation in and along Lake Michigan, including Chicago and the surrounding cities and towns, solve the drainage and sewage problem, and provide for the future by establishing ways and means to permanently protect the health, comfort and lives of the people not only within the present Sanitary District itself, but all the people in the Illinois Valley in particular and all of the people in the State of Illinois as well.

How the Act Was Secured

THE SANITARY DISTRICT ACT WAS HELD TO BE CONSTITUTIONAL AND ITS PURPOSE WAS STATED IN AN INTERESTING MANNER BY THE SUPREME COURT OF ILLINOIS.

The case of Wilson vs. Board of Trustees, et al., 133 Ill., 443, was a bill filed by the complainant as a resident and taxpayer in the Sanitary District to restrain the Trustees from issuing or selling bonds of the District, or from causing any general tax to be levied or assessed for the payment of such bonds or any portion thereof. This suit was brought very shortly after the organization of the first Board of Trustees after their election by the people. A very long opinion was given and the Court discusses many matters which are not material to the purpose of this particular report, but some of the statements of the court are very interesting, and after passing under the observation of citizens and taxpayers within the Sanitary District, the latter would certainly have a much

Wilson Case

better knowledge of the purpose of the District and the scope of its work and achievements.

The court after stating in detail the five contentions of complainant summarizes them on Page 458 of the opinion by using the following language:

"In the view that we take of these contentions, they involve but three general questions: First, is it within the power of the General Assembly, under our constitution, to authorize the formation of sanitary districts, disregarding the existence and boundaries of pre-existing municipal corporations, and invest their corporate authorities with powers of general taxation for sanitary purposes; second, if this shall be answered in the affirmative, are the corporate authorities of such districts limited in the amount of indebtedness which they may incur under section 12, article 9, of the constitution, by the amounts of pre-existing indebtedness of other municipal corporations covering the same or a part of the same territory; third, is the act under which the district whose corporate authorities are here sought to be enjoined, was formed, local or special legislation, within the prohibition of section 22, article 4, of the constitution."

Objections to Act

The court after discussing the constitution and various cases in reference thereto, states on page 461:

"The constitution nowhere commits corporate objects or purposes irrevocably to authorities now existing, nor does it prohibit the committal of them to such corporate authorities as may be called into life by the same law which creates the subject and commits it to their jurisdiction."

Again on page 463 the court said:

"Our present constitution, adopted in 1870, contains the following section:

Sec. 9 (art. 9.) 'The General Assembly may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of contiguous property, or otherwise. For all other corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes; but such taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same.'"

Constitutional Provision

Again on page 465 the court said:

"It seems to have been thought, in argument, that there is some restriction upon the General Assembly as to the boundary lines within which new municipal corporations may be authorized to be organized. This has no foundation in the constitution. There are there certain restrictions as to the boundary lines of counties, but none as respects other municipal corporations. * * *. But now there being no restriction as to the municipal corporations that may be vested with authority to levy and collect taxes for corporate purposes, it is wholly unnecessary that the corporate authorities of the new corporation shall be also the corporate authorities of some specified

Assembly May Create Municipal Corporations

pre-existing corporation, and it is not pretended that the corporate authorities of this sanitary district are the corporate authorities of any pre-existing corporation."

The court continuing says:

"The preservation of health is one of the paramount objects of government. It belongs to the police power, 'subject to the proper exercise of which either by the State Legislature directly, or by public corporations to which the legislature may delegate it, every citizen holds his property.' It includes the making of sewers and drains for the removal of garbage and filth, the boring of artesian wells and the construction of aqueducts for the purpose of procuring a supply of pure, fresh water, the drain of malarious swamps, and the erection of levees to prevent overflow."

Police Power

"It is too plain for argument, that the drain here in contemplation falls within this power, and perhaps no one will question the competency of the General Assembly to invest cities, towns and villages with the power to construct like drains. But is the duty or the power of the General Assembly, in this respect, any less in regard to rural than to an urban population? The constitution will be searched in vain for a provision or a clause recognizing the duty and the power in the General Assembly in the one case, and denying it in the other. If the General Assembly may vest the power in cities, towns and villages, and may also create a corporation in the county and invest it with the power, it would seem to inevitably follow that it may create a corporation including both city and county, and invest it with the power. It must be evident that often, to render the exercise of such power by cities effective, it would have to be exercised over large rural districts adjacent to cities, as in case of large malarious swamps lying within the vicinity of cities, and in other instances, where the air and water to be used by the city population would be poisoned and laden with germs of disease by causes existing beyond the city limits. In such cases the preservation of health in the city would require that municipal authority should be exercised beyond the city limits; and it would violate no principle of constitutional law to create a district and invest it with powers of taxation for sanitary purposes, co-extensive with the territory to be controlled. If districts may be thus organized, the question of the propriety of their organization in this or any other particular instance belongs to the General Assembly, and not to the courts, and it has been repeatedly held in other States that they may be thus organized."

The Court continues, Page 474:

"We must, therefore, now read section 9, article 9, as thus amended, and, so reading it, its language must be thus:

"'The General Assembly may vest the corporate authorities of cities, towns, villages and **drainage districts** with power to make local improvements by special assessment. The General Assembly may vest the corporate authorities of cities, towns and villages with power to also make local improvements by special taxation of contiguous property. For all other

Local Improvements

corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes; but such taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same.'

"This, and this only, is the extent of this amendment to the constitution, so far as it has a bearing upon any question arising upon this record. Before its adoption, drainage districts could not be invested with power to make local improvements by special assessment—only cities, towns and villages could be invested with such power. Since its adoption, drainage districts, as well as cities, towns and villages, can make local improvements by special assessment. But cities, towns and villages can also make local improvements by special taxation of contiguous property, which drainage districts cannot do. The effect of the amendment is the same as a grant of power to the General Assembly, in that it enables the General Assembly to now do what, by reason of previous constitutional restrictions, it could not before do; but it is not, in fact, a grant, but the simple removal of the previous constitutional restrictions, enabling the General Assembly to exercise original powers, which it was, by those restrictions, prohibited from exercising . . .

"It may be that the General Assembly is prohibited from authorizing the formation of drainage districts for agricultural or mining purposes, and investing their corporate authorities with power to make improvements otherwise than by special assessment, because such purposes are, as intimated in Hessler vs. Drainage Comrs., 53 Ill., 105, and Houston vs. Board of Directors, 71 id., 313, private, and not municipal; but as to this we express no opinion, for it can not affect the present case, since, as we have seen, sanitary purposes are, beyond all question, legitimate objects of municipal government . .

"The boundaries of this sanitary district are not co-terminus with those of the city of Chicago, or of any other municipality, nor are the persons and property within its limits the same, or substantially the same, as those within the limits of the city of Chicago or of any other municipality. The district was organized, pursuant to an affirmative vote of the electors within its limits, as a municipal corporation for sanitary purposes, entirely distinct from and independent of the government of the city of Chicago, and of that of every other municipal corporation, and it has municipal authorities of its own, elected by the electors within the district, pursuant to the requirements of its charter, whose functions are in nowise connected with any other municipal government. The case is therefore wholly unlike Runham vs. People, 96 Ill., 331, where it was held the park district was for the city of Chicago. This corporation is as independent of every other municipal corporation as is a township under township organization, and the case is therefore analogous to Wabash, St. Louis and Pacific Ry. Co. vs. McCleave, 108 Ill., 368, where it was held that a like objection was untenable.

Sanitary District and City of Chicago

"But it is said that if new corporations may be created and vested with some of the functions of local government of pre-existing munici-

pal corporations, this section of the constitution may be rendered a dead letter by the mere multiplication of municipal corporations. It will be quite time enough to meet that question when it shall arise. A case presenting the question of the power of the General Assembly to authorize the redistribution of the powers of an existing city, town or village to a number of corporations equal to the number of the powers distributed, for the purpose of getting rid of restrictions upon the old corporation, is so essentially and palpably different from the present case that it would be entirely irrelevant to stop to consider it.

Redistribution of Powers

"The present legislation may be unwise—improvident—even vicious; but it does not follow that it is unconstitutional. Under the most perfect constitution there must be much discretion in the legislative department, for an abuse of which there can be no remedy in the courts. This legislation preserves, to the fullest extent, the principles of local self-government. The law is not forced upon an unwilling community The mode of fixing the limits of the district is, it is true, arbitrary; but this is inevitable in the organization of any new municipality. Before there can be any government, some power must arbitrarily determine where its boundaries shall be, for otherwise it can not be known who are to take part in organizing, electing, etc., and so there can be, here, no valid objection in that respect. So far as it is possible, in any case, for the inhabitants of a district to select for themselves a municipal government, this municipal government has been selected by the people of this district. As we have before seen, we can only condemn legislation for unconstitutionality where some provision of the constitution can be pointed to as plainly and palpably violated. It is not enough that the principle of some particular restriction would, if extended, prohibit the legislation. The prohibition of a thing, by name, in the constitution, is equivalent to an admission of what is not named. Prettyman vs. Supervisors, etc., 19 Ill., 411.

Willing Public

"Since, therefore, we have been unable to find any denial, expressed or implied, in the constitution, of power in the General Assembly to authorize the formation of sanitary districts, as provided in this act, we must hold that the clause of the constitution in question applies to this district precisely as it does to any other independent municipal corporation, and that therefore the indebtedness of other municipalities can not be taken into consideration in determining the limit to which it may incur indebtedness."

PEOPLE vs. NELSON, ET AL.

Suit Brought to Prevent Trustees From Exercising Powers Given by the Act

The case of the People vs. Nelson, 133 Ill., Page 565, was an Information in the nature of a quo warranto filed by the State's Attorney of Cook County against the then Trustees of the Sanitary

District, alleging that they had usurped and unlawfully held the office of Trustees of the District; that the Act of the General Assembly was in violation of the provisions of the constitution of the State of Illinois, and, therefore, was void, and that the defendants were proceeding to exercise all the powers set forth and specified in the Act, and that by reason of the unlawful assumption and exercise of said offices and of said claim of right to do the acts and things aforesaid, great confusion, disorder and injury resulted and would result to the people residing within the boundaries of the Sanitary District. After a statement of the pleadings, the Court, speaking through Justice Bailey, beginning on Page 573, enumerates seven grounds upon which the constitutionality of the Act was assailed, but states that the third, sixth and seventh of these propositions were sufficiently considered in the case of Wilson vs. The Board of Trustees of the Sanitary District, above referred to, and that the Court deemed it unnecessary to add anything to what was there said. The fifth objection was addressed to the method provided by the act for the original organization of the district. The fourth had to do with the provision for voting at elections for Trustees, and neither of them are germane to the subject matter of this report. Statements by the court, in connection with the object and purpose of the Sanitary District, passing upon the first and second propositions are of interest here. These statements were made by the highest court in the State of Illinois with reference to the situation in and around Chicago along Lake Michigan prior to and just after the enactment of the Sanitary District Act, and these read in conjunction with reports of engineers and public officials who spent years in investigating the situation and endeavoring to find a remedy for the difficulties presented, are not only interesting but very instructive to any citizen or taxpayer in the Sanitary District who shall care to inform himself upon matters of such great importance.

Seven Objections to the Act

The court, beginning on page 580, said:

"The general sanitary scheme adopted by the act consists of creating certain districts comprising certain areas of contiguous territory, and empowering such districts to construct and maintain a common outlet for the drainage and sewage of their respective territories. That scheme is indicated in the first section of the act as follows: 'That whenever any area of contiguous territory within the limits of a single county shall contain two or more incorporated cities, towns or villages, and shall be so situated that the maintenance of a common outlet for the drainage thereof will conduce to the preservation of the public health, the same may be incorporated as a sanitary district under this act.' Of course it must be conceded, both as a historical fact and as a fact abundantly shown by the terms of the act itself, that this scheme was formulated mainly if not exclusively with reference to the sanitary condition and needs of the city of Chicago and its environs, and we can not give proper construction to the act without taking into account the peculiar situation of the territory which the proposed Sanitary District of Chicago was intended to embrace. Chi-

The Sanitary Scheme of the Act

cago is a city of probably one million inhabitants or more, and is bordered on the east by Lake Michigan, that lake being the source of its water supply. A few miles west of Chicago, and running in a north and south direction, is the Desplaines River, and at a point opposite the southerly part of the city said river turns toward the south-west and runs in that direction to the city of Joliet, below which it is known as the Illinois River. The territory between Lake Michigan and the DesPlaines River, and along the course of that river to Joliet, is nearly level, none of it being more than a few feet above the level of the lake, while at Joliet the general surface is quite a number of feet below the level of the lake. The object of the system of drainage proposed by said act is, to prevent the drainage and sewage of the city and its environs being carried into Lake Michigan, thereby contaminating the waters of the lake. This result is to be reached by cutting a channel which will give an outlet for the drainage and sewage of the city in the direction of the DesPlaines and Illinois Rivers, and which will also cause a large flow of water from the lake through the proposed artificial channel into those rivers for the purpose of diluting the sewage and rendering it innocuous to the people living along the course of those streams.

The Object

"The question then arises whether the removal of obstructions from the DesPlaines and the Illinois Rivers is or is not germane to this scheme of drainage. If in any point of view the removal of said obstacles will be rendered necessary by the increased flow of water in those rivers, or if such removal can be deemed to be in any way subsidiary to the drainage system or promotive of its proper objects, it must be held to be a part of the system, although it may incidentally result in the improvement of those rivers for purposes of navigation. And in that case the expression of such removal in the title of the bill can not be deemed the expression of another subject, but the enumeration of a particular matter included in the general subject already expressed.

Germane Provisions

"We think it clear that the removal of obstructions in said rivers may, and probably will, be rendered necessary as a part of the work required to secure the proposed drainage. The act contemplates a minimum flow of 600,000 cubic feet of water per minute through the proposed artificial channel into said rivers, and it is likely that, in order to prevent, so far as possible, damage to riparian lands by floods caused by the increase in the volume of water, it will become necessary to remove various obstructions now existing in said rivers. Among these are the dams heretofore constructed by the State for the purpose of improving the navigation of the Illinois River, and the act specifically confers upon the district the power to make such removal.

The Flow

"We are of the opinion then that the act is capable of such construction as will relieve its title from the charge of duplicity of subjects, and such construction being logically possible, it is the one which must be adopted. But we are of the opinion that said construction is not only logically pos-

No Duplicity

sible, but that it is the obvious and only fair construction which can be placed upon the act. The same course of reasoning also relieves the act itself from the charge of duplicity of subjects, at least so far as the matter of removal of obstructions in said rivers in concerned.

"Having disposed of the objections to said act growing out of the form of the title, it remains to be seen whether the act itself embraces subjects not expressed in the title, and is invalid for that reason. The first six sections of the act prescribe the mode in which sanitary districts may be organized, and provide for the election of nine trustees and for their organization into a board of trustees, and constitute them the corporate authorities of their district. Said sections also provide for the appointment of a president and various subordinate officers of the board, and empower the board to pass all necessary ordinances, rules and regulations for the proper management and conduct of the business of the board and of the corporation, and for carrying into effect the objects for which such sanitary district is formed."

Summary

The court then discusses briefly each section of the Sanitary District Act and follows this on Page 591 by stating:

"It is urged, in the next place, that said act, in addition to the creation of the sanitary district and empowering it to construct and maintain a channel capable of producing the requisite flow of water through and out of the district, legislates in relation to the DesPlaines and Illinois Rivers and the Illinois and Michigan Canal, and in relation to the removal of the lock in the canal at LaSalle and the dams in the river at Henry and at Copperas Creek, and gives power to deepen, widen and improve these several water-ways, which are the property of the State, each of these matters, as is claimed, being subjects distinct from that embraced in the title. On this point we need add but little to what has already been said. The sanitary district is organized to construct a system of drainage which, in its results, will necessarily affect said rivers, canals and water-ways, and which therefore necessitates a proper adjustment of said water-ways to the altered condition of things which said system of drainage, when completed, will bring about. If the large volumes of water contemplated by the act are turned into the Illinois River, the river itself as well as the rights of the owners of riparian lands will be more or less prejudicially affected throughout its entire length. The act would manifestly be incomplete in carrying out and perfecting the subject matter of the title, if it permitted the district to discharge the water flowing through the proposed channel into the Illinois River, and imposed upon it no duty to take proper steps for the protection of the river and the riparian lands against the necessary consequences of the largely increased volume of water. The provisions of the act conferring upon the district powers and imposing upon it duties in relation to the water-ways beyond the terminus of its own channel, were inserted for this purpose, and are therefore a part and a necessary part of the general system of drainage for sanitary purposes embraced within the subject expressed in the title.

Purpose and Conditions

"Again, it is said that the act embraces a duplicity of subjects because, in addition to empowering the district to construct and maintain a channel of certain dimensions and capable of producing a flow of water of certain magnitude, for purposes of drainage, it declares the channel, when constructed, a navigable stream, and authorizes the district to make, establish, lease and control docks, and also to control and dispose of any water-power which may be incidentally created in the construction of said channel. The contention is, that three wholly independent and dissimilar subjects are here embraced, viz., the construction of a channel for purposes of drainage, the construction of docks for purposes of navigation, and the creation of a water-power for the purpose of driving machinery, and that the first of these only is expressed in the title of the act. It can not be doubted that a channel of the dimensions and capacity of the one the district is required to construct, when completed, will be capable of subserving all three of these purposes. It will be capable of carrying off the drainage and sewage from the district in such state of dilution by means of water drawn from Lake Michigan, as, according to the theory which the Legislature seems to have adopted at least, to be rendered innocuous. A channel capable of doing this will, as a matter of necessity, be sufficiently broad and deep to be capable of navigation by large vessels, and the fall from Lockport to Joliet is said to be such that the water flowing through said channel will be capable of producing a very large and important water-power.

Drainage and Navigation

"But these circumstances alone do not sustain the contention that the act embraces a duplicity of subjects. It can not be said that because the channel, when constructed, will be capable of answering the purposes of navigation and the driving of machinery, those purposes also entered into the legislative intent, and that the scheme was undertaken with the view of constructing a navigable water-way and of creating a water-power, as well as that of promoting and preserving the public health by furnishing a suitable and efficient means of carrying off the drainage and sewage of the district. Bearing in mind the rule that every reasonable intendment should be in favor of the validity of a statute, and that every provision capable of it should receive the construction which will sustain the constitutionality of the act, there is, so far as this point is concerned, nothing in the act in question, if we except the provisions of section 7 which authorize the district to make and establish docks and to lease, manage and control the same, and to control and dispose of any water-power which may be incidentally created by the construction and use of said channel, and perhaps the provision of section 24 which declares the channel, when completed, to be a navigable stream, which will not clearly bear the construction of being referable solely to the subject of drainage for sanitary purposes. Such is the case with all those provisions which fix the locality, description, width, depth and capacity of the channel, and prescribe the rapidity of the current and the number of thousand

Legislative Intent

cubic feet of water per minute which it shall be capable of carrying off. In other words, every provision of the act which relates to the construction and character of the channel and also those relating to the changes and improvements to be made in the Illinois River are all capable of being so construed as to refer solely to the subject of drainage, and that construction therefore is the one which they must receive. If then, we entirely reject those provisions of section 7 which relate to docks and water-power, the act, so far as any question which can now be raised is concerned, remains wholly unimpaired. No provision which is vital to the organization of the sanitary district, or to the creation of the proposed drainage system is in the least affected.

How Construed

"Section 24, however, recognizes the obvious fact that the contemplated channel, when completed in such way as to accomplish in a satisfactory manner the purposes for which it is designed, will constitute a waterway capable of being utilized for purposes of navigation, and therefore declares what in the absence of such declaration would be the fact, viz., that, when so completed, it shall be a navigable stream. Section 7 also recognizes the fact that, as an incidental result, a large and valuable water-power will be created by the construction of the channel, and also that opportunities will be created for the construction along its course of valuable and remunerative properties by way of docks, and which may be made the source of considerable revenues. Assuming, as upon very recognized principle of construction we must, that the creation of these water-power and dock privileges is not the object or purpose of the act, still it is perfectly obvious that the accomplishment of that purpose will result incidentally in the creation of those privileges, and the question is, whether the district having, in the prosecution of its legitimate enterprise, brought these valuable privileges into existence, can utilize them as a source of revenue, for the purpose of paying the indebtedness incurred in the construction and maintenance of said channel and thus lighten the burden of taxation upon the property of the district. To answer this question in the negative would we think be placing upon the incidental powers of municipal corporations a narrower construction than the rules of law require.

Navigable Channel

Docks

"Can it be doubted that, if the authorities of the district, in the excavation of their channel, should strike a quarry of valuable building stone, that they would have the right, either with or without express legislative authority, to derive a revenue from the sale of the stone which in the pursuit of their legitimate objects, they are compelled to quarry? And if they should do so, would they expose themselves to the charge of embarking in the independent business of quarrying and dealing in stone? Clearly not. The power to dispose of property thus acquired so as to use the proceeds for legitimate corporate purposes would seem to be undoubted. And it would seem to be equally clear that the sanitary district having, as an incidental result of the

Corporate Revenue

prosecution of its corporate enterprise, created valuable water-power and dock privileges, will have a right to control and utilize those privileges for the purpose of raising a corporate revenue.

"But it must be admitted that the power of the district to lease and control its water power, and to construct, lease and control docks along its proposed channel, does not now arise, and can not arise until the channel is constructed and the district is in position to exercise the power if it exists. Until then the question must be regarded as theoretical and not practical. Its existence or non-existence therefore is a matter aside from any question which the present litigation can legitimately raise."

Theoretical Question

The foregoing opinions were written before the work of construction of the Sanitary District's channel was begun and indicate very clearly what the object and purpose of the formation and organization of the Sanitary District were, and the correctness of the views there expressed are corroborated and emphasized in later decisions and opinions rendered as the work of construction progressed, and those which were handed down after the water was turned into the main channel and subsequent work of development upon a larger scale undertaken by the Board of Trustees through its Engineering Department.

Conclusions

PRESIDENT ECKHART'S ADDRESS IN 1896

It is interesting in this connection to refer to the Address of Hon. B. A. Eckhart, President of the Board of Trustees of the Sanitary District, on June 11, 1896, at the inspection of the main drainage channel by the International Conference of the State Boards of Health. Among other things he said:

"It must not be imagined that what you see today is the result of the deliberations and action of the last few years only. Chicago may be said to have had this problem constantly with her since her population reached one hundred thousand. Up to that time the sewage to be taken care of was so small in proportion to the vast quantities of water into which it entered, that the necessity for more adequate measures pressed itself only upon a few of the more far-seeing.

An Old Problem

"Among these was Mr. E. S. Chesbrough, for many years the City Engineer, whose position forced him to make special study, not only of what was to be done to meet the then pressing necessities of the situation, but also of what was wisest for the future.

"It must be borne in mind that the natural situation presented difficulties in the way of an adequate and permanent solution of the question, such as are present in few, indeed, of the great cities of the world.

"It was early recognized that the steps taken from year to year were only temporary. At first water was taken from the lake at a

little distance from the shore, then from a much greater distance. Then a project, which for the time seemed most daring, to tunnel under the lake for a distance of two miles. This, at the time, seemed a provision for years to come. But the growth of the city seemed always to outstrip any provisions for sewage or water. It was soon found that the emptying of the sewage into the river was radically wrong. At most seasons it had no current. It was no better than a cesspool. At times of freshets, the current, then formed, carried the accumulations of weeks out into the lake. Two miles away was not far enough to prevent the water supply from being contaminated.

Difficulties

"As early as 1860, the project of widening and deeping the Illinois and Michigan Canal was advocated, but the requisite authority was not obtained until 1865. Meanwhile, some relief was obtained by pumping from the Chicago River into the Canal. The deepening and widening of the Canal was completed in 1871, and for a time the situation was greatly improved.

1860

"To relieve the North Branch of the River and secure a circulation, a twelve-foot conduit was cut through on Fullerton avenue, from the river to the lake. At first, an attempt was made to pump from the river into the lake, but afterwards water was forced from the lake into the river, and so continues to this time. The amount, however, is only about 12,000 cubic feet per minute, and so, too small to be of much effect upon the present condition of that portion of the river.

"The general plan for the sewage system of the city caused the greater part of the sewers, fully nine-tenths, to empty into the river. In dry weather, with the river essentially a stagnant pool, its condition became intolerable, and was a serious menace to the health of the citizens. The continued rapid growth of the city added to the peril. It was realized that something must be done.

Old System

"The necessary legislation was secured, providing that pumping works might be erected by the city, and a flow of 60,000 cubic feet per minute might be maintained from the river into the Illinois and Michigan Canal. The pumps were completed and put in operation in 1885, and have been maintained ever since, though the quantity of water pumped has never reached the maximum, and has hardly reached 50,000 cubic feet per minute. Though some alleviation was secured by the operation of the pumping works, still, at intervals, following great rain-falls, the current created in the river and its branches, increased by the overflow of the Desplaines River making its way into the South Branch, carried the sewage deposits into the lake. It was found that even the four-mile tunnel, which had been provided with the hope of securing an intake for the water supply beyond the danger of sewage pollution, was within the danger line.

Pumping Works

"Through the associated efforts of leading citizens, the City Coun-

cil created a Drainage and Water Supply Commission, which was organized in the spring of 1886. This Commission realized that no temporary expedients would answer. Provision must be made, not merely for the present, but for all time. Some general plan must be adopted for sewage disposal which would meet the requirements of the present population. The water supply must be preserved uncontaminated, while the plan of taking care of the sewage should be laid out upon such a scale as to meet the requirements of the great metropolis of the continent, which all good Chicagoans confidently expect this city to become.

"Sanitary science had at that time developed several methods of sewage disposal, each having its advocates and each having in other situations proved reasonably efficient in the locality adopting it."

After discussing these various methods of sewage disposal and the expense of each, which seemed to be prohibitory, Mr. Eckhart further said:

"But the vital defect of all these methods of sewage disposal was, that they provided only for the dry weather flow of sewage. When the heavy rains came, the greater portion of the floods, laden with surface accumulations of filth, would still find its way into the river and its branches. The DesPlaines River, pouring over the Ogden dam, would still make its way to the Chicago River, sweeping its pollution into the lake, and carrying it out towards our source of water supply. Moreover, the volume of the storm flow is far in excess of the dry weather flow. It was evident to the Commission that any method adopted which should not also take care of this storm flow would be but partial, and would leave our water supply unprotected.

Sewage Disposal

"The study of the physical surroundings of the city, which has been pursued most diligently and thoroughly under the auspices of the Commission, suggested a method which seemed to meet all the difficulties which stood in the way of the other methods proposed. To the west of the city, distant but about twelve miles from the shore of the lake, flows the DesPlaines River in a direction nearly north and south. At a point about opposite the center of the city, the valley of the DesPlaines River turns westward, and the river flowing in a southwesterly direction, in connection with the Kankakee, which it joins near the Town of Morris, forms the Illinois River. The elevation of the divide between the DesPlaines River and Lake Michigan is so slight that a rise of ten feet in the surface of the lake would send its water down the DesPlaines Valley by gravity flow. This situation has long been known, and has been the basis of proposals for commercial waterways from the time of the exploration of the Northwest country.

"Its possible use as a method for the effectual disposal of the sewage of Chicago has been long pointed out. It is, therefore, not strange that the Commission, after a thorough examination of all

Dilution Method

other methods, should recur to this as the most effective, and in the long run, least expensive of any. Nor was it at all strange that the older projects of a commercial waterway between the Great Lakes and the Father of Waters should suggest themselves, and that the possibility should be considered of so constructing whatever work should be undertaken by Chicago in such manner that it might form a proper and efficient connecting link to any work which the State of Illinois or the General Government might undertake, for the purpose of establishing and maintaining a commercial highway from the Lakes to the Mississippi.

"The serious difficulties of the situation, it was recognized, would be political, using this term in its broader signification, as pertaining to the rights and obligations of separate communities of the body politic. It was proposed to send the sewage of a great city down a river valley running through the center of the State of Illinois, a valley which for a hundred miles of its course, it is no exaggeration to say, furnishes views of such beauty and picturesqueness that it may be compared to the Rhine or the Hudson, a valley which is studded with large and small cities, whose inhabitants are jealous of any real encroachment upon their rights.

Illinois Valley

"The use of the Illinois and Michigan Canal in the disposition of so much of the sewage as has been pumped into it, had, during the many years it was so used, become more or less offensive for the greater part of its course. What would be the effect, not only upon this, but upon the river valley itself, if a great and constant stream of water were turned into it, and what the effect of the diluted sewage upon the waters of that stream?

"In the settlement of these questions, the State Board of Health took an active part. Under its direction, its then President, Dr. Rauch, conducted an exhaustive examination of the effect of sewage upon running streams. I have no doubt that you are familiar with the report made of the results of this examination. It was found that in the course of a flow of about one hundred miles, the effect of sewage pollution had disappeared, so far as chemical analysis could determine. That the purification would be more rapid the greater the dilution, could not be doubted.

State Board of Health

"This report essentially disposed of the fears of the people of the Illinois Valley. A large addition to the waters of the valley was greatly to be desired. The commercial advantage would also undoubtedly be great. These considerations were sufficient to overcome the opposition which naturally arose among the people of the valley when the project was first broached.

"There remained another serious difficulty—the administration of so great an enterprise. It was felt that there should be some distinctive body, separate from the regular municipal administration, of greater permanency of tenure, and as far as possible, set apart from the influence of party politics. To such a body alone could a trust, the continuity of which was so important, be confided."

DISTINCTION BETWEEN THE POWERS AND DUTIES OF THE CITY OF CHICAGO AND THE SANITARY DISTRICT OF CHICAGO AS TO DRAINAGE.

The Sanitary District of Chicago was not a party to the suit of Rich et al. v. City of Chicago, reported in Volume 152 of the Illinois Supreme Court Reports beginning at page 18, but in the decision in that case the Supreme Court had much to say concerning the purposes, powers and duties of The Sanitary District of Chicago which is of interest in connection with the matters herein presented.

Rich vs. City

The City of Chicago passed an ordinance for the construction of a receiving well and pumping works at the southwest corner of Seventy-third Street and Railroad Avenue, and for the construction of sewers in said street and others, and a discharge sewer from the pumping works into Lake Michigan. Many objections were filed and considered by the court, but the matter which is important to here review, is stated by the court as follows:

"It is, however, contended that the act of 1885 was repealed by the act of 1889 (the Sanitary District act) so far as it relates to territory within districts organized under the Sanitary District act.

The court further states, it is required by Section 2 of the Sanitary District act to take judicial notice of the organization of districts thereunder, and it is admitted in the record that all of the territory included in the district organized under this ordinance was, at the time of the passage of such ordinance, included within The Sanitary District of Chicago. The validity of the Sanitary District act, as well as the organization of said Sanitary District and the title of the trustees have been expressly affirmed by this court in the Nelson case and in the Wilson case. The question is, therefore, fairly presented whether the city authorities, acting under the act of 1885 and in conformity therewith, may provide for the construction of drains and ditches within the city in territory also included within the Sanitary District.

Judicial Notice

The court, after discussing the various sections of the Sanitary District act, said:

"Enough has been stated to show the evident purpose and intention of the legislature to attempt the ultimate bringing of the sewage and drainage of the district into channels and outlets therein provided for, and it is equally apparent that the construction of the 'adjunct and additions' authorized by the act is dependent upon the construction and completion of the main channel or channels. Their only purpose is to accomplish the end for which such main channels are designed. It could not have been within the legislative contemplation that the sewerage system of the incorporate city or village within the Sanitary District should pass immediately under the control of the trustees of the Sanitary District. Undoubtedly, upon completion of the main channels, and when such channels and 'adjuncts and

Purpose of the Act

additions' are so extended that the lands of the Sanitary District are drained thereby, the statute contemplates that such channels and auxiliary drains and ditches, 'adjuncts and additions' will be under the control of the trustees for drainage purposes, and that the sewage and drainage of the district be discharged, through such lateral 'adjuncts and additions' into such main channel or channels Upon the organization of the Sanitary District of Chicago, it is a matter of common knowledge that the trustees entered upon the construction of the channel contemplated by the act, by which water from Lake Michigan was to be turned into the DesPlaines and Illinois Rivers. From the magnitude of the work prescribed by the statute, it must have been known that some years in time and large sums of money would be required in its construction. It is apparent that these constructions were within the legislative contemplation in passing this act, and it cannot be supposed that the legislature intended that in the interim, and until the system of sewerage of the Sanitary District should be completed, there should be no authority in the City of Chicago to construct, extend or otherwise provide for the sewerage and drainage of the city.

"Repeals by implication are not favored, and if the two acts, though seemingly repugnant, may be so construed that each may be given force and effect, the former will not be held to be repealed by implication. As we have seen the drainage of the district, except in the mode prescribed in the act of 1889, has not been confided by law to the trustees of the Sanitary District. By construing the act of 1885, as applying to lands within the Sanitary District until the work of the Sanitary District is so far completed as to accomplish the end for which it was designed, or until the lands are connected with the drains of the Sanitary District, each act finds ample scope for operation.

"What will be the effect when the drainage system contemplated by the act of 1889 shall be completed or the lands are connected with and drained by such system is not before us in this case, and no opinion is expressed in regard thereto; but until drainage is provided thereby, we hold that the corporate authorities of the city may, under the act of 1885, establish and maintain drains, etc., as therein provided, in districts and parts of the city not actually drained by the drains of the Sanitary District.

City Drains

"The point made by counsel, that the drainage of sewage into Lake Michigan is against public policy, and that therefore this ordinance providing therefor is void, is without merit. The questions as to whether the lands and lots of the city shall be drained, and how and when it shall be done, are within the legislative discretion of the city authorities.

The opinion in the foregoing case, was filed by the Supreme Court on March 31, 1894, shortly after the beginning of construction work on the main channel of the Sanitary District and six years before the water was turned into said main channel.

THE STATE OF MISSOURI TRIED TO PREVENT THE TURNING OF WATER FROM LAKE MICHIGAN THROUGH THE CHICAGO RIVER INTO THE MAIN CHANNEL.

The State of Missouri filed a Bill of Complaint in the Supreme Court of the United States seeking an injunction to restrain the State of Illinois and The Sanitary District of Chicago from discharging sewage through the channel of the Sanitary District connecting Lake Michigan with the DesPlaines River, a tributary of the Illinois River, which empties into the Mississippi River above St. Louis, claiming that such sewage so polluted the water of the Mississippi River as to render it unfit to drink and productive of typhoid fever and other diseases. The defendants filed a demurrer which, after argument, was overruled, with leave to answer. The opinion of the court as to the bill and demurrer is found in the 180 U. S., page 208. Subsequently, answer was filed denying the jurisdiction of the court, and alleging that if the conditions complained of at St. Louis existed they resulted from discharge of sewage into the Mississippi by cities of Missouri and from other causes for which Illinois was not responsible. A large amount of testimony, expert and otherwise, was taken and reported to the court, and a very lengthy and interesting opinion was filed in this case on February 19, 1906 (six years after the water was actually turned into the main channel from Lake Michigan through the Chicago River), the opinion being delivered by Mr. Justice Holmes. This case is reported in the 200 U. S., beginning at page 496 and extending to page 526.

The court said it was alleged in the bill that the result of the threatened discharged would be to send fifteen hundred tons of poisonous filth daily into the Mississippi, to deposit great quantities of the same upon the part of the bed of the last named river belonging to the plaintiff, and so to poison the water of that river, upon which various of the plaintiff's cities, town and inhabitants depend, as to make it unfit for drinking, agricultural or manufacturing purposes; that the supplemental bill alleged that since the filling of the original bill the drainage canal had been opened and put into operation and has produced and is producing all the evils which were apprehended when the injunction first was asked; that the answers denying the plaintiff's case allege that the new plan sends the water of the Illinois River into the Mississippi much purer than it was before, that many towns and cities of the plaintiff along the Missouri and Mississippi discharge their sewage into those rivers, and that if there is any trouble the plaintiff must look nearer home for the cause.

Allegations

The court further stated, beginning on page 521:

"It is a question of the first magnitude whether the destiny of the great rivers is to be the sewers of the cities along their banks or to be protected against everything which threatens their purity. To decide the whole matter at one blow by an irrevocable fiat would be at least premature. If we are to judge by what the plaintiff itself

permits, the discharge of sewage into the Mississippi by cities and towns is to be expected. We believe that the practice of discharging into the river is general along its banks, except where the levees of Louisiana have led to a different course. The argument of the plaintiff asserts it to be proper within certain limits. These are facts to be considered. * * *

Strict Proof Required

Where, as here, the plaintiff has sovereign powers and deliberately permits discharges similar to those of which it complains, it not only offers a standard to which the defendant has the right to appeal, but, as some of those discharges are above the intake of St. Louis, it warrants the defendant in demanding the strictest proof that the plaintiff's own conduct does not produce the result, or at least so conduce to it that courts should not be curious to apportion the blame.

"We have studied the plaintiff's statement of the facts in detail and have perused the evidence, but it is unnecessary for the purposes of decision to do more than give the general result in a very simple way. At the outset we cannot but be struck by the consideration that if this suit had been brought fifty years ago it almost necessarily would have failed. There is no pretence that there is a nuisance of the simple kind that was known to the older common law. There is nothing which can be detected by the unassisted senses—no visible increase of filth, no new smell. On the contrary, it is proved that the great volume of pure water from Lake Michigan which is mixed with the sewage at the start has improved the Illinois River in these respects to a noticeable extent. Formerly, it was sluggish and ill smelling. Now it is a comparatively clear stream to which edible fish have returned. Its water is drunk by fishermen, it is said, without evil results. The plaintiff's case depends upon an inference of the unseen. It draws the inference from two propositions. First, that typhoid fever has increased considerably since the change and that other explanations have been disproved, and second, that the bacillus of typhoid can and does survive the journey and reach the intake of St. Louis in the Mississippi.

The Facts

"We assume the now prevailing scientific explanation of typhoid fever to be correct. But, when we go beyond that assumption, everything is involved in doubt. The data upon which an increase in the deaths from typhoid fever in St. Louis is alleged are disputed. The elimination of other causes is denied. The experts differ as to the time and distance within which a stream would purify itself. No case of an epidemic caused by infection at so remote a source is brought forward, and the cases which are produced are controverted. The plaintiff obviously must be cautious upon this point, for if this suit should succeed many others would follow, and it not improbably would find itself a defendant to a bill by one or more of the States lower down upon the Mississippi. The distance which the sewage has to travel (357 miles) is not open to debate, but the time of transit to be inferred from experiments with floats is estimated at varying from

Typhoid Fever

eight to eighteen and a half days, with forty-eight hours more from intakes to distribution, and when corrected by observations of bacteria is greatly prolonged by the defendants. The experiments of the defendants' experts lead them to the opinion that a typhoid bacillus could not survive the journey, while those on the other side maintain that it might live and keep its power for twenty-five days or more, and arrive at St. Louis. Upon the question at issue, whether the new discharge from Chicago hurts St. Louis, there is a categorical contradiction between the experts on the two sides."

The court then, after enumerating statistics as to typhoid fever in the region concerned and analyzing the testimony of the experts with reference thereto, said:

"The evidence is very strong that it is necessary for St. Louis to take preventive measures, by illustration or otherwise, against the dangers of the plaintiff's own creation or from other sources than Illinois. What will protect against one will protect against another. The presence of causes of infection from the plaintiff's action makes the case weaker in priciple as well as harder to prove than one in which all came from a single source.

"Some stress was laid on the proposition that Chicago is not on the natural watershed of the Mississippi, because of a rise of a few feet between the DesPlaines and the Chicago Rivers. We perceive no reason for a distinction on this ground. The natural features relied upon are of the smallest. And if under any circumstances they could affect the case it is enough to say that Illinois brought Chicago into the Mississippi watershed in pursuance not only of its own statutes but also of the acts of Congress the validity of which is not disputed. Of course, these acts do not grant the right to discharge sewage, but the case stands no differently in point of law from a suit because of the discharge from Peoria into the Illinois, or from any other or all the other cities on the banks of that stream.

Water-shed

"We might go more into details, but we believe that we have said enough to explain our point of view and our opinion of the evidence as it stands. What the future may develop, of course, we cannot tell. But our conclusion upon the present evidence is that the case proved falls so far below the allegations of the bill that it is not brought within the principles heretofore established in the cause."

Bill Dismissed

The bill was dismissed without prejudice.

It will be interesting for the taxpayers to know that this decision was handed down six years after the water of Lake Michigan was turned into the main channel; and through it down into the DesPlaines and Illinois Rivers, and that the highest court in the land after examination of the large amount of testimony that the ablest counsel in the States of Missouri and Illinois, which the parties could obtain, could and did assemble and present to the court, decided that the condition of the waters in the DesPlaines and Illinois Rivers had been thereby improved. Such

Notes

improvement having been effected within six years after the opening of the main channel, it goes far toward answering completely later day critics who have stated that conditions in the Illinois River were becoming worse each year and would soon become intolerable. Statements of that kind before a court of equity must be supported with adequate proof, and the evidence in that case is a fair indication that such proof could not be adduced, and from the evidence there, Missouri was held to be guilty of creating the nuisance.

THE PURPOSE OF THE SANITARY DISTRICT ACT WAS CLEARLY DEFINED IN 1909.

In the case of City of Chicago v. Green, reported in Volume 238 of the Illinois Supreme Court reports, beginning at page 258, to which suit the Sanitary District of Chicago was not a party, the City of Chicago instituted proceedings, under the Local Improvement Act of 1897 to construct by special assessment a brick sewer having a concrete bulkhead at its outfall, and extending from a point on the southerly line of the main drainage canal of the Sanitary District southeasterly a short distance across the right of way of the Sanitary District and thence south in Kedzie Avenue to West Seventy-first Street. The estimate cost was $370,000. One of the chief contentions in this case was that the proposed sewer was an "adjunct" or "addition" to the main channel of the Sanitary District within the meaning of the Sanitary District act. The court in its decision entered into a discussion of the act under which the Sanitary District was organized and the objects and purposes for which it was created. This discussion is germane to this report, and is very illuminating. The language is such that any layman can understand it and appreciate thoroughly the explanation given by the Supreme Court of our State. The court said:

City vs. Green

"A consideration of the various provisions of the Sanitary District act of 1889 leads, it seems, irresistibly to the conclusion that this act was passed to furnish a common outlet for the sewage of the incorporated municipalities within the limits of the district, recognizing the existence of these municipalities without seeking to curtail their powers except in the one matter of a common outlet for their drainage and sewage. This court, in Wilson v. Board of Trustees, 133 Ill. 443, and in People v. Nelson, 133 id. 565, considered and discussed various features of this act. It is manifest from a reading of those decisions that the court at that time did not consider that the act was passed for the purpose of taking charge of, controlling and constructing sewers by special assessments, for the purpose of local drainage, but rather to furnish a common outlet for all the sewers within the boundaries of the Sanitary District. This court, in People v. Nelson, supra, speaking by Mr. Justice Bailey, said (p. 580): 'The general sanitary scheme adopted by the act consists of creating certain districts comprising certain areas of contiguous territory, and empowering such

Purpose of Act

districts to construct and maintain a common outlet for the drainage and sewage of their respective territories. That scheme is indicated in the first section of the act, as follows: 'That whenever any area of contiguous territory within the limits of a single county shall contain two or more incorporated cities, towns or villages, and shall be so situated that the maintenance of a common outlet for the drainage thereof will conduce to the preservation of the public health, the same may be incorporated as a Sanitary District under this act.' Of course it must be conceded, both as a historical fact and as a fact abundantly shown by the terms of the act itself, that this scheme was formulated mainly, if not exclusively, with reference to the sanitary condition and needs of the city of Chicago and its environs, and we cannot give proper construction to the act without taking into account the peculiar situation of the territory which the proposed Sanitary District of Chicago was intended to embrace. Chicago is a city of probably one million inhabitants or more, and is bordered on the east by Lake Michigan, that lake being the source of its water supply. A few miles west of Chicago, and running in a north and south direction, is the DesPlaines River, and at a point opposite the southerly part of the city the said river turns toward the south-west and runs in that direction to the city of Joliet, below which it is known as the Illinois River. The territory between Lake Michigan and The DesPlaines River, and along the course of that river to Joliet, is nearly level, none of it being more than a few feet above the level of the lake, while at Joliet the general surface is quite a number of feet below the level of the lake. The object of the system of drainage proposed by said act is to prevent the drainage and sewage of the city and its environs being carried into Lake Michigan, thereby contaminating the waters of the lake. This result is to be reached by cutting a channel which will give an outlet for the drainage and sewage of the city in the direction of the DesPlaines and Illinois Rivers, and which will also cause a large flow of water from the lake, through the proposed artificial channel into those rivers for the purpose of diluting the sewage and render it innocuous to the people living along the course of those streams.

"It was argued in both of these cases that the work in question was a local improvement, and that, therefore, under the provisions of the constitution, especially section 9 of article 9, no municipality, except cities, towns and villages, could make such an improvement. This court, in discussing that question in Wilson v. Board of Trustees, supra, speaking through Mr. Justice Scholfield, said (p. 469): 'It would be a sufficient answer to this to say that it is not shown, by anything in the record before us, that the improvement here contemplated is a 'local improvement,' within the meaning of those words as used in this clause. In a general sense all improvements within a municipality are local, that is, they do not extend to all parts of the State; they have a locality; are nearer to some persons and property than to others. But it is evident that is not what is here meant by 'local

Local Improvements

improvements,' for if it were, it would have been more natural and lucid to have said 'improvements' without other qualifications, or, simply, 'municipal improvements.' We are to give all the words employed some meaning, if we can, and so we must consider 'local improvement' in connection with 'special assessment,' for the local improvement contemplated is one that can be made by special assessment, if only the corporate authorities shall elect to make it in that way. But all improvements within a municipality are not, by reason of their locality, a special benefit to some real property beyond benefits to real property generally throughout the municipality, but many times the result is directly the reverse—that of a positive injury, in loss of values. In such cases it is clear the improvement could not be made by special assessment, and it is not to be presumed that a constitution would contain the absurdity of prohibiting the doing of an impossibility, as for instance, that the General Assembly should not authorize any but the corporate authorities of cities, towns and villages to make local improvements by special assessment, when such improvements are of that character that they cannot be made by special assessment. 'Whether, in a given case, an improvement is of that character that it can be made by special assessment is a question of fact, and not of law. It is quite probable that the relation of benefits and cost of improvement to particular property would be very different in the case of a great drain, intended to benefit an extended area of city and country by affording outlets for a vast number of sewers and also an outlet for the stagnant waters of river and lake, than it would be in the construction of an ordinary sewer, benefiting only contiguous property holders by carrying off the sewage flowing from their property. We cannot take notice, as a matter of law, that the drain here contemplated is a 'local improvement' within the contemplation of the first clause of section 9, article 9, of the constitution, so that it can be made by a 'special assessment.' It was argued in that case that the Sanitary District act was an attempt to invest new corporations with the functions of local government with the powers of a municipal corporation, and we said (p. 477): 'It will be quite time enough to meet that question when it shall arise. A case presenting the question of the power of the General Assembly to authorize the re-distribution of the powers of an existing city, town or village to a number of corporations equal to the number of the powers distributed, for the purpose of getting rid of restrictions upon the old corporation, is so essentially and palpably different from the present case that it would be entirely irrelevant to stop to consider it. The present legislation may be unwise—improvident—even vicious; but it does not follow that it is unconstitutional. * * * This legislation preserves, to the fullest extent, the principles of local self-government.'

"Considering the opinions in those cases, especially in connection with the dissents filed in both, it is apparent that this court did not then consider that the Sanitary District act was intended to turn over to the corporate authorities of the district the control of all of

the ordinary sewers and drains necessary to drain the territory within its boundaries, but rather that the law was enacted for the purpose of constructing a main channel or outlet for all the sewers and drains of the various municipalities within the district, and to build such adjuncts and additions and auxiliaries as a part of said main channel as would make it possible to connect all such drains and sewers of the various municipalities with said main channel. The same conclusion as to the purpose of this act was reached by this court in Beidler v. Sanitary District, 211 Ill. 628. In discussing that question we said (p. 637): 'It is evident from an examination of the act for the creation of Sanitary Districts, that the primary and principal purpose of their creation under the staute is to provide for the preservation of the public health by improving the facilities for the final disposition of sewage and by supplying pure water. The fact that a navigable waterway may be created is a mere incident, and not one of the purposes for which a Sanitary District is created.' This question, however, is of such great importance and is so earnestly argued by counsel that we deem it proper to call attention to some facts leading up to the passage of this law.

Limitations

* * * "The history of the attempts to keep the sewage and drainage out of Lake Michigan by pumping it into the Illinois and Michigan canal for many years previous to the passage of this law, is concisely and fully set forth in the opinion of this court in Canal Comrs. v. Sanitary District, 191 Ill. 326. In 1880 the Citizens' Association of Chicago appointed a committee to study the subject of a main drainage channel for that city, and among their plans for the disposition of the sewage the construction of a canal or 'new river' connecting the Chicago River and the DesPlaines Valley was recommended. (Brown on Drainage Channel and Waterway, p. 336). In 1885 another committee, after discussing various schemes, suggested to the Citizens' Association that unquestionably the proper disposition of the sewage was by way of the Illinois valley. (Brown on Drainage Channel and Waterway, p 343). In 1886 the city council of Chicago, by resolution, authorized the creation of a drainage and water supply commission, to be appointed by the mayor, to study the problem. That commission was appointed, and reported to the city council in January 1887, that the problem demanded two things—the protection of the water supply and the removal of the river nuisance—and stated that there were three possible methods of getting rid of the sewage of Chicago: one by discharging it into Lake Michigan; another by means of a sewage farm; and the third through the DesPlaines and Illinois valley, with a sufficient dilution of water to make it sanitary to the people of the valley. (Brown on Drainage Channel and Waterway, p. 345). In 1887 two bills were introduced in the legislature touching upon the proper solution for an outlet for Chicago sewage and protecting the water of Lake Michigan from contamination.

History of Sewage Problem

Three Methods

(Brown on Drainage Channel and Waterway, p. 374). In May 1887, a joint resolution was passed by the Illinois legislature providing for the appointment of a committee of five, consisting of the mayor of Chicago (ex-officio) two members of the House and two members of the Senate, to examine and report to the next session of the legislature on the subject of the drainage of Chicago and its suburbs, and stating, "if such commission shall find, upon investigation, that the most practicable solution of the problem is in the construction of a waterway for the sewage from Chicago to the Des Plaines River at or near Joliet, the commission shall report what requirements shall be made as to the construction of such waterway and the dilution of such sewage for the protection of the health and comfort of the people at and below Joliet." (Brown on Drainage Channel and Waterway, p. 375.) This commission reported the Sanitary District act substantially as it was passed that year by the legislature. In its report accompanying such act the commission stated that it had "diligently studied the subject submitted to it in all its sanitary and commercial aspects. It has visited and surveyed the territory sought to be improved. Conferences have been held with representatives from all the leading cities, towns and villages affected. * * * All plans for meeting the demands of the river and valley communities and the pressing needs of Chicago have been carefully examined by this commission. The plan agreed upon by the commission, as set forth in detail in the bill which accompanies this report, is believed by the commission to be the most feasible, practicable and satisfactory method for all the varied interests involved." (Brown on Drainage Channel and Waterway, p. 376).

Commission's Plan

The discussion before the legislature, as well as these various reorts, discloses that the problem that was being studied was not the building of ordinary sewers, whether trunk (such as the one here under discussion) or lateral, by special assessments, but the finding of a common outlet for the sewage of Chicago and its suburbs, thus preventing the contamination of the water of Lake Michigan. These reports and discussions contain frequently the words "main drainage system", "outlet channel, "intercepting sewers" and other terms which indicate clearly that it was an outlet for the sewage, and not the building of ordinary sewers, that was under consideration. It is also manifest, not only from the Sanitary District act but from the surrounding facts and circumstances, that as a part of the work of disposing of the sewage of the municipalities in the sanitary district by an outlet through the Des Plaines and Illinois Rivers, it was intended at the same time to assist in building a great waterway from Lake Michigan to the Mississippi River, with the incidents of dockage and water power which would necessarily follow from a navigable channel of the proposed size and location."

* * * "When the Sanitary District act was first passed, the territory within its limits included the whole of the city of Chicago, the whole of the towns of Hyde Park, Lake View, Calumet and Jefferson, part of the town of Cicero, and the village of Riverside. By the

act of 1903 (Hurd's Stat. 1908, p. 384), the Sanitary District of Chicago was enlarged so as to take in all of the territory extending from the limits of Cook County on the north to and including all of the city of Chicago as now constituted, and all of the territory on the lake front from Lake County to the Indiana State line, and along the Indiana State line to about three miles south of the southern limits of the city of Chicago. The territory of the sanitary district as originally organized contained one hundred and eighty-five square miles. By this act of 1903 some seventy-eight square miles was brought within its limits on north and ninety-four and one-half square miles on the south. As the limits are now extended the Sanitary District of Chicago includes within its boundaries all of the city of Chicago; all of the city of Evanston, the villages of Wilmette, Gross Point, Kenilworth; Winnetka and Glencoe on the north; Oak Park, Berwyn, Lyons, Summit and the incorporated town of Cicero on the west; Evergreen Park, Morgan Park, Blue Island, Riverdale and Harvey on the south and several other smaller villages and hamlets. If the legislature intended to deprive all of these municipalities of the control of their local sewers, it is to be presumed that such intent would be plainly expressed in the act and not left to obscure or doubtful implication."

Original Boundaries

Additions

* * * "There is no possible basis for arguing from preceding legislation, its history and surroundings, that the Sanitary District act was intended to empower the authorities of the sanitary district to take charge of the building of the sewers of the cities, villages and municipalities within the limits of the district, and the only possible chance for making this argument from the act itself is in the construction that is attempted to be placed upon the words "adjuncts" and "additions." It is evident, not only from the amendment of 1903, enlarging the sanitary district, but also from the history of all legislation on the subject, that as a part of the scheme for getting an outlet for sewage and preventing the contamination of the water of Lake Michigan it was understood that it might be necessary to build an auxiliary channel connecting the north branch of the Chicago River with Lake Michigan north of and in the neighborhood of the city of Evanston, and another auxiliary channel in the southern part of Chicago, in the so called "Calumet district." The question was also considered, as appears from the reports heretofore referred to, that it might be necessary to have a cutoff connecting the south branch of the Chicago River with the lake at or near Sixteenth street, or at other points, and also another cutoff connecting the north branch with Lake Michigan at or near Fullerton Avenue. In the light of these surrounding facts it seems manifest that the words "adjuncts" and "additions" were used as referring to these auxiliary channels or others of like nature. They are called, as we have seen, in the act of 1903 "auxiliary channels". It needs no argument to prove that the legislature did not there use the words "auxiliary channel," "adjuncts" or "additions" as meaning a common sewer, as is here contended.

"It would be most unreasonable to conclude that the words "addition" and "adjunct" as used with reference to the main channel,—this common outlet for the sewage of Chicago, costing Many millions of dollars,—were intended to include not only such auxiliary channels as have been referred to, but the ordinary sewers of all cities and towns and municipalities within the sanitary district, including even the smallest lateral sewer or branch. Such a construction would make the act obnoxious to the charge urged against it in the Wilson case, supra, that it did not preserve the principles of local self-government in the various municipalities in the sanitary district. The words "adjunct" and "additions," as used in this act, mean simply auxiliary channels to bring the sewage and drainage from the various sewers and systems of sewers of the municipalities in the limits of the sanitary district into the main channel of the sanitary district. It was not intended that the sanitary district should be charged with and have the authority of constructing and maintaining local improvements for the local drainage and sewerage of lands and property, such as the one here in question."

Addition or Adjunct

THE PURPOSE OF THE SANITARY DISTRICT WAS AGAIN CLEARLY STATED BY THE SUPREME COURT IN PASSING UPON THE PROPOSED WORK UPON AND ALONG THE NORTH SHORE CHANNEL.

In the case of Judge v. Bergman, et al., the defendants being the trustees of The Sanitary District of Chicago (decided April 19, 1913, and reported in Volume 258 of the Supreme Court reports of Illinois beginning at page 246) Thomas F. Judge, as a citizen and taxpayer of Cook County, Illinois, filed a bill for the purpose of enjoining the Sanitary District from constructing and maintaining a proposed system of conduits, sewers and a pumping station in the city of Evanston and from expending the funds of said Sanitary District for said improvements, basing his claim for relief upon a want of power to construct and pay for said improvements. The theory of the bill was that the proposed conduits, sewers and pumping station were purely local improvements, designed to supplement the local sewer system of the city of Evanston, and as such should be constructed and paid for by the city of Evanston, by special assessment or otherwise. After answer, hearing and argument, a decree was entered dismissing the bill for want of equity. An appeal was taken to the Appellate Court, which affirmed the decree, and the case was then revised by the Supreme Court.

Judge vs. Bergman et al.

The court in its decision said:

"That complainant is a citizen, a voter and a taxpayer of said sanitary district; that defendants are trustees thereof; that the main

channel of the district was completed in 1900, and that its effect was to change the course of the Chicago River so that it now flows away from Lake Michigan and discharges into the Des Plaines River at Lockport affording an outlet in that direction for the drainage and sewage of the city of Chicago, which formerly was discharged into the lake; **Main Channel Effect**

that by the act of the General Assembly of May 14, 1903, said district was enlarged so as to include the city of Evanston and the villages of Wilmette, Gross Point, Kenilworth, Winnetka and Glencoe on the north and others on the south; that thereafter said district constructed a channel or drainage ditch known as the 'north shore channel,' extending from the north branch of the Chicago River to a point on the shore of Lake Michigan near the boundary line between Evanston and Wilmette, 'for the purpose of furnishing an outlet for the drainage and sewage of the city of Evanston, the village of Wilmette and other villages lying to the north of the city of Chicago, which channel runs through the northwestern portion of Evanston, and to provide for a sufficient flow of water for said channel a pumping station has been installed at the lake end of the same; that said channel 'is of sufficient capacity to carry off and divert into the north branch of the Chicago river, and thence into said main channel, all of the drainage and sewage of the village of Wilmette, the city of Evanston and all other villages lying north of the city of Chicago when such drainage and sewage is diverted into said north shore channel; that the city of Evanston has a shore line of approximately three and one-half miles along Lake Michigan, is from one and a half to two miles in width, with a population of over 25,000, and on and prior to May 23, 1912, had, and now maintains, an extensive system of sewers, through which the sewage and drainage of that part of the city which lies south east of the north shore channel are discharged directly into Lake Michigan; that the effect of this is to pollute and contaminate the water of the lake, and 'that at times said contaminative effect extends as far south as to include a part of the water supply of the city of Chicago, and as far north as to include the water supply of some of the municipalities lying north of said city of Evanston; that Lake Michigan is the source of the water supply of almost all of the people of the sanitary district; that the total assessed valuation of all taxable property within the limits of the city of Evanston for the year 1911 was $11,021,698, and its total indebtedness, including $146,100 of bonds, is $356,100; that on May 23, 1912, appellees, as trustees of said sanitary district, passed an order directing the chief engineer of the district to prepare detailed plans and specifications for the construction of a system of intercepting sewers and conduits at an estimated cost of $405,000, and that they are about to construct the same at the sole expense of said sanitary district; that the plans for said work provide for the construction of a pumping station on the lake front, in Evanston, for the purpose of pumping sewage coming from the lower parts of the city along the lake

North Shore

Local Sewers

Taxable Property

front to such an elevation that it can flow into the north shore channel of said district, 'it being impossible to divert said sewage into said north shore channel except by pumping the same;' that the 'proposed conduits are three feet in diameter at their southern extremities and gradually increase in size until said conduit is ten feet in diameter'; that 'the sole function of the works covered by said order of May 23, 1912, and shown in heavy red lines on said complainant's Exhibit 1, is to receive from the sewers built and maintained by the city of Evanston, as shown on said Exhibit 1, the sewage before it is discharged into the waters of Lake Michigan and to convey the same into said 'north shore channel.' A map attached as Exhibit 1 shows in small lines and figures what seems to be a practically complete system of sewers covering the whole city of Evanston, the main lines of which run east and discharge into Lake Michigan. Said map also shows in heavy red lines the location and direction of the proposed conduits. Two branch lines are thus shown, beginning in the southern part of the city, one running north along the lake shore and the other further west, intercepting the existing sewers. These branch lines meet near the pumping station, from which a single larger conduit proceeds in a north and westerly direction to the north shore channel."

Evanston

"The city of Evanston is wholly within the Sanitary District of Chicago. It has a complete and efficient system of sewerage, amply sufficient to properly dispose of its sewage. The only reason for constructing the conduits along the lake front is to intercept the sewage of the city and convey it to the north shore channel of the sanitary district instead of allowing it to be deposited in Lake Michigan. It is stipulated that the depositing of the sewage by the city of Evanston into Lake Michigan pollutes the water, not only in that portion of the lake opposite the city of Evanston, but above and below as well. Substantially the whole of the sanitary district is dependent upon Lake Michigan for its water supply. The primary object in organizing the Sanitary District of Chicago was to dispose of the sewage without pollution of the waters of Lake Michigan. This purpose was accomplished, at a cost of many millions of dollars, by constructing the main channel of the sanitary district canal, with such adjuncts and additions thereto as were necessary or proper to carry the sewage to said main channel. The north shore channel was constructed for the purpose of conveying the sewage of Evanston and other municipalities north of Chicago to the main channel of the sanitary district. The north shore channel is west of the principal part of the city of Evanston. Under present conditions there is no connection between the north shore channel and the sewage system of the city of Evanston. Without such connection the north shore channel will fail to accomplish one of the important purposes of its construction. The construction of the intercepting sewers along the lake front, with the installation of a pumping station at the north end thereof, is the only practical method of collecting the sewage of Evanston and conveying it to the north shore channel. The improvement is a necessary part of

Purpose of Act

the general purpose to avoid the pollution of the waters of Lake Michigan and its construction will confer benefits on the whole people of the sanitary district of the same general character as those that result from the construction of the main channel of the sanitary district.

"The bill in this case is filed on the theory that the trustees of the Sanitary District of Chicago have no power, under the law, to construct this improvement. The sanitary district is a municipal corporation organized to secure, preserve and promote the public health. It derives its power from the legislature, and can exercise only those that have been expressly delegated to it and such as are necessarily implied. Statutes granting powers to municipal corporations are strictly construed, and any fair and reasonable doubt as to the existence of the power is resolved against the municipality claiming the right to exercise it."

Theory of Bill

"Section 7 of the sanitary district act of 1889, is as follows: 'The board of trustees of any sanitary district organized under this act shall have power to provide for the drainage of such district by laying out, establishing, constructing and maintaining one or more main channels, drains, ditches and outlets for carrying off and disposing of the drainage (including the sewage) of such district, together with such adjuncts and additions thereto as may be necessary or proper to cause such channels and outlets to accomplish the end for which they are designed in a satisfactory manner.'

"Under the powers conferred by the above statute the main channel of the sanitary district was constructed. The constitutionality of the original Sanitary District act of 1889 came before this court at its June term, 1890. One of the objections urged against the validity of the act was, that the work contemplated under the Sanitary District act of 1889, was a local improvement, which, under the constitution, could only be made by cities, towns and villages. The objection was not sustained. It was there held that the preservation of the public health is one of the paramount objects of government; that the State, in the exercise of its police power, could enact any appropriate legislation to accomplish this object, or it might delegate the power to cities, towns and villages or other municipal corporations which the legislature in its wisdom might see proper to authorize to better accomplish this paramount object. It was there said that the making of sewers and drains for the removal of garbage and filth, the boring of artesian wells, the construction of acqueducts for the purpose of procuring a supply of pure, fresh water, the drain of malarial swamps, and the erection of levees to prevent overflow, were among the well recognized means which might properly be employed to preserve and promote the public health. It was held that the power conferred upon the sanitary district to construct its main channels, drains, ditches and sewers, together with such adjuncts and additions as were necessary, was directly referable to the police power, which was rightfully conferred upon the sanitary district by the legislature. It was there pointed out that while cities, towns and villages might exercise the police power within their limits, still

Prior Decisions

there was no constitutional objection to an act of the legislature creating a sanitary district including within its boundaries more than one city and investing it with the powers of taxation for sanitary purposes co-extensive with the territory to be controlled. As a justification for legislation of this character it was pointed out in argument that it might often happen, in the exercise of such powers by cities, that they would have to exercise control over large rural districts adjacent thereto, as in the case of large malarial swamps lying in the vicinity of cities, and in other instances where the air and water to be used by the city population would be poisoned and laden with germs of disease from causes existing beyond the city limits.

"The mere circumstance that the sanitary district may exercise powers such as cities and villages may exercise within their respective corporate limits is not conclusive of the question whether those powers may have been delegated to the sanitary district. Necessarily, the powers of a sanitary district are either of the same general character or very similar to the powers exercised by cities and villages in respect to the particular subjects over which the sanitary districts are given control. The delegated powers of a sanitary district may be exercised in the furtherance of the purposes of its creation within as well as without other municipalities that may be wholly or partly within the corporate limits of such district. It may not exercise all the powers belonging to a city or village within the district. It is not within the purposes of the sanitary district to install a system of sewers and connect the various houses of a city with the same. That belongs to the city or village and is strictly a local improvement. On the other hand, it is not the duty of a city like Evanston, which already has a complete and satisfactory system of sewerage installed which has presumably been paid for by special assessment, or otherwise, by the tax-payers of that city, to take upon itself the further burden of constructing adjuncts and additions to the sanitary district channels in order to dispose of its sewage in accordance with the general plans of the sanitary district. The sanitary district is expressly authorized to construct such 'adjuncts' and 'additions' as 'may be necessary or proper to cause such channels or outlets to accomplish the end for which they are designed in a satisfactory manner.' The words 'adjuncts' and 'additions' as used in the Sanitary District act mean auxiliary channels to bring the sewage and drainage from the various sewers and systems of sewers of the municipalities in the limits of the sanitary district into the main channel of the sanitary district. It was not intended that the sanitary district should be charged with constructing and maintaining local improvements for the local drainage and sewerage of lands and property.

Adjuncts

It would not be possible to lay down in advance, a hard and fast rule by which to determine what is and what is not an 'adjunct' or 'addition' within the meaning of section 7 of the Sanitary District act. Each case must be determined by its own facts and surrounding conditions. In City of Chicago v. Green this court held that the construction of a brick sewer nine

feet in diameter at its mouth and gradually decreasing was purely a local improvement and should be paid for by special assessment. The sewer there under consideration connected with the main canal of the sanitary district. But that case is distinguishable from the one at bar. There the sewer was a part of the drainage system of the city and was necessary for the proper local drainage of that portion of the city tributary thereto. In the case at bar, as we have already sought to show, the improvement is not at all necessary for the proper sewerage of Evanston and is not a necessary part of local sewerage. It is true, the city of Evanston is interested in the supply of pure water, but the benefits the citizens of Evanston will receive in this regard differ only in degree, if at all, from the benefits diffused throughout the greater portion of the sanitary district. The object to be accomplished in the construction of this improvement has an important bearing in determining whether it is an adjunct or addition to the sanitary district such as the sanitary district is authorized to construct.

"Section 2 of the act of 1903, extending the boundaries of the sanitary district, confers the same powers in respect to the territory taken by the district as were conferred by section 7 of the original act. It appears to have been the intention of the legislature to confer the same powers upon the trustees of the sanitary district in respect to the north shore channel as were given them by the original act in regard to the main channel. The north shore channel is designed to convey the sewage from Evanston and other municipalities to the main channel. It cannot be made to serve its purpose until it is connected with the sewerage system of the several municipalities intended to be served by it. Unless the sanitary district is authorized, under the law, to construct such adjuncts and additions as are proper and necessary to reach the sewerage systems of these several municipalities, the north shore channel will be practically worthless. If it were sought to compel the city of Evanston to construct these conduits and install the pumping station, its all-sufficient answer undoubtedly would be that the city had a complete and satisfactory system of sewerage and it was therefore unnecessary for the proper drainage of the city to construct said improvement."

Powers

THE PURPOSE OF THE SANITARY DISTRICT ACT AGAIN DESCRIBED.

The Supreme Court of Illinois in the case of City of Chicago, et al. v. The Sanitary District of Chicago, cited in a decision filed February 16, 1916, and reported in Volume 272 of the Supreme Court Reports of Illinois beginning at page 37, again passed upon the relative jurisdiction of the City of Chicago and The Sanitary District of Chicago with reference to drainage and sewerage, and after quoting at length from previous decisions, held, the function of The Sanitary District of Chicago is to provide a channel into which sewage can

be emptied and in which a flowage can be maintained sufficient to carry such sewage away from Lake Michigan, and the subject of its creation is accomplished by providing and maintaining a channel sufficient to carry through it the drainage emptied into it by the municipalities in the district.

POWERS OF THE BOARD OF TRUSTEES UNDER THE SANITARY DISTRICT ACT AS DEFINED BY THE COURTS.

In the quotations from the Wilson case and the Nelson case hereinbefore given at some length, the general powers of the Board of Trustees of The Sanitary District of Chicago were discussed by the court and to some extent defined. Not, however, with the degree of particularity which characterizes later decisions of that court where the acts of the Sanitary District trustees under sections of the Sanitary District Act were passed upon.

The case of Tedens at al. v. Sanitary District, reported in Volume 149 of the Illinois Supreme Court Reports, at page 87, was one in which The Sanitary District of Chicago sought to condemn the whole of an island two miles long and over a quarter of a mile wide, and it was, held, that whether the taking of so much land was an abuse of power was a question the defendants had the right to have the court determine before the jury was called upon to ascertain the compensation to be paid to the owners. The court said: "The Board of Trustees of any sanitary district organized under this act shall have power to provide for the drainage of such district, by laying out, establishing, constructing and maintaining one or more channels, drains, ditches and outlets for carrying off and disposing of the drainage (including the sewage) of such district, together with such adjuncts and additions thereto, as may be necessary or proper to cause such channels or outlets to accomplish the end for which they are designed, in a satisfactory manner." "The sanitary district, under the power conferred upon it by the legislature, when proceding to condemn lands for the purposes for which it was organized, must, of necessity to a modified extent, be allowed to determine for itself the quantity of land to be taken to be used for the ditch or channel. But the right is subordinate to all statutory and constitutional restrictions, and also the further limitation that the courts of the State which are authorized to entertain applications of this character are clothed with ample power to prevent any abuses of this right by such corporations. While the district, by the act under which it was organized, has ample power to condemn such a quantity of land as may reasonably be necessary to be taken and used to enable it to carry out the object and purpose contemplated by the legislature in passing the act, it has no right to abuse the power conferred, or to take more lands than are reasonably necessary to be used in the

Tedens Case

Condemnation

Limited Power

construction and maintenance of the drains and outlets. As appears from the petition, the lands proposed to be taken embrace a strip over a quarter of a mile wide. Whether it was necessary that this amount of land should be taken, or whether the condemnation of so large a tract was an abuse of power, was a question the defendants had the right to submit to a court for determination before the jury was called upon to determine the amount that should be paid for the lands taken. The court is fully committed to this rule."

POWER TO ISSUE BONDS.

In the Wilson case, the Supreme Court discussed and passed upon the right of the Board of Trustees to issue bonds for the corporate purposes of the Sanitary District, and what the court there stated need not be here repeated.

In the case of Lussem v. Sanitary District, 192 Ill., page 404, the complainant as a taxpayer sought to enjoin the Sanitary District from issuing bonds to the amount of $2,500,000.00 in pursuance of an ordinance passed by the Board of Trustees and by an ordinance supplemental thereto, and it was claimed by the complainant that the bonds were void by reason of the fact that the ordinance did not state the purpose for which the funds to be derived from the sale thereof were to be used. It was provided in said ordinances that the proceeds arising from the sale of said bonds should be used for the "corporate purposes" of said district as might be directed from time to time by its Board of Trustees.

Lussem Case

The court said: "Section 9 of the Sanitary District act provides that districts organized under said act 'may borrow money for corporate purposes and may issue bonds therefor.' The ordinance authorizing the issue of said bonds specifies the purposes for which the proceeds thereof are to be used, as 'corporate purposes,' which is the language of the statute specifying the purposes for which sanitary districts organized under said act may borrow money and issue bonds." The court then stated that in the Wilson case it held valid an ordinance passed by the district authorizing its first issue of bonds wherein the same purpose was stated. The court then further stated: "We are of the opinion the ordinance in particular complained of is sufficiently definite, and that the statement therein that the proceeds arising from the sale of said bonds are to be used for 'corporate purposes' is a sufficient statement of the purposes for which the proceeds arising from the sale of said bonds are to be used." The court further stated that the complainant insists that the proceeds of the bonds are to be used for deepening, widening, bridging and otherwise improving the Chicago River, and that the bonds cannot be lawfully issued or the funds derived from the sale thereof used for such purpose. That in reply thereto it is stated "that, if it lawfully may, it proposes to use a portion of the money raised by the issue of said bonds for the pur-

Bonding Power

poses above stated." The court then stated that "the sanitary district was organized in the year 1890 under the Sanitary District act; that it shortly thereafter commenced to secure the right of way for the construction of its main channel, and that the work of construction commenced in the year 1892 and was substantially completed in January, 1900." The court then gave the boundaries, location and dimensions of the main channel and stated that the purpose sought to be accomplished by said act and the formation of The Sanitary District of Chicago are well stated in the case of People v. Nelson, and then quoted the language hereinbefore set forth in connection with that case. The court then proceeded to discuss the various sections of the Sanitary District act and the procedure with reference to opening the main channel, and in that connection quotes the permit given by the Secretary of War, and then stated: "It will be observed the statute under which the appellee is organized requires a discharge of not less than 300,000 cubic feet of water per minute through said channel, with a current of not exceeding three miles an hour, while the permit of the Federal government limits the discharge from the Chicago river into said channel by requiring that a current shall not be created in said river to exceed one and one-quarter miles per hour.

Chicago River

The evidence shows the Chicago river to be a narrow and crooked stream and obstructed in many places, so that with a discharge of 300,000 cubic feet of water per minute from the river into said channel a current would be created in the river of much greater velocity then one and one-quarter miles per hour, which would be a violation of the terms of the permit granted to the appellee by the Federal Government, make navigation in the river dangerous and subject the rights of appellee to take water from the Chicago river to forfeiture, and thereby render it impossible for appellee to accomplish the purpose for which it was created. Upon the hearing, Mr. Isham Randolph, the chief engineer of the Sanitary District, testified: "The permit to open the gates at Lockport and permit the flow went into effect the morning of January 17, 1900. The condition existing in the Chicago river at that time, and which has not been remedied, was such that the Chicago river could not give the full flow required by law and at the same time conform to the requirements of the Secretary of War, under which the permit was given to use the Chicago river. The current has exceeded two miles an hour in certain narrow and restricted portions of the river, with a flow of 300,000 gallons per minute. There is no connection between the main channel at Robey Street and Lake Michigan except through the Chicago river and the south branch. The condition prevailed at the time the commission appointed by the Government made its report, and prevails now. The center piers of bridges in the Chicago river afford the most serious obstruction which exists in the river today with reference to passing 300,000 cubic feet of water per minute through the Chicago river and the south branch thereof. With the bridges there this flow of 300,000 cubic feet per minute cannot be obtained without creating a current which

would be an obstruction to navigation or in excess of a mile and a quarter an hour. The presence of these center piers is a menace to navigation with such a current as must obtain in the river with 300,000 gallons per minute flowing, so long as the center piers remain there. The district cannot deliver through the Chicago river 300,000 cubic feet per minute without exceeding a flow of a mile and a quarter per hour. The current would approximate two miles an hour at the narrowest point of the Chicago river in the present condition. A current of two miles an hour in a straight stream without central obstructions would not be a serious matter, but in a crooked stream like the Chicago river, with frequent barriers in the center of the stream, it is a serious matter. By those barriers I mean center-pier bridges and the protection of piers which go along with them."

The court then sets forth the resolution adopted by the Sanitary District on April 21, 1891, directing the chief engineer to investigate and report a plan for deepening and widening the Chicago river and its branches, and states that in pursuance of said resolution such a plan was afterwards formulated for this improvement and the work undertaken. Section 7 of the Sanitary District act hereinbefore quoted, and Section 17 of said act empowering the Sanitary District to secure the necessary right of way and to enter upon public property or property held for public use are set forth in full in the opinion, and the court then stated: "By virtue thereof said district is not only authorized to enter upon and use, widen and deepen and navigate stream or waterway, but it is also authorized to construct such adjuncts and additions thereto as may be necessary or proper to cause such channels or outlets to accomplish the end for which they are designed in a satisfactory manner. Taking into consideration said section of the act, in connection with what appears to be an absolute necessity of entering upon, widening and deepening the Chicago river in order to comply with the law under which the Sanitary District is organized and not to violate the terms of the permit granted by the Federal Government, we are of the opinion that the Sanitary District has power, with the consent of the Federal Government and upon the payment of such damages as it may cause, to widen and deepen the Chicago river so that the same shall have sufficient capacity to supply the artificial channel of the Sanitary District with sufficient water to enable it to comply with the act under which it is organized, without violating the regulations and requirements of the Secretary of War. To hold otherwise would be to hold that the Sanitary District had power to construct a channel from Robey Street to Lockport, but that it had no power to obtain the water from Lake Michigan through the Chicago River so as to render it possible to utilize said channel."

Resolution 1891

Power to Improve River

APPROPRIATION ATTACKED.

The case of Bourke v. Sanitary District, reported in Volume 92 of the Illinois appellate Court Reports, beginning at page 333, was one where a bill of complaint was filed to enjoin the Sanitary District from expending any part of the sum of $25,000 appropriated by an ordinance passed by the Sanitary District June 3, 1899.

Bourke Case

It appears from this case that the Sanitary District act provides that the compensation and expenses of the State Commission and engineer, in the inspection of the drainage channel necessary in order to make report to the Governor for permit to be granted to turn the water into said channel, should be paid from the State treasury and the State reimbursed therefor by the Sanitary District; that the General Assembly of that year failed to make an appropriation for said expense; that because of the necessity of making said inspection an ordinance was passed appropriating said sum of money, which ordinance stated that the sum of $10 per day fixed by the statute for the services of a civil engineer was inadequate, and it authorized the commissioners to pay a reasonable sum of money for such services, and also to pay for the services of said commissioners and their necessary expenses. It was contended that the ordinance was absolutely void; that the placing of said sum of $25,000 was a misappropriation of the funds of the Sanitary District by its Board of Trustees and that it was illegal, and so also was the fixing of the salary of said engineer at $1,500 per month. In the course of its opinion, the court stated: "The act plainly providing, as it does, that the commissioners and engineer should be paid for their services, expenses and outlays from the State treasury in the first instance, and that the Sanitary District should reimburse the State therefor, and no other mode of payment being provided, we think it follows that the attempt of the sanitary trustees to provide, by the ordinance in question and their action thereunder, a different mode of payment, is without authority or sanction of law. The Sanitary District "is incapable of exerting its faculties only in the manner that act authorizes. There is clearly a lack of power which permits to be done what the sanitary trustees have attempted to do. We therefore conclude that the whole ordinance in question is void."

Expense of Channel Opening

Void Ordinance

In the case of Sanitary District v. Martin, reported in Volume 227 of the Illinois Supreme Court Reports, at page 260, which was a condemnation suit adjusted by the execution and delivery of a deed, the court, held, that, under the law of its organization, The Sanitary District of Chicago has power, in compromising a suit to condemn land for use in changing the channel of the Des Plaines River, to agree, in consideration for a deed to the land desired, to build a levee to protect the remaining lands from overflow, although the levee must, if built, cross lands the district does not own, including part of a highway and railroad right of

Levee

way; and if it has full knowledge of all the facts and accepts the deed and uses the land for a new channel, it cannot lawfully refuse to perform its agreement upon the ground that the expenses of building the levee greatly exceeds the value of the land to be protected."

THE SANITARY DISTRICT HELD TO BE SUBJECT TO THE USUAL RULE AS TO MANDAMUS PROCEEDINGS.

In the case of People ex rel Mason, et al. v. James Reddick, reported in Volume 181 of the Illinois Supreme Court Reports, at page 334, a petition was filed for a writ of mandamus to compel James Reddick, Clerk of the Sanitary District, and the Sanitary District, to pay the petitioners the sum of $15,000 claimed to be due on a contract for work done on the main channel of the Sanitary District, that sum having been retained by the Board after the completion of the work as an indemnifying fund to await the termination of certain litigation concerning the work. The Sanitary District demurred to the petition and the demurrer was overruled. The Sanitary District stood by the demurrer, and appealed to the Appellate Court where the trial court was reversed. Appeal was then taken to the Supreme Court, and the petition was dismissed. The court sat forth the fact that there was a dispute between the parties as to the actual amount due, and the court used the following language: "There is a disagreement between the parties as to the amount due on account of interest, the appellees claiming there was no interest due and appellants maintaining the contrary. The Board provided that in the receipt the district should be released 'in full.' The petition does not show upon its face that the petitioners had made a demand upon the Secretary of the Board for the money with an offer to perform the conditions contained in the order of payment, but, on the contrary, it shows appellants refused to receive the money upon the terms prescribed by the Board and were demanding certain reservations as to the payment of interest. The Board was clothed with a discretion in the matter of ordering the payment of appellants' claim, and if they saw proper to make an order upon conditions which appellants were unwilling to accept, the latter's remedy was not by this proceeding."

POWERS OF THE CITY OF CHICAGO AND THE SANITARY DISTRICT OF CHICAGO DISTINGUISHED.

The case of City of Chicago v. The Sanitary District of Chicago, reported in Volume 272 of the Illinois Supreme Court Reports, at page 37, was a case where the City of Chicago, by an ordinance providing for the construction of an intercepting sewer emptying into the Chicago River, sought to acquire by condemnation from the Sanitary District a strip of land acquired by the Sanitary District by condemnation for the purpose of widening said river, the strip in question having remained after the widening had been accomplished. The court in this case stated: "The situation presented is unusual. The

Sanitary District was organized mainly to solve the sanitary and sewage problems of the City of Chicago by giving it an outlet for its drainage and sewage and preventing the contamination of the waters of Lake Michigan. This court said, in the Green case, that the Sanitary District act was passed to furnish a common outlet for the sewage of the incorporated municipalities in the district; that it recognized the existence of such municipalities and did not curtail their powers except in the one matter of a common outlet for their sewage and drainage; that the act was intended to give the corporate authorities of the sanitary district control of the ordinary sewers and drains within its boundaries. It was said in the case of Judge v. Bergman that the installation of a system of sewers connecting with the houses of a city was the province of the city and not within the powers of the sanitary district. The function of the sanitary district as to provide a channel into which the sewage could be emptied and maintain a flowage that would carry it away from Lake Michigan. The sanitary district was not intended to have the power to determine the system of sewers which could be adapted for the purpose of carrying sewage into the channel provided by it for that purpose. The outlet in any system of sewers designed to drain a large area as is the case here, is an important element in the determination of the system. The object for which the sanitary district was organized is accomplished by providing and maintaining a channel sufficient to carry through it the drainage emptying into it by the municipalities in the district. If by owning a narrow strip of land along the banks of the channel the sanitary district can prevent sewer connections with it except at such places as it may consent to, it could indirectly in a measure dictate to the city its plan of sewer systems. No such power was intended to be given by the Sanitary District act. In view of the purpose for which the sanitary district was organized or created and the powers given its corporate authorities, we think it must be held, whether given express power to do so or not, that the city has the power to condemn the land of the sanitary district, or anyone else, for the purpose of emptying its sewage into the channel. But even if that were not true, the land sought to be condemned is not devoted to the necessities of the district for the maintenance of its channel, and under the power of the city to construct and maintain sewers, and for that purpose to exercise the right of eminent domain, we are of the opinion the city had the right to condemn the land in question."

Apparent Conflict of Powers

AUTHORITY TO ACQUIRE PROPERTY HELD FOR PUBLIC USE.

In the case of Sanitary District v. Lee, reported in Volume 79 of the Illinois Appellate Court Reports, the court said, page 165:

"At the threshold of the inquiry, the question is raised whether the Sanitary District has the power to erect, etc., a bridge, by way of compensation to the railroads,

Lee Case

as provided in the several contracts with the railroad companies. Section 8 of the act under which the Sanitary District is organized provides: 'Such Sanitary District may acquire by purchase, condemnation or otherwise, any and all real and personal property, right of way and privilege, either within or without its corporate limits, that may be required for its corporate purposes,' etc. It is contended that the power to make compensation by erecting a bridge, etc., can not, on well recognized principles of construction, be held to be included in the word 'otherwise,' but we do not find it necessary to base the right to so make compensation on the word 'otherwise' in section 8.

Compensation for Lands

"Section 17 of the act provides: 'When it shall be necessary, in making any improvements which any district is authorized by this act to make, to enter upon any public property, or property held for public use, such district shall have the power so to do, and may acquire the necessary right of way over such property held for public use in the same manner as is above provided for acquiring private property, and may enter upon, use, widen, deepen and otherwise improve any navigable or other waters, waterway, canal or lake; provided the public use thereof shall not be unnecessarily interrupted or interfered with, and that the same shall be restored to its former usefulness as soon as practicable,' etc.

Public Property

"We cannot concur in the contention of appellee's counsel that the above quoted words, after the word, provided, apply only to 'public property' and not at all to 'property held for public use.' On the contrary, we think that, construing the language strictly and grammatically, the provision applies in terms to property held for public use. Railroads are public highways of the State, and are so declared to be by the Constitution and the Supreme Court so holds, and the Federal Supreme Court holds the same, as a proposition of general law and without reference to any constitutional provision.

"The railroads, being public highways, are held for public use, and it is not contended that the acquisition by the Sanitary District of the right of way through the railroad property is not necessary. The tracks of the railroad companies are now constructed on the solid ground, which, in all human probability, is a permanent foundation; the foundation for the tracks proposed by the contracts with the companies, namely, a bridge to be properly and continuously maintained, is as near an approach to the present foundation as is perhaps practicable, and is, as we think, clearly within the power of the Sanitary District."

Public Highways

ADVERTISING FOR BIDS.

In the case of Sanitary District v. Lee, reported in Volume 79 of the Illinois Appellate Court Reports, at page 159, the court quoted the provisions of Section 11 of the Sanitary District act as follows: "All contracts for work to be done by such municipality, the expense of which will exceed $500, shall be let to the lowest responsible bidder

Section XI

therefor, upon not less than sixty days' public notice of the terms and conditions upon which the contract is to be let having been given by publication in a newspaper of general circulation is said district, and the said Board shall have power to reject any and all bids."

The court, continuing, stated: "It is claimed by appellants' counsel, but we can hardly think seriously, that this section does not apply to the contract for the work in question. The construction of the bridge is 'work to be done' by the Sanitary District in pursuance of its contracts with the railroad companies; the expense of it will greatly exceed $500; a contract for it is, therefore, within the very letter of the section, and it must be advertised and let as therein provided. This court has heretofore held that: 'The object of the statute is, that there should be notice, in writing, of the work to be contracted for, given by publication, to secure full and fair competition and prevent favoritism.' The Supreme Court of Wisconsin has held that: 'The law requiring contracts to be let to the lowest bidder is based upon public economy, and originated, perhaps, in distrust of public officers whose duty it is to make contracts.' The same court, in another case, held, that the obvious policy and intention of the statute was to render favoritism impossible."

Public Protection

After discussing various decisions, the court then stated: "We are of the opinion that the spirit and intent of Section 11 of the act is that the Sanitary District shall so advertise the work to be let and invite proposals therefor, that nothing will be left to the discretion of the trustees, after the bids shall have been received, except to determine who is the lowest responsible bidder. The question who is the lowest bidder is determinable by a mere inspection of bids, and involves no exercise of discretion, but only a comparison of figures. The bidder who has offered to do the work for the smallest sum is the lowest bidder, and as among bidders equally responsible, the work cannot lawfully be awarded to one who is not the lowest bidder."

Procedure

"The Supreme Court has reprobated, in no uncertain terms, the reservation of the decision of any matter material to a public work until after the making of a special assessment for the work, or the reception of bids for the contract."

"All matters material to the contract to be let must be determined before advertising for bids, and that the advertisement, including documents to which it refers, must give full and definite information of the precise work to be done as a basis for intelligent bidding."

Specifications

"In the present case the attention of bidders was invited by the advertisement to only two plans, one on the designs of C. L. Strobel, and the other on that of the Scherzer Rolling Lift Bridge Company. It appears from the record, and is conceded, that a bridge built on the plan of the latter design will be much more expensive than one

built on the plan of the former, and that the designs are essentially different. Therefore, the adoption of the plan or design was matter material to the contract, and it was incumbent on the Sanitary District to adopt the plan or design before advertising for bids, and the adoption of it after receiving the bids, and the award based on such adoption, were illegal."

Bridge Designs

"Section 11 of the Sanitary District act is stricter in its expressed requirements than was the statute commented on in any of the cases cited. It, in terms, requires public notice to be given 'of the terms and conditions upon which the contract is to be let.' The phrase 'terms and conditions' embraces all of the contract. How is it possible to give notice of the terms and conditions upon which the contract is to be let, when the very plan on which the work is to be done is undertermined? It is simply impossible."

Notice Required

Counsel for the Sanitary District say that no fraud is charged in the bill. This is not necessary to appellee's case. It is not even necessary to appear that there was actual or intentional fraud. It is enough if it appears that, by a violation of the statute, an opportunity for fraud or favoritism was created."

In the case of Johnson et al. v. Sanitary District, reported in Volume 163 of the Illinois Supreme Court Reports, at page 285, the court, after quoting Section 11 of the Sanitary District act, stated: "The advertisement for bids was in the form generally used by corporations, both municipal and private, and contained these express provisions: 'No proposal will be considered unless the party making it shall furnish evidence satisfactory to the Board of Trustees of his ability to do the work, and that he has the necessary pecuniary resources to fulfill the conditions of the contract, provided such contract shall be awarded to him. Bidders are required to state in their proposals their individual names and places of residence in full.' Under this advertisement many bids were made, but for this discussion we need take into consideration but two—that of appellants, which was the lowest, and that of Griffiths & McDermott, which was the next lowest in amount. The Board, after patient investigation as to the financial responsibility of the bidders to do the work, as well as their conception of the work to be done, rejected the bid of appellants and let the contract to Griffiths & McDermott. By the proposal for bids as advertised, the Board required evidence to be furnished of the ability to do the work and of necessary pecuniary resources to fulfill the conditions of the contract. It necessarily reserved to itself the determination of the sufficiency of that evidence. The act under which authority to advertise for bids existed, expressly provided the Board should have power to let to the lowest responsible bidder, and to reject any and all bids and re-advertise. The Board having reserved to itself the right to pass upon the evidence of the pecuniary resources and ability to do the work, and being, under the act, vested with the

Johnson Case

Lowest Bidder How Determined

power to determine the lowest responsible bidder, it is by the act made the judge to determine the qualifications of the bidders. When the statute vests a discretion in a municipal body to determine a question, it is not the province of the courts to determine and control that discretion. The mandatory injunction applied for to compel the letting of the contract to appellants is in the nature of a mandamus, and is an attempt to control a discretion that is judicial in its nature. The duty of examining the proposals, determining the responsibility and awarding the contract is judicial in its nature and character, and the awarding the contract is a judicial act, which is not within the province of the courts to control by mandamus or mandatory injunction."

Power of Courts

In the case of Sanitary District v. Blake, reported in Volume 179 of the Illinois Supreme Court Reports, at page 167, the court stated: "Upon the report and advice of appellant's chief engineer, the appellant, at a meeting of its trustees, decided to make what was called an 'erosion test' upon a section of its drainage channel, and directed the chief engineer to make the test as recommended in his report, at a cost not to exceed $1,500. The appellee proposed to appellant's engineer to furnish three pumps of the kind wanted, and a man to superintend the work of setting them up, for $42.50 per day. This proposition was accepted, the pumps were received, and the services of the man to superintend them were availed of by appellant for such a length of time as to amount in value, according to contract price, to $1,200.55. Payment was resisted on two grounds: First, that appellant had no power to enter into the contract, because it was not let to the lowest bidder; and second, because the expense of the test was limited by the Board of Trustees when it was directed to be made for $1,500, and appellant had since then expended $1,496.30 for labor and other necessary expenses in making the test, leaving nothing of the $1,500 with which to pay appellee's demand. In support of the first ground, section 11 of the Sanitary District act is relied upon. 'We are of the opinion that this provision of the statute has no application to the case at bar. The contract in question was not a contract for work by appellee with appellant to cost more than $500. It was a mere hiring of pumps by appellant by the day, to be used by its engineer in making the test desired, and appellant could have discontinued their use and returned them at any time. The appellant did the work itself by its chief engineer and used appellee's pumps at a stipulated price per day, and it should be compelled to pay for them. The statute, without resorting to a strained construction, cannot be held to cover such a defense. The second ground of defense is also devoid of merit. The Board first fixed a limit to the expense, of which limit appellee had no knowledge, and then voluntarily exceeded that limit, and now sets up such excess as a reason why it should not pay appellee'."

Blake Case

Erosion Test

Exception to Rule

Liability

In the case of Sanitary District v. Ricker, reported in Volume 91, Federal Reporter, at page 833, the United States Circuit Court

of Appeals passed upon the power of the trustees of the Sanitary District with reference to advertising for bids and making contracts, and the court there stated: **Ricker Case**

"We are of opinion that the decree under review rests upon an erroneous theory. The contract which the court ordered annulled was made by parties dealing at arm's length. The sanitary district stood in no relation of trust or confidence, and owed no duty, to proposing contractors. The trustees of the district and their chief engineer, it might well be said, were bound in duty to the public to use diligence to obtain such knowledge of the conditions to be dealt with as was necessary to enable them, in letting contracts, to conserve the public interests, but there has been pointed out no provision in the statute whereby the drainage district was created and the powers of its officers defined, which required that information concerning the nature of materials to be excavated should be collected for the benefit of bidders, and for the assertion of such duty on the general principles of law or equity there is, we believe, no foundation in authority or reason. If conceded, the proposition would mean that every representation made by public officials or trustees, appointed to obtain proposals for the execution of a public work, amounts to a warranty either that the representation is true or that experienced and skillful agents had been employed to obtain the information on which it was made, and that the agents had followed the best known methods and had been guilty of no negligence in the discharge of their duties; or, to say the least, that, if such representations are not to be regarded as warranties, either of the truth of the statements or of due diligence used to make them true, they do demonstrate, if they turn out to be untrue, a mutual mistake of the parties, by reason of which the bidder may abandon his contract, once he discovers in the course of performance that the representations were false or mistaken. The books would be searched in vain for precedents or principles to sustain such a doctrine. The possibilities which it would involve of peril to public interests are infinite. It would take from the contractor, and impose on the public, all undiscovered contingencies and risks, which by diligence might have been found out, incident to the construction of public works. **Duty to Public** **Representations are Not Warranties**

"The principles underlying the conclusion already declared are inconsistent with the proposition, in the master's finding of law, that, while the drainage district was under no obligation to give any information to the complainants touching the character of material likely to be encountered in Section F, yet, when it did make and exhibit a profile for the information of bidders, it was bound in good faith to communicate to them, also, all the information in its possession on the subject, namely, the reports of the Cooley borings, the government borings, and the statement of General Fitz Simons made before the engineering committee of the defendant. The drainage district was represented by its board of trustees, not by the individuals who composed the board, and could be bound by the action of the

board, directly or through agents empowered to act or speak for it, but not by the knowledge or conduct of its individual members. It is not material, therefore, that some of the trustees at the time of the making of the contract with the appellees, were familiar in a general way with the fact that Cooley, when chief engineer, two years or more before, had made borings, and by his report had known the results of such borings; or that some of the trustees, two years or more before, had been present and heard the statements of General Fitz Simons to a committee of engineers; or that the certified copy of the government borings was also on file in the office of the defendant. The important and controlling finding is that the evidence does not show that the trustees, or any of them, at the time when this contract was made, had any actual knowledge of the existence of said intractable material, or that they intended any deceit. The drainage district was not originally, and by nothing that occurred did it become, under obligation to the appellees that its trustees should recall and communicate to them facts of the past, which they had forgotten, and of the significance of which, being men without experience in engineering, they had little or no understanding when they were told of them."

Trustee Cannot Bind Board

CALUMET SAG CHANNEL—LIABILITY FOR DAMAGES.

The Sanitary District of Chicago sought to condemn a right of way and easement for the Calumet Sag Channel across the railroad right of way of the Chicago & Alton Railroad Company and others. The questions in dispute concerned the matter of abutting damages of property taken, the amount thereof, and the power of the Sanitary District with reference to taking the property sought. The court stated in this case, which is reported in Volume 267 of the Illinois Supreme Court Reports, at page 252:

C. & A. Case

"Under the authority granted to it by the legislature, the Sanitary District of Chicago has laid out and established a right of way for a channel extending from a point on the Little Calumet River, near Blue Island, Cook County, Illinois, to the main channel of the district at or near the Sag. The proposed channel intersects the right of way of the Chicago and Alton Railroad Company near Lambert station, in the same county. The right of way of the district at that point is approximately two hundred feet in width, and the records show that the district intends to construct a channel which at the point of the proposed crossing is one hundred feet in width. So constructed, the channel will occupy permanently about that width of the right of way, necessitating the construction of a bridge to carry the railroad tracks over said channel and the elevation of the railroad right of way on each side of the bridge to the grade necessary to allow the crossing of the bridge above said channel. When the channel is completed it will connect Lake Michigan, through the Little Calumet and Grand Calumet rivers, with the main channel of the sanitary district. The Calumet Feeder of the Illinois and Michi-

gan Canal extends from the Calumet river near Blue Island to the Illinois and Michigan canal at or near the Sag, and is practically parallel with the proposed Sag channel of the sanitary district. Where said Feeder crosses the Alton right of way the railroad bridge maintained by said railroad is about three hundred feet from the point where the Sag channel will cross said railroad right of way. When said sanitary district channel is completed it will entirely drain the Calumet Feeder and the territory tributary thereto, and the Feeder thereafter will serve no purpose. This Feeder, since its construction, has been considered, in law, as part and parcel of the Illinois and Michigan canal. Said Feeder was not a natural water-course but was artificially constructed previous to the building of the appellee's railroad, said railroad building and maintaining at its own expense a railroad bridge over said Feeder at this point.

Canal Feeder C. & A. Bridge

"Counsel for appellant contend that this court has held that the Sanitary District of Chicago was organized to preserve health and to protect life, and that the construction of this and other channels for carrying out that purpose of the sanitary district is in the interest of the public health and a regulation under the police power for the purpose of protecting the public health and life of the people, and that, therefore, under the authorities in this and other jurisdictions, appellees can only recover for the actual value of the property taken."

Value of Property Taken

"Police power has been defined by this court as that inherent, plenary power in the State which permits it to prohibit all things hurtful to the welfare, comfort and safety of society. It is co-extensive with self-protection, and is not inaptly termed the 'law of overruling necessity.'" The extent of this power has never been defined with precision. Indeed, it cannot be accurately defined, and the courts have not been able or willing definitely to circumscribe it. It is much easier to perceive and realize the source of this power than to mark its boundaries or prescribe its limits. Notwithstanding, however, it is very broad and far-reaching, it is not without its restrictions. "It cannot be held to sanction the taking of private property for public use without making just compensation therefor, however, essential this might be, for the time, to the public health, safety, etc. It must have some relation and be adapted to the ends sought to be accomplished. Rights of property will not be permitted to be invaded under the guise of police regulations. Every person is bound to use his property so as not to interfere with the reasonable use and enjoyment of the property of others and not to interfere with the general welfare of the community in which he lives. This last, only may be regulated by the police power of the State. Whatever restraints the legislature imposes upon the use and enjoyment of property within the reason and principle of this duty the owner must submit to. 'It is a regulation and not a taking; an exercise of police power and not of eminent domain. But the moment the legislature passes beyond mere regulation and attempts to deprive the individual of his property, or of

Police Power

some substantial interest therein, under the pretense of regulation, then the act becomes one of eminent domain.' Police power and eminent domain are distinct powers of the government. 'The difference lies neither in the form nor in the purpose of taking, but in the relation which the property affected bears to the danger or evil which is to be provided against. * * * It may be said that the State takes property by eminent domain because it is useful to the public, and under the police power because it is harmful,' or, as Justice Bradley has put it, because 'the property itself is the cause of the detriment. The legislature may determine when the exigency exists for the exercise of the police power, but it is for the courts to determine what are the subjects of the police power and what are reasonable regulations thereunder, and whether there is any real or substantial relation between the avowed subjects of the law and the means devised therein for attaining those ends'."

Assembly and Courts

The court further stated: "Regardless, however, of the correctness of the conclusions heretofore reached on the legal questions discussed in this opinion, there is a further reason why it cannot be held that the appellee railroad company is required to build and maintain this bridge at its own expense. It is a general proposition of law that a municipal corporation possesses and can exercise only those powers that are granted to it in express words or are necessarily or fairly implied in the powers expressly granted and essential to the accomplishment of the declared objects and purposes of the corporation. What police powers a local corporation or municipality may exercise, and the manner in which they are to be enforced, will depend upon its charter, or legislative act applicable thereto, and the general policy of the State with respect to the same. It can only exercise such powers as are fairly included in its charter grants. The State may delegate to local municipalities, in such measure as it may deem desirable for the best interests of the public, this power, and may resume it again when deemed expedient. The police power of the Sanitary District of Chicago therefore depends upon its charter powers granted by the legislature by the act creating it."

The court then discussed the various sections of the Sanitary District act pertinent to the issues in this case, and followed with the statement: "Manifestly, from these sections, read in connection with the remaining portions of these acts, the legislature intended that this municipality should be required to build bridges across the main channel and its adjuncts. It would be inconsistent, in view of this general requirement as to the construction of bridges by the Sanitary District, if such district should be relieved from building bridges when its channel crosses railroad rights of way. Under the present wording of the statute it would be most unreasonable to put such a construction upon this act. This court has said that no other kind of a municipal corporation in this State has such extensive powers as does a Sanitary District organized under this act. Every provision of the act bearing on this question shows that it was the in-

Bridges

Large Powers

tention of the legislature to hold the Sanitary District to a strict accountability for all damages inflicted by it upon any property, whether owned by private interests or the public, and to require it to pay full compensation for the property actually taken and for damages to the remainder.

"This court has had occasion several times to construe certain provisions of the Sanitary District act which have a greater or less bearing on the question here under consideration. In Lussem vs. Sanitary District of Chicago, 192 Ill., 404, it was held that the Sanitary District had authority to build new bridges across the Chicago River, made necessary by widening the river. In Beidler vs. Sanitary District of Chicago, 211 Ill., 628, the court held that damage caused to adjacent property by lowering the water level on dock canals on the south branch of the Chicago River through the construction of the Sanitary District channel was damage to private property for public use, for which the constitution guaranteed compensation. In that case counsel for the Sanitary District relied upon the doctrine of police power as a defense, arguing that as the Sanitary District had been delegated power by the State for the building of this canal for preserving and safeguarding public health, under such power it was not liable for such damages. In Pittsburgh, Ft. Wayne & Chicago Railway Co. vs. Sanitary District of Chicago, 218 Ill., 286 (the same case was also before this court in 216 Ill., 575), the court affirmed a judgment in favor of the railway company for over a million dollars in a condemnation proceeding, where the Sanitary District acquired, by condemnation, the right to some of the property of the railway company, including tracks which were a part of its freight and passenger terminal, in order that it might deepen and widen the Chicago river. It was there held that the Sanitary District had the power to condemn property for public use, not only under Section 17 of the Sanitary District act, but also under Section 8 of the said act.

Previous Decisions

"It is conceded by counsel for the Sanitary District that heretofore the district has built all the bridges for railroad corporations where similar crossings of the railroad right of way have been made by the channel of the Sanitary District as proposed to be made in this case, and that never before this case has the right or duty of the Sanitary District so to do been questioned. Indeed, it is apparent from the briefs of counsel for the Sanitary District in some of the cases heretofore cited, that they have argued in favor of the right and duty of the Sanitary District to build such bridges. Furthermore, to hold as now contended for by counsel for the district would be to practically overrule the decisions of this court last cited, and decide that the millions of dollars shown by those decisions to have been spent by the Sanitary District heretofore in constructing bridges for railroad corporations under like circumstances to those here presented have been expended contrary to law. The legislature obviously did not intend to make the Sanitary District of Chicago, under this law a favored municipality in questions of this kind. To uphold the argument of counsel in this case would be to place such

Duty to Build Bridges

municipality in a most favored position as compared with other municipal corporations.

"* * * Under the construction heretofore given to the Sanitary District act by this court, the trial court rightly allowed the damages in the court below against the Sanitary District for the propery of appellees taken in condemning the right of way for its channel at the Sag over and across the right of way of the appellee railroad company. Such construction is in full accord with the legislative intent as expressed in the Sanitary District statute and is in entire harmony with the general public policy of this State on this question."

THE EFFECT OF TURNING THE WATER OF LAKE MICHIGAN THROUGH THE CHICAGO RIVER INTO THE MAIN CHANNEL

Corrigan Case

In the case of Corrigan Transit Co., et al. vs. The Sanitary District of Chicago, reported in Volume 137, Federal Reporter, at page 851, the United States Circuit Court of Appeals held that "the government permit to create a current in the Chicago River by connecting a branch thereof with the sanitary canal, providing that the Sanitary District shall assume all responsibility for damages to property and navigation by reason of the introduction of such current, constituted a mere contract of indemnity to save the government harmless from liability for such damages, and not an undertaking on the part of the Sanitary District to pay damages to third persons for which they would otherwise have no cause of action; that where a libel against a Chicago Sanitary District to recover damages to shipping by reason of respondent's introduction of a current in the Chicago River was predicated on the introduction of any current therein which would render navigation more difficult and expensive than it previously was, libelants were not entitled to recover on account of the rate of the current on the date the damages occurred; that where the Secretary of War authorized the construction of improvements in the Chicago River so as to secure a flowage capacity of 300,000 cubic feet per minute with a velocity of 1¼ miles an hour, but reserving the right at any time, when it became apparent that the current created in the river was an unreasonable obstruction to navigation to close the connection between the river and the canal of the Sanitary District, the grant was not conditioned on the district's keeping the current within the stated velocity."

BRIDGES

The work of deepening, widening and improving the Chicago River, and its branches, by the Sanitary District, involved the securing of a large amount of property, which was afterwards dredged out by the District, and in procuring this property many condemnation cases were instituted and prosecuted to a conclusion. Some of these cases were adjusted before trial by contracts and deeds, and

much of this property was secured, through negotiations, by contracts and deeds without the necessity of condemnation proceedings. All of this involved a large amount of work on the part of the Law Department in the matter of preparing petitions for condemnation and briefs on the law and facts. The trial of these cases in many instances occupied much time. The preparation of contracts and deeds, examination of titles, etc., will be more particularly set forth in part two of this volume.

In connection with this work many bridges were constructed by the Sanitary District over the Main Channel, North Shore Channel, Calumet Sag Channel, Des Plaines River and the Chicago River and its branches. The work of preparing contracts and specifications as to each of these bridges will be hereinafter referred to in part two.

As a matter of interesting information, it may be well to here set forth the bridges built by the District, the cost of each, and the total cost of all such bridges constructed, as follows:

BRIDGES BUILT BY THE SANITARY DISTRICT OF CHICAGO WITHIN THE CITY OF CHICAGO

North Shore Channel.

Stationary Bridges	Cost	Opened for Traffic
Devon Avenue	$ 7,395.52	Aug. 18, 1910
Lincoln Avenue	21,604.63	Feb. 10, 1911
Petersen Avenue	12,911.94	Sept. 17, 1910
Bryn Mawr Avenue	8,087.35	1913
Foster Avenue	21,303.57	July 23, 1910
Argyle Street	9,815.56	Aug. 11, 1910

CHICAGO RIVER, NORTH BRANCH.

Stationary Pile and Timber Bridges, Replacing Old Stationary Bridges.

Montrose Boulevard	$ 10,181.95	Nov. 22, 1906
Irving Park Boulevard	10,328.65	Sept. 1905

Pile and Timber Approaches and Supports for Old Stationary Bridge.

Addison Street	$ 5,002.06	Dec. 28, 1907

CHICAGO RIVER, MAIN RIVER.

New Bascule Bridges, Replacing Old Swing Bridges.

State Street	$201,665.86	Feb. 28, 1903
Dearborn Street	316,240.52	Oct. 10, 1907

CHICAGO RIVER, SOUTH BRANCH.

New Bascule Bridges, Replacing Old Swing Bridges.

	Cost	Opened for Traffic
Randolph Street	$256,582.91	Apr. 15, 1903
Jackson Street	389,996.68	Jan. 29, 1916
Harrison Street	315,691.52	Oct. 26, 1905
Taylor Street	107,598.46	Jan. 30, 1901
C. T. T. R. R. (B. & O. C. T. R. R.)	449,363.02	Dec. 12, 1901
Eighteenth Street	231,902.00	Jan. 7, 1905
Canal Street	184,693.87	Jan. 19, 1903
Twenty-Second Street	280,727.07	Nov. 1, 1906
Main (Throop) Street	195,542.87	Nov. 25, 1902
Loomis Street	234,051.41	Oct. 17, 1904
Ashland Avenue	166,521.43	Nov. 25, 1902

Stationary Approach Span, Account of Construction of By-Pass

Van Buren Street	$ 35,443.11

MAIN CHANNEL.

Bascule Bridge (Four Spans).

Old Eight Track R. R. Bridge	$635,174.22	April 1901
New Eight Track R. R. Bridge, Span No. 1 (E)	458,176.20	Oct. 2, 1909
Span No. 2		April 21, 1910
No. 3		Feb. 7, 1910
No. 4		Nov. 22, 1909

Swing Bridges.

Western Avenue, West Roadway	$153,162.71	1900
East Roadway		1904
C. M. & N. R. R. (I. C. R. R.)	180,777.54	July 2, 1899
Kedzie Avenue	49,779.13	April, 1899
A. T. & S. F. Ry.	81,574.56	June 27, 1899
Belt Railway	229,454.62	Dec. 12, 1900

Viaduct.

C. M. & N. R. R. Over Kedzie Ave.	$ 13,002.95	1899

Total Cost of Replacing Old Bridges Over Chicago River . $3,348,077.62
Total Cost of All Sanitary District Bridges in Chicago . . . 5,291,253.89

BRIDGES BUILT BY THE SANITARY DISTRICT OF CHICAGO OUTSIDE OF THE CITY OF CHICAGO

NORTH SHORE CHANNEL.

Stationary Bridges.

	Cost	Opened for Traffic
Sheridan Road	$ 78,976.49	Nov. 25, 1911
Linden Avenue	14,412.40	Feb. 20, 1909
Hill Street	12,385.86	Feb. 26, 1909
Isabella Street	9,777.00	Jan. 4, 1910
C. M. & St. P. Ry.	67,285.24	Oct. 8, 1909
Central Street	23,531.08	Apr. 2, 1909
Lincoln Street	15,296.70	Feb. 3, 1911
C. & N. W. Ry., Milwaukee Div.	76,306.29	Nov. 29, 1909
West Railroad Avenue	26,579.44	Nov. 17, 1910
Browne Avenue	15,370.03	Oct. 1909
Emerson Street	18,051.59	Aug. 3, 1909
Church Street	10,280.19	Feb. 2, 1909
Dempster Street	9,121.99	Dec. 28, 1909
Main Street	11,162.05	Nov. 30, 1910
Oakton Avenue	7,465.90	Sept. 1910
C. & N. W. Ry., Mayfair Div.	132,307.38	Nov. 13, 1909
Howard Avenue	7,336.99	Aug. 1910
Kenilworth (Touhy) Avenue	7,406.78	Sept. 16, 1910

MAIN CHANNEL.

Swing Bridges.

A. T. & S. F. Ry. (LeMoyne)	$115,763.47	April 19, 1899
Lyons-Summit Road	45,551.20	June, 1899
C. T. T. Ry.	58,189.99	Oct. 15, 1898
Willow Springs Road	25,079.40	March, 1899
A. T. & S. F. Ry. (Lemont)	136,534.20	May 18, 1899
Lemont Road	29,186.66	1898
Romeo Road	33,621.45	Aug., 1899

Stationary Bridge.

A. T. & S. F. Ry. Viaduct Over Stevens St., Lemont	$ 17,055.93	June 18, 1899

Swing Bridges.

Ninth Street	$ 54,416.93	Feb. 12, 1906
Sixteenth Street	54,947.46	Aug. 22, 1906
Power House Swing Bridge	9,528.52	Dec. 23, 1910

MAIN CHANNEL, WATER POWER EXTENSION (Cont'd).

Stationary Bridges.

	Cost	Opened for Traffic
Ninth Street Deep Run (Raising Stone Arch)	$ 6,115.93	Oct., 1905
Sixteenth Street Deep Run and A. T. & S. F. Ry.	24,341.92	Jan. 19, 1907
Power House Foot Bridge	930.09	Nov. 13, 1913

DES PLAINES RIVER DIVERSION.

Stationary Bridges.

A. T. & S. F. Ry.	$ 19,210.73	1898
Lyons-Summit Road	13,220.47	Oct. 8, 1898
C. T. T. Ry.	29,727.61	Dec. 8, 1899
A. T. & S. F. Ry. (Lemont)	42,013.87	1898
Lemont Road	22,329.89	1894
Western Stone Company	15,983.63	

DES PLAINES RIVER IMPROVEMENT:

Stationary Bridges.

Ninth Street	$ 17,249.73	Aug. 3, 1899
Sixteenth Street	68,569.73	Aug., 1899
E. J. & E. Ry.	45,120.22	1897
Tow Path I. & M. Canal (Removed 1910)	36,361.00	Nov., 1900
Cass Street	46,124.82	June 11, 1900
Jefferson Street	64,032.69	May, 1900
C. R. & P. Ry.	45,287.47	May, 1900
Brandon Road (New Timber Trestle)	2,523.86	Feb. 17, 1917

CALUMET SAG CHANNEL.

Stationary Bridges.

C. & A. Ry.	$ 64,371.75	1917
C. & J. Electric Ry.	28,231.55	June 19, 1917
Archer Road	11,535.00	Dec. 8, 1917
Bach Road	13,516.16	April 5, 1915
McLaughrey Road	10,286.67	Dec. 31, 1914
West Eighty-Second Street	9,173.22	July 21, 1915
Wabash Ry. (Cost to Sanitary District)	26,083.00	July 3, 1915
Worth Road	18,603.59	Nov. 24, 1916
Piper Road	27,727.38	July, 1917
Burr Oak Avenue	30,410.54	Nov. 4, 1916

CALUMET SAG CHANNEL (Cont'd).

	Cost	Opened to Traffic
Forty-Eighth Avenue	$ 22,620.27	May, 1917
Homan Avenue	20,180.19	Mar. 28, 1917
Kedzie Avenue	12,289.71	Sept. 30, 1916
Francisco Avenue	14,354.06	Jan. 29, 1917
C. R. I. & P. Ry. Connecting Track	25,000.00	
Grand Trunk Western Ry	175,000.00	
B. & O. C. T. R. R	250,000.00	1919
Public Service Co. Trestle	6,500.00	1918
Ann Street	15,783.35	
Western Avenue	39,113.17	Mar. 31, 1917
C. R. I. & P. Ry. Main Line	175,000.00	1919
Chicago Street	16,335.05	
Division Street	17,585.91	
Ashland Avenue	13,487.76	1919
Controlling Works Road	4,993.46	1919
Controlling Works Foot Bridge	2,500.00	1919
B. & O. C. T. Ry., Stony Creek (Cost to Sanitary District)	10,000.00	
Milk Creek Bridge and Spillway	1,718.00	Oct. 16, 1913

TOTAL COST:

Sanitary District Bridges Outside of Chicago (Est.)	$2,684,472.06
Sanitary District Bridges Inside of Chicago	5,291,253.89
Grand Total (Est.)	$7,975,725.95

ROOSEVELT ROAD (12TH STREET) BRIDGE

An agreement was entered into between the City of Chicago and The Sanitary District of Chicago, under date of October 4, 1915, providing for the construction of a direct lift bridge across the south branch of the Chicago River at 12th Street (now Roosevelt Road), but differences of opinion arose as to the character of the structure to be erected and delays were subsequently caused because of war conditions. Early in 1919, negotiations were again resumed, and many public hearings were had by officials of the City of Chicago and by the Board of Trustees of the Sanitary District, and later on several joint public hearings were held, as a result of which an agreement was formulated, a draft of which appears in the Proceedings of the Sanitary District for the year 1919 at pages 836 to 842.

Said last mentioned agreement provides that the original agreement of October 4, 1915, shall be abrogated; that a new bridge of the single leaf bascule type shall be erected, which bridge shall provide a clear channel for navigation purposes of 140 feet in width and a

by-pass with a cross-sectional area of 1400 square feet below Chicago City Datum available for the flow of water through said by-pass, with provision that subsequently the bridge can be changed and the river channel widened to give 170 feet clear navigable channel by dredging out a strip of land behind or east of the east dock line of said 140 foot channel; that the City shall, as soon as practicable, prepare plans and specifications for the substructure and superstructure of said new bridge, said new bridge to have a roadway approximately 56 feet wide between curbs with two sidewalks each approximately 17 feet wide; that the City shall also construct a by-pass with free unobstructed approaches thereto for the flow of water beneath said new bridge west of said abutment; that the plans and specifications for this new bridge shall be subject to the approval of the Chief Engineer of the Sanitary District, and no contract shall be awarded before such approval is secured; that subsequently the City shall advertise for bids for the bridge described, subject to the approval of the Board of Trustees of the Sanitary District, and that the City shall award contracts for the performance of the work with the approval of said Board of Trustees and not otherwise; that before the commencement of the work at the site of the bridge, the City shall acquire the necessary land on the east side of said river and shall lengthen the east arm of the existing center pier swing bridge at Twelfth Street (now Roosevelt Road), and remove the east end pier of same and construct a new temporary east end pier so as to provide a navigable channel through the east draw of said swing bridge at least 92 feet wide in the clear, measured at right angles to the center line of said channel; that the City shall promptly construct a new permanent dock on the east side of said river across Twelfth Street (now Roosevelt Road) along the east line of said 140 foot channel beneath said new bascule bridge, and shall dredge said land and said river channel between new dock and the center pier of said swing bridge to a clear width of not less than 92 feet.

It is not necessary to set out here all the many details covered by this agreement, but only so much as will call attention to the character of this valuable improvement to the City and the Sanitary District.

The City is to acquire by purchase for condemnation a triangular strip of land south of the site of said proposed bridge and to dredge out the same and straighten the channel of the Chicago River at that point. The contract further provides that the Sanitary District agrees to pay the City, in the manner specified therein, one-half the cost of removing the substructure and superstructure of the existing bridge, one-half the cost of constructing the abutment, east end pier and protection of the new single leaf bascule bridge, including the necessary cofferdams, and excavation in same and the necessary dredging in the present river channel within or adjoining Twelfth Street, and also one-half of the cost of the superstructure of said new bridge including only the movable leaf and the stationary parts of the bridge located over and upon the abutment, the electrical equipment, traffic and barrier gates, river signals, sidewalk and roadway

lights and signals, machinery houses, operator houses and guard houses and lighting equipment for same; also one-half the cost of such extra work and incidental expenses, as may in the opinion of the Chief Engineer of the Sanitary District be necessary to fully complete the work herein above described in this section of this agreement.

The agreement further specifies at great length the number of items which shall be paid for by the City only. It further provides that the total amount to be paid by the Sanitary District shall not exceed the sum of $600,000.00, and that no part of this sum shall be paid by the Sanitary District to the City until the City shall have acquired all of said land provided to be acquired for the by-pass and for the approaches thereto and for widening the river on the east side thereof at Twelfth Street, and said triangular piece of land on the west side of said river, about 500 feet south of Twelfth Street, and not until said city shall have dredged all of said parcels of land and shall have constructed said docks fronting on each of said parcels of land as therein provided.

The City Council at its meeting on July 21, 1919, passed two ordinances providing for the purchase of the lands to be acquired as provided in the contract for said Twelfth Street bridge, and authorizing the Corporation Counsel, in the event of the failure of the City to acquire said land by purchase, to proceed by condemnation proceedings to acquire the same. (See Council Proceedings, 1919, pages 815-816.)

SUPREME COURT OF ILLINOIS PASSES DIRECTLY UPON AMENDMENT AS TO BRIDGES

In the case of John S. Rylands vs. Wallace G. Clark, et al. Sanitary District Trustees, reported in Volume 278 of the Illinois Supreme Court Reports, at page 39, the question of the authority to build certain bridges was the sole and only issue.

The Act of June 25, 1915, amending Section 17 of the Sanitary District Act, and providing that the District shall build bridges where certain streets are intersected by the construction of its drainage canal, which bridges, if wholly within the limits of any municipality, shall be the property of such municipality, was held by the court not to be in violation of Section 22 of Article 4 of the State Constitution, either as granting special privileges and immunities or as being within the inhibition of such section against the passage of local laws relating to roads or streets.

The court further held that the amendment in 1915 of said section of the Sanitary District Act, providing that the District shall construct bridges over certain streets newly extended across its drainage canal, does not deprive either the District or the taxpayers residing therein of property without due process of law, but merely apportions the cost of a public improvement between the two municipalities; that municipal corporations are purely creatures of the legislative will and are subject to its control, and may be created or annulled at

the pleasure of the body creating them and their property turned over to some other municipal corporation and their powers and duties conferred upon such other body.

The bridges involved in this suit were, one on the line of Crawford Avenue (sometimes called Fortieth Avenue), one on the line of Cicero Avenue (sometimes called Forty-Eighth Avenue) and one on the line of Harlem Avenue (sometimes called Seventy-Second Avenue).

CALIFORNIA AVENUE BRIDGE

The General Assembly of Illinois in 1919 amended the Sanitary District Act by providing that a similar bridge should be built on a line with California Avenue and that each and all of these bridges should be of the bascule type. Pursuant to that authority and direction, the Board of Trustees of the Sanitary District proceeded forthwith to provide for the construction of a bascule bridge at California Avenue. At this time (August, 1919) plans and specifications are being prepared with a view to advertising for bids for the construction of this bridge.

ADDITIONAL INFORMATION AS TO THE COST OF BRIDGES, RIVER IMPROVEMENT, ETC.

In connection with the foregoing, it may be well to here state that the expenditures of the Sanitary District of Chicago from the time of its organization to December 31, 1918, for river improvements and bridges have been as follows:

Chicago River, South Branch (Right of Way, improvements and Bridge Construction)	$12,253,063.47
Chicago River, North Branch (Right of Way, Improvements and Bridge Construction)	430,859.28
Main Channel and River Diversion (Right of Way, Channel and Bridge Construction)	29,119,489.45
Controlling Works at Lockport	340,716.73
DesPlaines River Improvement (Joliet Project)	2,336,769.83
Engineering Construction Expense	161,830.70
North Shore Channel (Right of Way, Channel and Bridge Construction)	3,286,595.67
Calumet-Sag Channel (Right of Way, Channel and Bridge Construction and Controlling Works)	11,446,580.20

The foregoing figures and others may be found in the Proceedings of the Sanitary District for the year 1919 at page 765-B.

OVERFLOW CASES

Section 19 of the Sanitary District Act provides that the District is liable for all damage to real estate within or without such District which shall be overflowed or otherwise damaged by reason of the construction, enlargement or use of any channel, ditch, drain, outlet or other improvement under the provisions of this Act. It further provides that actions to recover such damages may be brought in the

county where such real estate is situated or in the county where such district is located, at the option of the party claiming to be injured. It further provides that in case judgment is rendered in any such case reasonable attorney's fees may be allowed the plaintiff and taxed as costs. It further provides for notice to be served upon the Trustees, or some one of them, sixty days before bringing suit, and that the amount recovered shall be larger than the amount offered by the Trustees as a compromise as conditions precedent to the allowance of such attorney's fees.

It is assumed by the Law Department that the foregoing section is an expression of the liability of the Sanitary District at common law and under the Constitution for damages sustained by persons whose land was overflowed or damaged by virtue of the construction, operation or maintenance of the works of the Sanitary District, except as to that portion of the section which relates to the Plaintiff having taxed as costs his reasonable attorneys' fees in the litigation.

Two Classes of Suits

The overflow cases instituted and now pending against the Sanitary District are divided into two classes: Those suits instituted or brought prior to January 17, 1905 (within the five-year period following the opening of the Sanitary District channel) for damages sustained by the Plaintiffs by reason of the construction and operation of the drainage channel. These suits are termed permanent damage suits because the measure of damages is the depreciation of the fair cash market value of the land, due to the opening of the drainage channel on January 17, 1900. In other words, in these suits it is assumed that the drainage canal, when opened and placed in operation, would cause to be flowed through the DesPlaines and Illinois rivers a certain amount of water, and each year thereafter an additional amount, according to the population of the district, and that by virtue of such situation, land subject to overflow would be damaged in its fair cash market value.

The other class of suits is those which have been instituted in later years and seek to recover damages, due to overflow occurring each year, to the crops, timber and other things upon the land thus overflowed. They are called temporary damage suits.

The aggregate ad damnum in the suits instituted for permanent injury or damage prior to January 17th, 1905, was $5,033,680.00. These suits cover approximately seventy-five thousand acres of land in the Illinois and DesPlaines River Valleys subject to overflow. The entire area subject to overflow is estimated at approximately four hundred thousand acres. The suits for temporary damages are one hundred and forty in number and the ad damnum aggregates $1,460,-750.00.

Of the permanent damage suits instituted, 123 have been disposed of, to January 1st, 1919, and the ad damnum was reduced by virtue of trial, settlements, etc., $2,358,475.75, and the Sanitary District has paid the Plaintiffs in such suits disposed of, in settlement or after trial and judgment, the sum of $368,992.56. To many of the permanent damage suits remaining there is a good legal defense.

The history of the litigation concerning temporary damage suits will be hereinafter given, but it is enough to say at this time that such litigation has been without success and it is not likely that the Plaintiffs will now be able to succeed on their theory of temporary damages. This litigation, if successful, however, by reason of Plaintiffs being able, continuously for all time to come, to bring suit for damages to crops, timber, etc., occurring from year to year, would be very serious and would undoubtedly cost the Sanitary District in the neighborhood of Seventeen million dollars. When this fact is considered the importance of that branch of the litigation is immediately apparent.

The DesPlaines and Illinois River overflow cases started before January 17, 1905, were as follows:

County	Number of Suits	Ad Damnum
Grundy	26	$ 627,250.00
LaSalle	49	1,181,000.00
Bureau	37	577,300.00
Putnam	31	288,000.00
Marshall	37	595,300.00
Woodford	13	258,000.00
Peoria	17	162,500.00
Tazewell	13	411,000.00
Fulton	2	100,000.00
Mason	2	33,330.00
Scott	2	105,000.00
Green	3	364,000.00
Total	222	$4,712,680.00
Will	50	321,000.00
Grand Total	272	$5,033,680.00

There were pending in January, 1919, the following suits:

County	Number of Suits	Ad Damnum
Grundy	26	$ 627,250.00
LaSalle	25	351,500.00
Bureau	9	94,500.00
Putnam	12	152,000.00
Marshall	11	115,000.00
Woodford	1	7,500.00
Peoria	3	30,000.00
Tazewell	11	361,000.00
Fulton	1	50,000.00
Green	3	364,000.00
Total	102	$2,152,750.00
Will	41	276,000.00
Grand Total	143	$2,428,750.00

The Will County cases, save three or four, were affected by the purchase of riparian rights by the Economy Light & Power Company. The District's theory being that they were purchased as water power property and the persons who owned the land on January 17, 1900 (that being the date when the water was turned into the Des-Plaines and Illinois Rivers through the Sanitary District Channel), obtained a greater price for the land by reason of the increased flow.

In the list of suits pending in LaSalle County there are two tenant suits.

In Marshall County there are three cases that were brought after January 17, 1905. There are a number of cases in the different counties where the plaintiffs did not own the land on January 17, 1900, and still others where the plaintiffs only owned a portion of the land on January 17, 1900, upon which they sued.

Within the last two years one suit was brought in Peoria County, viz., Scholl vs. Sanitary District, on the theory that temporary damages can be recovered by reason of the fact that the District was able to control the flow, and there are now pending two suits in Cass County, so that the number of suits pending in Illinois Counties outside of Chicago in January, 1919, was 146, some of which have been settled as hereinafter shown in the second part of this report wherein the details as to all laws suits of the Sanitary District are set forth.

During past years suits of this kind against the Sanitary District have been tried in Will, LaSalle, Bureau, Marshall, Woodford, Peoria and Fulton counties and one case was tried in Schuyler County. The trial of these cases occupied anywhere from one to nine weeks. The Law Department of the Sanitary District has to the utmost of its ability and resources contested all of these cases that have come to trial. About twelve cases involving permanent damages were taken to reviewing courts. The Sanitary District obtained "not guilty" verdicts in the downstate counties five times, had one mistrial, and procured a discharge of the venire of jurors five times on technical grounds, but, as a rule, the plaintiff has secured a substantial verdict. On behalf of the Sanitary District every possible question was raised both at the trial and on the appeal. It has been rather easy for the plaintiffs to secure witnesses among their friends and neighbors who placed the value of some of the land that had not been farmed at from $25 to $50 an acre on January 17, 1900, and the value of farm land that had been farmed in years gone by at from $90 to $200 an acre, while the Law Department of the Sanitary District has been obliged to secure witnesses who would place the value of such lands at about what the land actually sold for, and fair success in this respect has been secured. In the case of LaSalle County Carbon Coal Company vs. The Sanitary District, the District actually took into court 145 witnesses and actually used 100 of these witnesses on the witness stand. Other cases have not required so many witnesses, but the difficulty of securing witnesses who can and will testify and who are competent to so testify and the expense in connection therewith constitute one of the large problems to be solved by the Law De-

partment of the Sanitary District and the Board of Trustees. The plaintiffs in these cases, and their attorneys, were very insistent in pressing their demands up to the year 1912 and in view of this there was little chance of making reasonable settlements. Some substantial verdicts were secured in the Fall of 1912 and in the Spring of 1913, in two cases in Marshall County, three in Bureau County and two in Tazewell County. The Sanitary District appealed five of these cases and secured a reversal of the judgment in four of them, in which the costs in the Supreme Court were taxed aaginst the plaintiffs. Since that time there has been an apparent disposition on the part of some of the plaintiffs' attorneys to seriously consider the settlement of their cases and from time to time adjustments have been secured after full hearing before the Board of Trustees, but in every case such settlement has been made upon the basis of compensation only for the land damaged.

In one county one of the local attorneys has handled a large number of these cases and he has settled all of his cases where the land was owned by the plaintiffs on January 17, 1900. He has expressed a desire, however, to take a test case to the Supreme Court in order to have it determined whether the plaintiff who did not know of the damage until a period of five years before suit was brought had a right to recover and this action will probably be taken in due time.

About a year ago the members of the Law Department of the Sanitary District succeeded in having a demurrer sustained to the declaration in the Scholl case in Peoria County.

SUITS STARTED AFTER FIVE YEARS ASKING DAMAGES FOR THE FIVE YEAR PERIOD PRIOR TO BRINGING THE SUITS, COMMONLY CALLED TEMPORARY DAMAGE SUITS

There are now upon the dockets in Cook County, suits involving temporary damages to lands in various counties as follows:

County	Number of Suits	Ad Damnum
Cass	62	$ 616,450.00
Schuyler	23	235,650.00
Brown	4	49,000.00
Mason	16	195,150.00
Fulton	12	129,500.00
Putnam	21	227,500.00
Bureau	1	7,500.00
Total	141	$1,460,750.00

In addition to the foregoing there are two suits brought in Cass County asking damages to the extent of $17,000.00, making the grand total of suits brought by one attorney 143, in which the total amount of damages claimed is $1,477,750.00.

After the decision in the Jones case hereinafter mentioned, the attorney for plaintiffs started to make preliminary proof in many of his cases by taking depositions of persons along the Illinois River, which work engaged the attention of the Law Department of the Sanitary District for a considerable portion of two years. On behalf of the Sanitary District these witnesses were cross-examined on the theory that the declaration in those cases stated a permanent cause of action for damages, and that the best course was to bring out the fact that the plaintiffs had observed the effect of the increased flow of water on their land from the time that the Sanitary District Channel was opened.

In the Fall of 1912 and the Spring of 1913, four of those cases were tried in Cook County courts and in two of them the plaintiffs obtained verdicts. These were appealed, and reversed by the Supreme Court which sustained the contention of the Law Department of the Sanitary District that the declarations in effect stated permanent damages, and that, therefore, the Statute of Limitations had run against the claims. Thereupon declarations in all of these cases were amended and since the Spring of 1913 the Law Department of the Sanitary District has adhered to the policy of contesting these cases every step of the way, first by demurrers on every possible ground, and where these demurrers were overruled they were followed by many different forms of pleas setting out defenses at length, many of which have been sustained and the demurrers thereto overruled. Then the Shaw case was tried in Schuyler County, and a verdict of "not guilty" was obtained. This case was appealed to the Supreme Court, where the instructions of the court to the jury on behalf of the Sanitary District which were attacked were sustained by the court, which held that they stated the law correctly. Thereafter new declarations were filed in all of those cases. The previous policy above described was followed thereafter by the Law Department of the Sanitary District.

About 1916 the Wheeler case was tried in Cook County and a verdict was rendered against the District. The Sanitary District appealed to the Supreme Court which reversed the judgment.

During past years the Law Department of the Sanitary District has pursued a policy of bringing in all of the graphic illustrations possible showing the condition of the land as to elevations, rainfall, gauge readings, soil tests and everything that could be devised to make conditions clear to the jury. This has been justified by the fact that most of these lands described in the temporary damage suits were originally swamp lands when the water was first turned into the Sanitary District Channel and were practically valueless.

An examination of all of the facts in connection with the campaign of the Sanitary District against these cases will conclusively show that the defensive tactics of the Law Department have saved the Sanitary District a very large amount of money. As time goes on enterprising counsel for such plaintiffs will undoubtedly endeavor to develop new and unusual theories by which to maintain their actions

and secure verdicts, but the vigilance of the Illinois Valley Engineer and his assistants, as well as that of the Law Department and attorneys for the District who reside in downstate counties will undoubtedly be able to develop an all-sufficient answer to each new theory advanced.

SAG VALLEY OVERFLOW SUITS

The Summer of 1915 was unusually wet. In the Sag Valley in 1914 the excavation of the Sag Channel had gone forward far enough to lower the water in the soil, and as a result some of the swamp land through which the old Calumet Feeder ran became dryer than usual. In 1915 Green & Sons Company, contractors, did their surface excavating with hydraulic dredges. Some of the land owners in that locality claimed that the work of the Sanitary District and the contractors had been carried on in such a manner as to cause damages to their lands, and brought suits against the District. Seventeen of these suits were started in which the total amount of damages claimed was $61,000.00. Most of the plaintiffs were represented by one firm of attorneys. It was agreed with counsel that the Zuidema case should be first tried. This case differed from the other overflow suits in that the contractor was made co-defendant with the Sanitary District. Pursuant to this agreement the Zuidema case was tried in the Circuit Court of Cook County during the latter part of April and first part of May, 1919, and the trial thereof occupied two weeks and resulted in a verdict against the contractors and the Sanitary District jointly in the sum of $2,900.00. Subsequently, counsel for plaintiff undertook to have attorneys' fees allowed and taxed as costs but this motion was denied. The Sanitary District Act provides for attorneys' fees in such cases under certain conditions, but the contractors could not be and were not sued under the Sanitary District Act, and there is no provision for allowance of attorneys' fees against them. The judgment was joint and the court could not separate it, so that it is quite apparent that the ruling of the court is correct in this respect. As the trial of this case progressed a careful record was made with every possible objection, exception and motion in order to have the case thoroughly reviewed by the Appellate Court, and the record and briefs are now being prepared for the October term of that tribunal.

Zuidema Case

The foregoing was prepared by Walter E. Beebe, Illinois Valley Attorney for the Sanitary District.

OPINIONS OF THE SUPREME AND APPELLATE COURTS AS TO THE DUTIES AND LIABILITY OF THE SANITARY DISTRICT IN OVERFLOW CASES

Supplementing the foregoing synopsis of the experience of the Sanitary District in the matter of claims for damages to lands overflowed by the DesPlaines and Illinois rivers, it is of interest to consider the statements made by the Supreme and Appellate Courts of

Illinois in those cases which have been taken to those courts for review.

The case of Ray vs. Sanitary District, reported in Volume 85 of the Illinois Appellate Court reports, page 115, was one in which James Ray sued the Sanitary District to recover damages for injuries to his crops, grass, hay and pasture on farm lands in Will County which he occupied as a tenant of his mother, who owned a life estate in the lands, and her children, including James Ray, were the owners of the remainder in fee. **Ray Case**

The injury complained of was one caused by the overflow of the DesPlaines River after the course of the same had been changed by the Sanitary District. In 1902 the Sanitary District commenced a condemnation proceeding against the owners of the land. The land involved in the overflow case was not included in that suit, so the Sanitary District acquired no rights therein. The land in controversy in this suit is situated on the northwest side of the DesPlaines Valley, and at this point the river ran in a crooked and winding course through said valley. The District located its main channel on the southeast side of the land condemned and erected a high embankment to the center of its right of way to keep the river out. It also dug a new channel for the purpose of straightening the river on the northwest side of the valley, which new channel was 19 miles long and was called the "river diversion." About the time this new channel was finished in the Spring of 1893, James Ray rented these farm lands from his mother for one year; the evidence shows that the land was valuable for grazing and meadow purposes. During times of high water, in 1893, the land was flooded sometimes to the depth of one and one-half to two feet, doing serious damage to the grass, hay and pasture. **River Diversion**

James Ray again rented the land in the Spring of 1894 and also in 1895 and 1896, and in each year there was an overflow of water from the new river diversion and he suffered like damage in each of the years named as in the year 1893. There was a trial by jury and he recovered a judgment of $320.00. Among the defenses the District included the following: That the injury was permanent and that only one suit could be maintained for the recovery of damages consequent upon the change of the river for the purposes of the Sanitary District; that after the damages suffered after the first year, 1893, Ray must be presumed to have known of the liability to overflow, and rented the land at less than it would be worth but for such liability to damage from overflow. **Defense**

The court stated: "We think the evidence clearly shows that the construction of the river diversion and the new channel was imperfectly and negligently performed. It was the duty of the Sanitary District when it diverted the water from its natural channel to a new one to so construct the new channel as to depth and width and capacity as to carry and prevent its overflow to lands which it did not reach before the change was **Negligence**

made. From the evidence it appeared that a deeper channel would have prevented the injury from overflow. The Sanitary District was under a continuing duty to obviate the defect, and we think its failure to do so renders the imperfect construction a continuing nuisance for which successive suits could be maintained. Under the circumstances appearing in this case, Ray was not bound to assume that the wall and river diversion would be a permanent construction.

"It is true there is a want of harmony in the decisions of the courts as to cases of this character, upon the question as to whether successive suits may be brought for each new injury and damage, or whether the party is confined to one single recovery. Authorities cited by the Sanitary District give the one view, and those cited by Ray give the other. After a careful examination of both lines of authorities, we have arrived at the conclusion that the case at bar belongs to that class in which successive suits may be brought for each recurring injury arising from the improper construction and maintenance of the river diversion, which may be regarded as a nuisance. Any other rule would make the first suit a practical condemnation of the land, in a proceeding where the value of the land itself could not be shown. This would certainly not be a fair way to condemn land for public use.

Conflict in Decisions

"The statute under which the Sanitary District was organized specifically provides that it shall be liable for all damages to real estate which shall be overflowed or damaged by reason of the construction, enlargement or use of any channel, ditch, drain, outlet or other improvement, under the provisions of the Act. (Section 19). We think the case at bar comes within the provisions of this statute. To so hold is clearly just and right. The District should either have condemned the property and paid for it, or have or constructed its work as to avoid doing damage to the owners and occupiers thereof."

The Appellate Court affirmed the judgment.

The same plaintiff, JAMES RAY, subsequently brought a suit for damages for loss and injury to his crops from forty acres of land which he possessed as tenant for the years 1897, 1898 and 1899, basing his action and recovery on the alleged negligence of the District in constructing what is known as the "river diversion" hereinbefore described. He recovered a judgment for $180,00, and the court allowed $200.00 attorney's fees and taxed it as costs against the District. This case was taken to the Supreme Court of Illinois and the opinion is found in Volume 199 of the Illinois Supreme Court Reports at page 63. In the course of that opinion, the court stated: "It is insisted next that the plaintiff is barred by a former recovery in a suit for damages to his crops prior to the year 1897 The judgment in that case was affirmed by the Appellate Court (85 Ill. App. 115). The instructions were in accordance with the views we have expressed and we find no fault with them. The evidence tended to prove that the Sanitary District excavated the new channel to a greater depth

Second Ray Case

than the old, and threw up embankments on the sides of the channel but did not make the new channel of sufficient capacity to carry off the water of the river in times of freshets, and by the diversion of such waters caused the land in question to overflow. The land was bottom land near the river, and was subject to overflow before the channel was changed, but there was evidence tending to prove that such overflow, and consequent injury to crops, etc., was increased by the alleged negligent construction of the new channel and while it seems, from the record, that it would not be a wholly unjustifiable inference to draw that the Sanitary District has been charged with losses which would have occurred had the channel remained as it was in a state of nature, still we cannot say that the verdict is so clearly against the weight of the evidence as that it should be set aside for that reason.

JOHN HERBERT brought suit against the Sanitary District to recover damages for injuries resulting from the overflow of his real estate alleged to have been caused by the unlawful action of the Sanitary District in increasing the flow of water in the DesPlaines River. He recovered a judgment for $650.00, and the court allowed $345.00 attorney's fees and taxed the same as costs. The Sanitary District took this case to the Appellate Court, and it was there affirmed. The opinion of the court is reported in Volume 108 of the Illinois Appellate Court Reports at page 532. The court in the course of that opinion stated:

Herbert Case

"By his original declaration, filed August 1, 1901, Herbert stated that by reason of the said action of the Sanitary District he had been deprived of the use of twenty acres of his land and of the use of a spring located on the same for all beneficial purposes, and also of access to that portion of his land lying north of Jackson Creek, which flows into the DesPlaines River. Afterwards Herbert filed additional counts to his declaration, charging that he had also suffered damages on account of the depreciation in value of that portion of his land not actually flooded and that the injuries to his land were permanent. The District urges that Herbert was not entitled to recover the amount of damages awarded by the jury, and 'that under the declaration and notice served on the Sanitary District before the commencement of the suit, he was not entitled to the attorney's fees.'

"The suit being for permanent damages to the entire tract of 107 acres owned by Herbert, the measure of damages was the difference in the fair cash market value of the tract before January 17, 1900, when the water was turned into the river from the drainage channel, and after that time, so far as the same was affected by the acts of the appellant complained of. A number of witnesses testified on the subject of damages, the examination being conducted under the rule above mentioned as to the measure of damages. The question of the amount of damages was one of fact for the jury, and under the proofs in this case, where in the opinion of witnesses who appeared to be familiar

Measure of Damages

with the premises, the damages ranged from $107 to $3,210, we cannot say that the verdict for the sum of $650 was excessive.

"The Sanitary District insists that appellee's notice, stating that he claimed damage to the amount of $470 by reason of the flooding of a portion of his land, was a demand for temporary damages and not for permanent injuries; that consequently he is not entitled to recover attorneys' fees under the statute, as the damages claimed in the notice were different from the damages claimed on the trial."

The court then, after quoting Section 19 of the Sanitary District Act, and the notice in question, stated: "It is to be observed that the notice does not confine the damages claimed to any particular length of time, but is general in its terms and describes the entire 107 acre tract. We are of the opinion that the terms of the notice were clearly broad enough to cover a suit for permanent damages to the whole tract. It was therefore immaterial that the original declaration was only for temporary damages, as the notice was sufficient as a basis of claim for attorneys' fees under the amended counts. The notice was served in ample time and the record fails to show that the trustees ever made any offer to compromise the claim. The court was therefore authorized to fix the attorneys' fees, to be taxed as costs."

Attorneys' Fees

THE PIONEER STONE COMPANY brought suit against the Sanitary District to recover damages for the overflow and destruction of the beneficial use of certain of plaintiff's lands by water discharged into the DesPlaines River from the Sanitary District channel. There was a trial before a court and jury, and the plaintiff recovered a judgment for $3,000.00 which judgment was affirmed by the Appellate Court of Illinois for the Second District. This case is reported in Volume 109 of the Illinois Appellate Court Reports at page 283.

Pioneer Stone Co. Case

The court in the course of its opinion stated: "The argument of defendant is mainly devoted to the question whether the damages awarded are excessive. The contract of land described in the declaration contains about 50 acres along the west bank of the DesPlaines River a short distance below the City of Joliet, and it is alleged that 29 acres of this were destroyed by the waters discharged into the river from the Sanitary District channel, and the proof tended to show a little over 26 acres were so destroyed. The main channel of the Sanitary District connects with the Chicago river in Chicago and ends at the controlling works near Lockport, some 7 miles above plaintiff's land. At the lower portion of the main channel of the Sanitary District it is 160 feet wide at the bottom and 162 feet at the top, and widens into a large basin just above the controlling works. The average depth of the water at the controlling works is 27 feet. The water is discharged from the basin into the river through 7 lifting gates, having an opening of 32 feet each, and over a bear trap dam having an opening 160 feet wide with an oscillation of 17 feet. The average discharge from the channel into the river is from 200,000 to 250,000 cubic feet per minute, with a velocity of about a mile and

a quarter per hour, but it sometimes is much greater and has exceeded 300,000 cubic feet per minute. The lower part of the main channel has a capacity of 600,000 cubic feet per minute at a velocity of a mile and nine-tenths per hour. The lower part of the channel is cut through solid rock for several miles. The description of the channel by the Chief Engineer of the Sanitary District shows this is designed to be a permanent improvement, and such is the public history of the work. The waters of the Chicago River were first discharged through the channel into the DesPlaines River on January 17, 1900.

"The proofs show plaintiff's land, now overflowed by these waters, is a deep deposit of rich black soil, upon which for many years unusually large crops of agricultural products have been raised. Defendant produced witnesses who testified that prior to 1900 it was so often overflowed by the freshets of the DesPlaines River that it could not be relied upon the produce crops, and that because thereof the value of the land before 1900 was slight. Plaintiff produced witnesses more familiar with the land and who had worked or controlled it during the last thirty or forty years, who showed that during that period of time prior to 1900 this land had been overflowed at a time injurious to crops only two or three seasons, and that the other overflows were for brief periods only and were not during the season of crops and that they tended to enrich the land by alluvial deposits. It is clear that since the waters of the Sanitary District have been turned into the river about 26 acres of this land is habitually overflowed and rendered practically useless. Plaintiff's witnesses estimated the value of this land before the Sanitary District waters were turned into the river at from nothing to $10 per acre. Defendant's witnesses valued the land at from $30 to $50 per acre before 1900, and its depreciation in value by the overflow of the Sanitary District at one-third to two-thirds of that value. As a whole, plaintiff's witnesses were more familiar with the land than those who testified for defendant. If about 26 acres were practically destroyed, the verdict follows almost the lowest estimate made by plaintiff's witnesses. We find nothing in the record which would justify us in disturbing the conclusion the jury have reached upon the conflicting testimony."

Conroy Case

PETER CONROY brought suit against the Sanitary District to cover damages for injuries alleged to have been sustained by the overflow of certain lands owned by him in Section 29 in Channahan Township, Will County, Illinois. The lands are situated between the Illinois and Michigan Canal and the DesPlaines River. The tract consisted of 149 acres, 86 acres of which was low land having a deep black rich soil. He recovered a judgment for $4,500.00 and the court allowed $300.00 attorney's fees which were taxed as costs. This case was taken by appeal to the Appellate Court and the judgment was there affirmed, and it is reported in Volume 109 of the Illinois Appellate Court reports at page 367:

The court, after discussing the statute, stated: "In the middle

of appellee's premises in a piece of high table land. Before the water of the Sanitary District was turned into the DesPlaines River, appellee had put in some 4,000 feet of large tile which drained the 86 acres of low land. It was contended and we think demonstrated by the evidence that the act of the appellant totally destroyed the utility of this system of tiling by destroying its outlet. The evidence showed that turning a large quantity of water into the channel of the Sanitary District caused the overflow of appellee's premises, which before had been rich productive lands and destroyed their use for agricultural purposes.

"That a cause of action existed and that appellee was entitled to recover substantial damages cannot be denied. The principal question for determination upon this appeal is, as stated by appellant in its brief, whether the damages awarded are excessive. There is a wide range in the testimony offered on that question. The testimony given by appellee's witnesses, who were farmers and had been familiar with the premises from 20 to 40 years and were well qualified to testify to the value of the land before and after the infliction of the injury complained of would have been justified an award in excess of that given by the jury. From an examination of all of the testimony bearing on the question of damages, we are satisfied that the award was not excessive."

Damages Not Excessive

A. S. ALDERMAN sued the Sanitary District to recover damages for injury to grass, hay and pasture on land in Will County alleged to have been sustained on account of the construction and maintenance of an embankment which it was claimed obstructed the natural flow of water and caused it to flow and stand upon plaintiff's land. He recovered a judgment for $500 and attorney's fees from which appeal was taken to the Appellate Court of the Second District, which affirmed the judgment. This case is reported in Volume 113, of the Illinois Appellate Court Reports at page 28. The court stated:

Alderman Case

"The DesPlaines River ran through this tract of land from the northeast in a southwest direction. Goose Lake is a shallow body of water, covering a part of said land. It also lies in a northeast and southwest direction, and the river passes through it a little west of the middle. The DesPlaines River is a shallow winding stream having low banks and in times of heavy rains quickly overflows and covers the entire valley.

"Defendant constructed its drainage canal or channel a short distance through the southeast of the DesPlaines River, following the general direction of the river. In order that the work of constructing the drainage channel might not be interfered with by the overflow from the river, defendant changed and straightened its channel from the head of Goose Lake northeast to Riverside, a distance of about 19 miles, where it connected with the original channel of the river. From the point where this new channel or 'river diversion' connected with the old channel at the head of Goose Lake, defendant cleaned

out and straightened the channel southwest and constructed an embankment along and near the bank and between the river and the line of the Drainage Canal, to prevent the water from the river flowing in and upon the canal while the work of its construction was in progress. As the Chief Engineer of defendant testified, 'All this was done to enable us to prosecute the work of the new channel in the dry.' This embankment extended through Goose Lake and through Sections 26, 35 and 34 to the Romeo Road on the township line, and was about six or seven feet high, and wide enough at the top to drive a team on.

DesPlaines Overflow

"The proof fairly shows that prior to the construction of the embankment, the overflow from the river would spread to the southeast and much of the water pass off that way, and that the embankment prevented this and caused the water to flow to the northwest on plaintiff's land in increased quantity and remain there for a longer period of time. In our opinion the proof warranted the finding that plaintiff had sustained damages to the use and occupation of his land, resulting from the construction and maintenance of the embankment. The lands injured, comprising between 70 and 80 acres, were used by plaintiff for hay and pasture. The proof was that during the years 1897, 1898, 1899 and 1900 the land was overflowed so often and the water stood on it so much of the time that plaintiff had but little use of it. His cattle at times had access to it but the water so injured the grass that it was not fit for pasturage and they would eat very little of it. Plaintiff testified, and it was not contradicted, that the fair cash value of the flooded land for each of these years was $3 per acre. The year 1901 was an unusually dry one, and plaintiff cut quite a good deal of hay, but of poor quality, from the land. He testified that the injury for that year was $1 per acre. This testimony was objected to by defendant as not being the proper measure of damages, and it is now insisted the court erred in admitting it. The testimony showed that for the first four years above mentioned, the plaintiff practically had no use or benefit of the land, and the last year, while he cut a crop of hay from it, it was injured to the extent of $1 per acre. That the court adopted the correct measure of damages we think is settled by Chicago vs. Huenerbein, 85 Ill. 594, and Kankakee and Seneca R. R. Co. vs. Horan, 17 App. 650. Even if defendant's theory as to the proper measure of damages had been adopted, the verdict so far as the amount is concerned could hardly have been more favorable to it, for the verdict was for but $500, while the truth tended to establish damages to the extent of twice that amount."

The court further stated, at page 29: "The construction of the embankment as shown by the exidence was for convenience in excavating the main channel. It was built to keep the water from the DesPlaines River and valley from flowing into the drainage canal while the work was in progress. As defendant's Chief Engineer testified, 'to enable us to prosecute the work of the new channel in the dry.' Whatever may be said of the convenience or necessity for the

embankment while the work of constructing the drainage channel was in progress, after the completion of that work, it would seem the necessity for it ceased, and that its maintenance is such negligence as to make the defendant liable for the damage resulting therefrom. There is evidence also tending to show that defendant has not treated the maintenance of the embankment as necessary, for it has allowed the water to cut and wash channels through it, at different places."

Suehr Case

JULIUS SUEHR brought suit against the Sanitary District to recover damages for an injury to his real estate alleged to have been caused by the construction of the drainage canal of the Sanitary District connecting the south branch of the Chicago river with the DesPlaines River and the flow of water from Lake Michigan through said canal and the DesPlaines River into the Illinois River. He recovered a judgment for $4,000.00, which was affirmed by the Appellate Court of the Second District, and upon appeal to the Supreme Court the judgment was there affirmed. This case is reported in Volume 242 of the Illinois Supreme Court reports beginning at page 496. The court there stated:

Island in Illinois River

"The appellee, Suehr, is the owner of an island containing about 15 acres situated in the Illinois River near the City of Ottawa, which he purchased in the year 1897. The soil of the island was from 8 to 14 feet in depth and consisted of a sandy loam and was well suited to the growing thereon of asparagus, and a considerable portion of the island at a very large expense, had been planted by appellee to asparagus after its purchase by him, and prior to the time the water was turned into the Drainage Canal by the appellant on the 17th day of January, 1900, and the depth of water in the Illinois River was greatly increased by the flow from Lake Michigan through the Drainage Canal to the DesPlaines River, the result of which was the ford across the North Channel connecting the island with the mainland was destroyed and part of the island was washed away including the timber along its edges, its arable lands were largely submerged and its uses for agricultural purposes were largely destroyed.

"The court admitted proof of the effect of the increased flow of water upon the island up to the time of the trial, and the admission of this class of proof is the main question discussed in the brief of appellant. The Drainage Canal is a permanent structure and the appellee has the right in this case to recover all damages, past, present and future which his real estate has sustained by reason of the construction of that improvement; and it is the well settled law of this state that it was proper to prove the effect of the increased flow of water upon said island down to the time of the trial.

Canal a Permanent Structure

"The appellant admits that this court has held the class of testimony objected to is admissible in this class of cases, but insists that the admission of this class of testimony does not harmonize with the holding of this court that the measure of damages, where the injury is of a permanent character, is the difference between the fair cash

market value of the real estate before and after the injury complained of has taken place, and therefore, at least inferentially, asks that the former holding of this court upon that question be overruled. While it is true that the ultimate fact for the jury to determine is how much has the property been damaged—that is, what was the fair cash market value of the property before the injury complained of and after the injury took place, still, as bearing upon that question it is entirely proper to prove what effect the act or acts complained of have had, as a matter of fact, upon the fair cash value of the real estate involved in this suit, for the purpose of fully advising the jury as to the amount of damages caused by the injury which a plaintiff has sustained. We are entirely satisfied with our former holdings upon this point, and are not disposed to recede therefrom. The court did not, therefore, err in the admission of evidence of the physical condition of said island at the time of the trial."

Measure of Damages

OWEN S. JONES brought suit in the Superior Court of Cook County against the Sanitary District, and in the one count of his declaration filed March 17, 1908, he alleged that he was and had been for more than five years prior to the commencement of the suit the owner in fee simple of 1976 acres of land in Cass County; that said land was covered with timber the lumber of which was used for commercial and manufacturing purposes, that the Sanitary District in 1900 turned the waters of Lake Michigan and the Chicago River into the tributaries of the Illinois River, having theretofore, by virtue of authority conferred on it by law, cut certain channels connecting the said Chicago River with the tributaries of the Illinois River; that the flow of water through said channel and into the Illinois River was under the control of the Sanitary District, which might at all times regulate the same by means of certain appliances; that at various times during the five years prior to the commencement of the suit large quantities of water were caused to flow from Lake Michigan and the Chicago River into the Des-Plaines and Illinois Rivers; that the lands of Jones lie adjacent to the Illinois River in Cass County, and were overflowed as a result of this addition to the waters of the Illinois River; that because of the wrongful acts of the Sanitary District and the careless and negligent management of said waters and because of the increased flow into the Illinois River, the lands of appellee overflowed for the greater portion of each year, causing large quantities of appellee's timber to die and rendering his land unfit for grazing and agricultural purposes. Subsequently appellee filed an additional count in which he alleged that his lands were covered by timber of great value and in a lively and flourishing condition on March 17, 1903, and at that date, and at all times thereafter, appellant had caused the waters of Lake Michigan to flow through its Drainage Canal into the Illinois River, whereby the amount of water in said river had been greatly increased during the period from March 17, 1903, to the time of the beginning of the suit. The additional count further alleged that the canal was con-

Jones Case

structed and operated by appellant under a statute giving it power to do so, and which provided that it should be liable to all damage to real estate which should be overflowed or otherwise damaged by reason of the construction, enlargement or use of such channel. It contained the same allegations with reference to overflowing the lands as the original count, except, that it did not charge that the overflowing of the lands was caused by any negligent act on the part of appellant. To both counts of the declaration appellant filed the general issues, a plea denying that appellee was the owner in fee simple of the lands described and a plea of the statute of limitations. A demurrer was sustained to the plea of the statute of limitations and appellant stood by its plea. The plea of a statute of limitations set up the organization of the Sanitary District under the Act of 1899, entitled "An Act to create sanitary districts and to remove obstructions in the DesPlaines and Illinois Rivers;" that any channel constructed under the provisions of this act should be of certain size and capacity, and that in the event of its operation a continuous flow of 200,000 cubic feet of water per minute should be produced and maintained, and 20,000 cubic feet of water per minute additional for every 100,000 inhabitants of the said District exceeding 1,000,000; that the channel was constructed pursuant to such authority, and that from January 17, 1900, when the channel was opened there has been discharged through said channel into the DesPlaines River the quantity of water required by the statute, to-wit, 300,000 cubic feet per minute; that the construction of the channel was and is a permanent work and was done in the skillful, prudent and workmanlike manner, and that from the time of the opening of said channel to the present time the flow of water required has been continuously maintained, and that any damage sustained by appellee was caused by the construction of the channel and the turning in of the water on January 17, 1900. Issues were joined on the plea of general issue and the plea denying appellee's title to the lands, and a trial resulted in a verdict for the appellee of $6,250.00. Subsequently, appellee, under Section 19, of the Act of 1889, relating to Sanitary Districts, moved the court to fix his attorney's fees, and upon a hearing the court allowed $3,000.00 to appellee for his attorney's fees and entered judgment on the verdict and for the amount of these fees. From that judgment appellant prayed an appeal to the appellate Court for the First District where, on motion of appellee the cause was transferred to this court on the ground that a freehold is involved.

Limitations

Attorneys' Fees

This case is reported in Volume 252 of the Illinois Supreme Court Reports, beginning at page 591 and the court in its opinion there stated:

"The contention that the court erred in sustaining the demurrer to the plea of the Statute of Limitations is based upon the claim that as the building of the drainage canal is authorized by an act of the legislature and is permanent in its character, the injury inflicted upon appellee, if any, is permanent, and he is limited to one cause of action

for the recovery of all damages, past, present and prospective, and that his right of action accrued more than five years before his commencement of the suit. In support of this contention appellant relies on the class of cases which hold that when the original nuisance or cause is of a permanent character, so that the damage inflicted is of a permanent character and goes to the entire destruction of the estate affected thereby, the recovery not only may, but must, be had for the entire damage in one action, as the damage is deemed to be original. In those cases the injured lands were adjacent to the structure complained of, so that its construction necessarily and immediately destroyed or depreciated their value. This case does not fall within that class. The improvement known as the drainage channel is permanent in character, but it is not alleged that appellee suffered damage by reason of its construction. The construction and continuance of the channel more than two hundred miles from appellee's land is not necessarily an injury. It is the use that has been made of it that it is complained has caused the injury. The declaration alleges that the lands of appellee have been overflowed but a portion of each year. This might be caused by the emptying of more water from the channel into the river at some time than at others, or it might be the result of the confluence of the waters of the drainage channel with those of a freshet, or with the waters which cause an annual rise in our rivers. In either event it is contingent whether the lands of appellee shall suffer damage—in the one case upon the action of those in control of the flow of water from the drainage channel, and in the other upon the action of nature. If the flooding was the result of the first named cause, then it was due to the negligent management of the flow through the channel, as the statute provides for a constant flow, which is not to be increased except as the population of the district increases, in which case the increase will be permanent and the flow will still be constant. The fact that the channel is a permanent improvement does not, of itself, serve to determine when, if ever, or to what extent, injury will be suffered. That the injury complained of is not necessarily caused by the construction or existence of this permanent improvement is evidenced by the fact that at times the river is within its banks and the lands of appellee are not overflowed. If, as appellent contends, the Statute of Limitations runs as to such actions as this from the date the drainage channel was completed to Lockport and the flow of water turned on, it is possible for a party to be barred before he has suffered any injury whatever. It is the injury sustained which is the cause of action, and the statute does not begin to run before the cause of action accrues. The permanency of the injury is the test as to whether damages for all time must be assessed. In this case the declaration alleges that the flooding was intermittent and recurring. Both the declaration and the plea refer to the act of 1889, under which the district was organized. An examination of that act and the supplemental act of 1901, to extend the powers of sanitary dis-

Permanent Damage

Cause of Action

tricts, discloses that it was contemplated by the legislature that everything possible should be done to keep the waters of the sanitary district within the banks of the stream into which they empty, and the district was invested with extraordinary powers to accomplish this purpose and thus prevent the flooding of the adjacent bottom lands. An exhaustive discussion of the scope and purposes of the act of 1889 is found in People v. Nelson, 133 Ill. 565. While the plea states with particularity the construction and completion of its channel to Lockport and the flow of water which has been maintained at that point from its channel into the DesPlaines river, it does not allege that any further work has been prosecuted or any attempt made to provide for keeping the waters of the district within the banks of the Illinois river, or whether it is possible to so confine its waters. While, as, the plea alleges, the channel of appellant was built under authority of law and may have been constructed in a proper and skillful manner, yet its continuance and operation, under the allegations of the declaration, will not necessarily result in injury to the lands of the appellee. Where the continuance and operation of a permanent structure are not necessarily injurious but may or may not be so, then only the injury sustained prior to the commencement of the suit may be compensated in that suit.

"Appellee cites a number of cases holding that under certain circumstances one has the right to elect whether to sue for permanent or temporary injuries, the latest being Strange v. Cleveland, Cincinnati, Chicago and St. Louis Railway Co., 245 Ill. 246. These cases are of value in determining the circumstances or conditions under which damages for a temporary injury may be recovered, but as the appellee, under the facts alleged, had the right to sue for injury suffered during the five years next preceding the commencement of his suit, it is not necessary to determine whether this is of that class of cases where he might have elected to recover for permanent injuries."

The court further stated: "Appellant contends that the only theory upon which appellee could recover was that the work of appellant was a nuisance and had not been constructed in accordance with law and in a careful and proper manner, whereas the work of the sanitary district, being permanent in character and authorized by the legislature, cannot be a nuisance when constructed properly. As a general proposition it is true that that which is authorized by the legislature cannot be a nuisance, but that statement is subject to some qualifications. If the act or work authorized is done or constructed within the scope of the power granted, any injury which is a necessary and probable result of the act so done in pursuance of legislative authority may be fairly said to be covered, in legal contemplation, by the legislature conferring power, and the grant operates as a protection against indictment or suit therefor. 'It is only against such consequences as are fairly within the contemplation of the legislature in conferring the authority, and such results as are necessarily incident to its being done—in other words, such results as are the natural and probable consequence of an exercise

of the power at all—that the grant operates as a protection. Beyond that it affords no protection whatever. It is sometimes laid down in elementary works and appears in the opinions of courts that that which is authorized by the legislature cannot be a nuisance. This is clearly erroneous in the sense in which it is generally understood. That which is authorized by the legislature, within the strict scope of the power given, can not be a public nuisance, but it may be a private nuisance, and the legislative grant is no protection against a private action for damages resulting therefrom.

"As the injury counted on was not the immediate and direct result of the construction of the drainage channel but was consequential and resulted from the recurrent and intermittent overflow of the lands of appellee, the demurrer to the plea of the Statute of Limitations was properly sustained."

The court further stated: "If the thing destroyed, although it is a part of the realty, has a value which can be accurately ascertained without reference to the soil on which it stands or out of which it grows, the recovery may be of the value of the thing thus destroyed and not for the difference in the value of the land before and after such destruction.

Measure of Damages

"For injury done to the plaintiff's crops by flooding his lands he is entitled to recover their value standing upon it so far as they are destroyed and the depreciation in value of such as are only injured or partially destroyed. * * * If the growth of grass is prevented and the owner is deprived of the use of the pasture for a considerable time, his damages are measured 'by the value of the use of the land for pasturage in the condition' it would have been but for the wrong done. The proper measure of damages was applied.

"Appellant contends that the verdict is not sustained by the evidence, and under this point argues but two propositions: First, that the evidence discloses that all the damage done was by reason of the flood of 1902, more than five years prior to the commencement of this action; and second, that as there was no proof of negligence on the part of appellant in the management of the waters in the sanitary channel, the peremptory instruction offered by it at the close of plaintiff's evidence, and again at the close of all the evidence, should have been given.

"The evidence on the part of appellee tended to prove that prior to the turning into the Illinois river of the water of the drainage channel, in 1900, his land had been subject to the annual spring overflow of the Illinois river, but that since that time the annual overflow was increased and prolonged by reason of the presence of the waters of the sanitary district, and that his injury is occasioned by the waters remaining over lands until the months of July and August, instead of the first of June, as theretofore. The evidence disclosed that the greatest flood since the waters of the sanitary district were turned in, in 1900, and before the commencement of the suit, was in 1902. That year

Annual Overflow

the rainfall was heavier than usual and the water remained upon appellee's land for two hundred and seventy-six days, and it is the theory of appellant that it was this flood which caused the timber of appellee to die on the stump. The proof tended strongly to show that none of appellee's timber was killed as the result of one flooding, but that it required successive and repeated flooding to finally kill the trees. While it appears conclusively that the flood of 1902 contributed to the destruction of appellee's timber, still it appears just as conclusively that had no other floods occurred the timber would not have died by reason of that one flood, alone. From this it is shown that the injury to appellee was accomplished by reason of the floods which occurred within five years prior to the commencement of the suit, and is not attributable, as appellant contends, to the flood of 1902, alone.

"As to the second contention of appellant under this point, it is true that there is little, if any, proof, in the record of negligence on the part of appellant in the management of the flow of the waters from the channel into the DesPlaines river. The only proof at all that can be said to have any bearing on that question is found in the testimony of George M. Wisner, the chief engineer of the sanitary district. He testified that since the channel was opened, on January 17, 1900, the amount of water that had been allowed to pass through the controlling works at Lockport varied considerably, but that he would say it averaged 300,000 cubic feet per minute. Mr. Wisner was produced as a witness for appellee, but he did not testify how much nor at what times the flow varied from 300,000 cubic feet per minute. There was not sufficient ground in this testimony upon which to base a verdict that appellant had been negligent in allowing excessive amounts of water to pass through its controlling works at Lockport at the times the appellee's lands were flooded and that the floods were thus produced. Appellant's argument proceeds upon the theory that unless appellee has shown it to be guilty of negligence he is not entitled to recover. This is not correct. While the original count of the declaration charged appellant with negligence, the additional count does not so charge, and appellee is entitled to recover if he has been damaged, irrespective of whether appellant has been guilty of any negligent act. It is no defense for appellant to say that it was in the exercise of due care and caution in the management of the waters of the drainage channel. If, by reason of the flow of waters from the drainage district into the Illinois river, the lands of appellee have been overflowed and injured, appellant is liable. The peremptory instruction was properly refused."

Negligence

The Judgment was affirmed.

HENRY VETTE brought an action in the Superior Court of Cook County against the Sanitary District to recover damages to his farm lands adjacent to the Illinois River. On the trial he recovered judgment for $6,520 and costs. The court fixed his attorney's fees at $1,200.00. From this judg-

Vette Case

ment the Sanitary District appealed to the Supreme Court, where the judgment was reversed and remanded with directions December 5, 1913. This case is reported in Volume 260 of the Illinois Supreme Court Reports, page 432. The court there stated:

"The first count was dismissed and the trial proceeded upon the second count, which, after setting up the incorporation of the sanitary district and the construction and completion of the drainage canal for the purpose of turning the waters of the Chicago river, carrying the sewage from the sanitary district, from Lake Michigan into the Illinois river, alleges that at all times during the five years next preceding the beginning of this suit appellee was the owner in fee simple of certain described real estate; that upon the lands were oak, ash, elm and other trees native to the bottoms of the Illinois river; that the lands were of extreme richness and capable of bearing large farm crops; that the farm lands are adjacent to the Illinois river and were subject to excessive overflow from the Illinois river if any waters beyond the usual and natural flowage of the river should be cast into the stream; that while said lands were at all times subject to overflow from said river from natural causes, such overflow was of a temporary nature and did not interfere with the growth or health of the timber upon appellee's lands or with the use of the pasture land for pasturage or the use of the farm lands for farming purposes; that the said lands 'were so situated that any waters artificially caused to flow into the Illinois river would cause an overflow which would prevent their use as farm lands and would destroy the crops thereon and any additional flowage would injure and destroy said timber;' that on January 17, 1900, appellant, the Sanitary District of Chicago, connected its canal with the Chicago river, and by means thereof has ever since January 17, 1900, caused the waters of the Chicago river and vast quantities of water from Lake Michigan to flow through said canal into the DesPlaines river and from thence into the Illinois river; that after casting the waters of the canal into the DesPlaines river at Lockport appellant made no further provision for caring for said waters, and did not deepen or alter the beds of the DesPlaines and Illinois rivers or in any way provide any protection for the Illinois river bottom lands against the increased waters of the Illinois river, but has, by means of said canal, from day to day from January 17, 1900, until the beginning of this suit, cast approximately 300,000 cubic feet of water each minute into the DesPlaines river in such manner that said waters flowed into the Illinois river. The declaration then sets up section 19 of the act under which the sanitary district was incorporated, which provides that every district organized under the provisions of that act shall be liable for all damages to real estate which shall be overflowed or otherwise damaged by reason of the construction, enlargement or use of any channel, ditch, drain, outlet or other improvement, and which also provides for the recovery of attorneys' fees, under certain conditions, in case an action is brought and judgment for damages recovered against the district, and alleges that by reason of the provisions of said act appellant became liable

to appellee for all damages to his real estate caused by the use of said canal during the five years immediately preceding the commencement of this suit. It is further alleged that because of the acts of appellant appellee's lands have become at times overflowed with the waters from the Illinois river, and that the waters artificially deposited in the Illinois river by appellant have, in connection with natural causes and the natural precipitation of the watershed of the Illinois river and the natural flowage of said river, caused the lands of appellee to become greatly overflowed with water in the spring time and have caused such waters to stand over the lands of appellee late into the summer of each year since the year 1900, so that during the five years next preceding the commencement of this suit said lands have been flooded and said floods have remained over appellee's lands late in the summer. The declaration then alleges that by reason of the acts of appellant and the consequent floods the timber upon appellee's lands has been greatly injured and much of it has died during the five years last past; that the pasturage upon his lands during the last five years has become injured and destroyed and he has been prevented from enjoying the same; that he has lost divers crops growing upon his lands, and that he has been prevented from using the lands for farming purposes during the period of five years. The damages sought to be recovered herein are for those alleged injuries. * * *

Timber Injured

"The plea of the Statute of Limitations was merely the formal plea. It set up no special facts in bar of the action, but simply stated that the cause of action did not accrue within five years next before the commencement of the suit. Appellant first contends that the court erred in sustaining the demurrer to this plea because it was in proper form and no question of law was raised except as to the sufficiency of the plea itself. In an action brought to recover damages for a permanent injury to real estate the formal plea of the Statute of Limitations may be interposed and a demurrer will not lie. On the other hand, if, as appellee contends is the case here, a suit is brought to recover damages for a temporary injury to real estate or for a continuing trespass alleged to have occurred within five years, then, if the Statute of Limitations is pleaded, the mere formal plea is not sufficient but special facts must be set up to show wherein the suit is barred, as, for instance, facts which, if proven, would show that the injury for which recovery is sought was a permanent injury, and not, as the declaration alleged, a temporary one. A formal plea of the Statute of Limitations alleging no more than the plea in this case alleges, if filed to a suit to recover damages for a temporary injury or for a continuing trespass, would be obnoxious to a general demurrer. So here, the demurrer to the plea of the Statute of Limitations raised the question of law whether under this declaration appellee was suing to recover damages for a permanent or temporary injury. To determine, then, whether the plea is bad on demurrer it is necessary to look to the declaration.

Pleadings

The declaration, as above quoted, alleges that the lands of appellee were so situated that any waters artificially caused to flow into the Illinois river would cause an overflow which would prevent their use as farm lands and would destroy the crops thereon and any additional flowage would injure and destroy said timber. From this declaration it is apparent that the channel of the sanitary district is a permanent structure, and that it was connected with the Chicago river on January 17, 1900, and the water turned through the same into the Illinois river on that date. If, as is alleged in the declaration, any waters artificially turned into the Illinois river would cause such an overflow of the lands of appellee as to destroy their use as farm lands and to destroy the crops and timber thereon, it is apparent that appellee was permanently injured at the time the water was first turned into the Illinois river through its channel by appellant on January 17, 1900, and that this suit is for the recovery of damages for a permanent injury, and not for a temporary injury, as appellee contends. The plea of the Statute of Limitations was properly filed to this declaration, and the demurrer to the same should have been overruled."

Permanent Injury

CHRIS BROCKSCHMIDT brought suit in the Superior Court of Cook County against the Sanitary District to recover damages alleged to have resulted from having his lands overflowed. He recovered a judgment against the Sanitary District, which took the case to the Supreme Court for review, and in the opinion of that court found in Volume 260 of the Illinois Supreme Court Reports, page 502, the court said:

Brockschmidt Case

"The declaration and pleas in this case are precisely the same as in Vette vs. Sanitary District, the last case mentioned. The decision in that case is conclusive upon all questions of pleading in this case, and the judgment in this case must be reversed for the reason stated in the opinion in that case."

Vette Case Conclusive Here

The court further stated: "An additional point made in this case by plaintiff is, that the improvement is not to be regarded as permanent because defendant has not done what the legislature contemplated that it should do in completing its drainway from the city of Chicago to the Mississippi river, and that the use of the connecting channel without making provision for taking care of the additional water brought into the Illinois river, so as to prevent injury to adjacent lands, authorizes bringing successive actions for injury to the rental value of the land. It is argued that because power is conferred by the statute upon defendant to extend its channels or outlets beyond the boundaries of the district, and for that purpose it was given authority to acquire, by purchase or condemnation, the necessary land or right of way outside its limits, and in constructing its channel to carry water from lake Michigan into the Illinois river through the DesPlaines river it was given authority to modify and remove obstructions in those rivers where necessary to prevent overflow or

damage, it was the duty of defendant, under the law, to deepen or widen, or both deepen and widen, the rivers into which the channel emptied, if necessary to prevent the waters of the Illinois river overflowing and damaging adjacent lands. The facts with reference to the construction of the district channel as stipulated are, that the defendant has, by excavating a canal twenty-six miles long, connected the Chicago river with the DesPlaines river at Lockport, Illinois, and has made certain permanent changes in the DesPlaines river above Joliet but none below that city, by means of which the flowage of the Chicago river has been in part reversed, and water has been continuously flowing from Lake Michigan and the Chicago river through said channel into the DesPlaines river since January 17, 1900, thence into the Illinois river and through it into the Mississippi river.

"It is not contended by plaintiff in argument, and no proof was offered to show, that the twenty-six miles of channel was negligently constructed or that the increase in the overflow on plaintiff's lands was in anywise attributable to the failure of the defendant to remove any obstructions or to remove the dams at Henry and Copperas creek The damage complained of is due to the fact that the channel of the Illinois river, unobstructed by any object defendant had the right or duty to remove, is insufficient to carry the additional waters coming into it through defendant's channel without increasing the overflow and causing the water to stand longer on the land than it did before the channel was constructed and opened. Unless plaintiff is correct in the contention that defendant's improvement was not complete until it had so increased the capacity of the Illinois river that the additional waters turned in through its channel would not affect or raise the water level in the river, the improvement or structure must be regarded as permanent and the damages resulting therefrom as a permanent injury or decrease in the fair cash market value of the land, recoverable in one action. We are of opinion it would be an unwarranted construction of the Sanitary District act to hold that it was made the duty of defendant to so increase the capacity of the Illinois river that the waters turned into it by means of the district channel would have no effect upon the rise or overflow of the water in said river. Courts will take judicial notice that the Illinois river is a navigable stream, and we cannot presume that the legislature intended to assume and exercise the power of delegating to a sanitary district authority to increase the capacity of a navigable stream by widening or deepening its channel, or both, and removing or interfering with a dam or dams built and maintained by the Federal government. The proof shows one such dam is near the plaintiff's land. In our opinion it was not contemplated or intended by the legislature that defendant should do more to the DesPlaines and Illinois rivers than remove the dams mentioned, which were the property of the State, and any obstruction (not including a dam built and maintained by the Federal government) which hindered or retarded the natural flow of the water. When it had con-

Theory of Plaintiff

Removal of Dams

structed the connecting channel according to law and the same had been approved by the commissioners appointed under section 27 and the Governor had authorized the water to be turned into it, the district had complied with the requirements of the statute and was authorized to continuously maintain the channel and the flow of water. We do not think it was intended to be understood from what was said arguendo in People v. Nelson, 133 Ill. 565, that the Sanitary District act required the defendant to improve the capacity of the Illinois river so that the additional waters turned into it should not affect the water level of the river or overflow."

Jane Jones Case

JANE JONES brought suit in the Circuit Court of Woodford County against the Sanitary District and recovered a judgment of $5,480.50. Upon writ of error the case was reviewed by the Supreme Court, which rendered an opinion on October 16, 1914, which opinion is reported in Volume 265 of the Illinois Supreme Court Reports at page 98. The court in that opinion stated:

Overflowed Farm Lands

"Plaintiff in error next contends that the court erred in admitting proof of a difference in the condition of farm lands in the Illinois river bottom before and after the water was turned into the Illinois river from the sanitary district. Evidence was received, over objection of plaintiff in error, that the tendency had been to increase the overflows from the Illinois river since 1900, and that lands which before that time were above high-water mark were inundated and damaged; also, proof was received that the creeks tributary to the Illinois had filled up at the mouths with sand, rubbish and silt as a result of the dead water from the Illinois river backing up into the creeks for a greater distance than before the waters of the sanitary district were turned in. As a result of the filling up of the creeks near the river the head waters flowing down the creeks were obstructed and dammed up and were thus backed up and spread out over adjacent lands. This condition was shown to exist in regard to a creek which ran through the lands involved in this suit, and the evidence objected to tended to show that the same condition existed in other creeks which flow into the Illinois river below the mouth of the sanitary district channel.

Error Alleged

"Plaintiff in error insists that it was error to receive evidence in regard to the effect of turning the waters of the sanitary district into the Illinois river upon any lands other than those of defendant in error. Plaintiff in error sought to account for the higher stages of the Illinois river by reason of the organization of drainage districts in the Illinois river bottom and the construction of levees both above and below the lands of defendant in error, and in attempting to establish its contention in this regard plaintiff in error saw proper to extend the scope of inquiry over the entire length of the Illinois river and some of its tributaries in the State of Illinois. Numerous witnesses were introduced to describe the nature and extent of the local improvements made by different drainage districts and numerous photographs

were introduced showing various conditions that had been found to exist at different places on the Illinois river. Having thus gone into a general inquiry in regard to conditions that have been found to exist at numerous points up and down the Illinois river, plaintiff in error is in no position to complain that defendant in error was also permitted to introduce evidence of a similar character tending to show the general condition as it existed before and after the turning in of the sanitary district water, of the lands in the Illinois river valley. A party cannot complain of an error committed against him when a like error appears to have been committed in his favor. Plaintiff in error complains that the damages are excessive, and that the verdict is, in its amount, against the clear weight of the evidence. The testimony upon the question of damages is quite voluminous. The abstract contains about 450 pages and is largely made up of the testimony given on both sides upon the question of damages. As is usually the case in the trial of an issue of this character, the witnesses differ widely both in regard to the value of the land prior to 1900 and subsequent to that date. Counsel upon both sides have devoted much space in their respective briefs to a discussion of the evidence bearing upon the question of damages. We have carefully considered that question in the light of the evidence and the discussion in the briefs and have reached the conclusion that the verdict is not excessive. The testimony of many of the witnesses would have warranted a much larger amount, but, taking the evidence altogether, we are inclined to the opinion that the verdict is in accord with its fair weight. The rule that applies to questions of this kind is, that this court will not reverse a judgment solely because we may differ from the jury in our opinion as to the proper amount of damages. It is only in cases where the verdict is so high or so low as to indicate that the jury must have been influenced by some prejudice, passion or favor that this court will reverse the judgment because of the amount of damages."

Evidence Voluminous

Witnesses Disagree

Verdict Not Excessive

DANIEL SHAW brought suit in the Circuit Court of Schuyler County against the Sanitary District for damages caused by overflowing his land, which resulted in a verdict in favor of the Sanitary District. The plaintiff appealed the case to the Supreme Court of Illinois and the opinion was filed February 17, 1915, and is reported in Volume 267 of the Illinois Supreme Court Reports at page 216. The opinion is largely devoted to a discussion of the technical pleadings involved in this case, and the court held that the mere fact that in times of low waters the lands are not flooded and are only flooded when the water is high and the river out of its banks, does not necessarily establish that the injury to the lands is temporary only; that where a legal right has been invaded, although there may be no evidence of actual damages, the plaintiff may recover nominal damages, but the Statute of Limitations applies to all damages and bars a recovery where the statutory period for bringing the action has elapsed."

Shaw Case

Wheeler Case

WILLIAM WHEELER brought suit in the Circuit Court of Cook County against the Sanitary District for damages for overflowing his lands, and on the trial recovered a verdict in the sum of $4,827.00, and was also allowed $1,200.00 attorney's fees, to be taxed as costs. The Sanitary District appealed the case to the Supreme Court and the opinion of that court was filed December 10, 1915, and is found in Volume 270 of the Illinois Supreme Court Reports at page 461. The judgment was reversed and remanded. The court in its opinion stated "The case was tried on an amended declaration of one count, which alleged temporary damages to the land during the five years next preceding the beginning of the suit, which was March 12, 1912. Besides pleas of the general issue and denial of title, pleas were filed alleging a permanent injury to plaintiff's land at the time the drainage canal was opened January 17, 1900; that that injury is the injury complained of by the plaintiff in his declaration, and that his supposed cause of action did not accrue within five years before the commencement of the suit. Issues were joined on these pleas.

Judgment Reversed

"The original declaration alleged facts which we have held to show permanent injury to the land caused at the time the drainage canal was opened. The amended declaration omitted all reference to the condition of the land showing that it would necessarily be damaged by the operation of the canal, and counted on damages to the crops, pasture and timber and the use of the land during the five years immediately preceding the suit. It is argued that the court erred in permitting the declaration to be so amended. Our statute permits amendments at any time before judgment and on such terms as are just and reasonable to enable the plaintiff to sustain the action for the claim for which it was intended to be brought. It is not necessary that the amendment should state technically the same cause of action as the original declaration. The original declaration may not have stated a cause of action or may have stated one which the facts would not sustain. Unless the amended declaration stated a different cause of action from the original, in such case it would be of no avail. However, the filing of an amendment setting up a new cause of action is considered the beginning of a new suit commenced at the date of the filing of the amendment, and the Statute of Limitations may be pleaded to it accordingly. While the original declaration counted on a permanent injury occurring at the opening of the canal and the amended declaration on a different injury occurring during the five years preceding the suit, the amendment was properly allowed. The appellee was not estopped by the averments of the original declaration to amend it. The fact that he may have been mistaken as to his rights or the facts from which they arose would not prevent his amending his pleading to enable him to maintain his action.

"The amended declaration was filed December 13, 1913, nearly two years after the beginning of the suit. It counted upon damages

to the crops, pasture, timber, and the use of the land during the five years immediately preceding the beginning of the suit. The appellant by its ninth plea set up the Statute of Limitations, averring that the cause of action did not accrue within five years next before the date of the filing of the amended declaration. A demurrer was sustained to this plea, and this action of the court is assigned as error. It is insisted by appellee that the demurrer was properly sustained in accordance with the holding in the case of Vette vs. Sanitary District of Chicago, 260 Ill., 432, that in an action to recover damages for a temporary injury to real estate or a continuing trespass alleged to have occurred within five years a mere formal plea of the Statute of Limitations is not sufficient but special facts must be set up to show in what way the suit is barred. That rule is not applicable here, because the injury is not alleged to have occurred within five years before the filing of the amended declaration but within five years before the commencement of the suit. The amendment to the declaration introduced a new cause of action, and is therefore to be regarded as a new suit commenced when the amendment was filed. All of the injuries occurring prior to December 13, 1908, would be barred by the Statute of Limitations. The only method in which the defendant could have the benefit of the statute for that part of the injuries which were alleged to have occurred prior to the statutory time before the filing of the amendment would be by pleading the statute. The demurrer to the ninth plea should have been overruled and no recovery should have been permitted for injuries prior to December 13, 1908.

Pleadings

"The plaintiff's farm of over seven hundred acres was situated in Putnam County and before 1900, good crops were raised on it. It adjoined Senachwine lake, a bayou of the Illinois river. It had been overflowed by the waters of the Illinois river in 1892, when an usual flood occurred, but except in years of extremely high water the raising of crops was not seriously interfered with. After the canal was opened, in 1900, the water level was about three feet higher than before, the floods were higher and slower going down, the ground was soggy and wet, the under-drainage was affected and the tile stopped up. A good deal of the time corn could not be planted in time to make merchantable corn, the pasture could not be used, the timber began to die and a large part of its was dead within a few years. In 1907, 1908, 1909, 1910 and 1911 there were floods which inflicted damage by keeping the ground wet and delaying planting or by injuring the growing crops. The appellant asked, and the court refused to give, the following instruction:

> "'You are instructed that if on January 17, 1900, the plaintiff owned certain lands which he has described in his declaration filed herein, and that if prior to five years before the bringing of this suit the defendant did some act or acts by the construction or use of its drainage canal of which the natural and probable consequence was that the plaintiff's land would be invaded from and after the performance of

such act or acts and at certain times in the future that could be ascertained to a reasonable degree of certainty, then as to such lands so described and so affected you are instructed that the plaintiff has sustained a permanent injury and cannot recover for such injury in this suit.'

"This instruction should have been given on the authority of Shaw vs. Sanitary District of Chicago, 267 Ill., 216. Instruction No. 32, which was also refused, stated a like principle and should also have been given.

"In various instructions the jury were told, in substance, that if the plaintiff's lands were overflowed, permeated and soaked with water only temporarily each year, and such water receded within the banks of the river and Lake Senachwine and the lands dried out and were usable for agricultural purposes for a portion at least of every year, such damages were not permanent but temporary. The reverse was held in Shaw vs. Sanitary District of Chicago, supra.

"The appellant insists that if the lands of the appellee were so situated that they would necessarily be damaged and the timber, crops and pasturage thereon injured by the opening of the canal and the flow of water from it into the Illinois river, all damage, present and future, must be recovered in one suit, and for this reason appellee is barred by the Statute of Limitations from recovering in this suit and the jury should have been instructed to render a verdict for the defendant. It is true that all the damages resulting from the construction of the canal and its operation as then authorized, must be recovered in one suit, and it was the duty of the appellee to bring that suit within five years of the completion of the work and putting it in operation. He could not, however, recover in such a suit for the consequential damages which might result to his land from the enlarged operation of the canal which might afterward be authorized. He is not bound to sue in anticipation of injuries which may never be suffered, basing his right to recover on a future increased flow of water which may never happen. If damages are afterward occasioned by such increased flow authorized by subsequent events, a cause of action for such damages will arise.

"The appellant's special pleas of the Statute of Limitations averred facts showing that the appellee's land sustained a permanent injury at the opening of the canal on January 17, 1900. Instructions were asked stating that if such permanent injury was shown by the evidence there was but one cause of action for such permanent injury and that the plaintiff could not recover. So far as such instructions stated that there was a single cause of action for such permanent injury they were correct, but it is contended by the appellee that an increased flow of water during the five years preceding the commencement of the suit, in excess of that authorized at the time the canal was opened, caused additional damage during those years. The instructions generally ignored this claim of the appellee and were therefore properly refused. While the claim of the appellee was too broad, still, if an increased flow of water during the five years pre-

ceding the filing of the amendment over that authorized immediately before that time damaged the land the appellee would be entitled to recover for such additional injury, and this hypothesis could not be ignored. Instructions 29 and 30 were based upon the hypothesis, which has no basis in the evidence, that all of the appellee's land was necessarily and inevitably overflowed by the waters which appellant introduced into the river on January 17, 1900, and its use for farming or agricultural purposes destroyed. Instruction No. 9 should have been given. It was as follows:

> "'You are instructed that if you find, from a preponderance of all the evidence in the case, that the land described in the plaintiff's declaration was as frequently and continuously overflowed by the water of the Illinois river during the period from January 17, 1900, to five years before the time of bringing the suit in this case as it was during the period for which suit was brought, then the plaintiff has suffered a permanent injury and cannot recover in this action.'

"Witnesses were permitted to testify to the crops produced before 1900 and those produced in 1907 and subsequent years, and the jury were instructed that the appellee was entitled to recover for damages sustained during the five years preceding the commencement of the suit by reason of the increased height of the water in those years over the height before 1900, caused by the flow of the water into the river from the canal. This was error. It is undisputed that the conditions under which the land was farmed were different in 1900, and afterward, from what they were before. The damages recoverable, if any, were such as were brought about by the act of the appellant in 1909 and subsequent years, and must be measured by a comparison with the changed conditions existing after 1900 and before 1909 and not with those existing before 1900. Unless the amount of water let into the river from the canal was greater in the five years immediately preceding the filing of the amended declaration than the amount authorized to be let in immediately before that time, there can be no recovery."

BEIDLER CASE

This was a suit brought in the Circuit Court of Cook County by GEORGE BEIDLER and others as tenants in common of certain lands to recover as damages the amount expended by plaintiff in deepening or lowering the canals hereinafter referred to, and in repairing certain docks fronting on said canals and the South Branch of the Chicago River, and for permanent injuries to said lands, the nature of which was not specified. Demurrer was filed and sustained, and the case was taken to the Supreme Court of Illinois and the opinion is there reported in Volume 211, Page 628. The case was remanded with directions to the Lower Court to overrule the demurrer.

The Court said (page 629):

"More than twenty years prior to January 17, 1900, the South Branch

Dock Company, a corporation, was the owner of a large tract of land, divided into lots, in Green's South Branch addition to the City of Chicago. Some of these lots fronted on the south branch of the Chicago river, which is and was a natural navigable water- course opening into Lake Michigan, but a large majority of them lay north of the lots which fronted on the river. The dock company had excavated and constructed a number of large canals through the property so owned by them, extending north from said river several hundred feet and connected therewith, and then so subdivided their property that each lot not fronting on the waters of the river would front on one of the canals. The canals opened into the river, which, in turn, emptied into Lake Michigan. The river supplied them with sufficient water to keep their depth at about seventeen feet at all times. This was their only source of water supply. They varied in length, the longest extending back from the river 2,560 feet, and were wide enough to admit large barges, steamboats, ships and other vessels, and such vessels passed to and from points within each of said canals into Lake Michigan by means of said canals and river, and conveyed lumber, goods and merchandise to and from such points by means thereof. Plaintiffs' premises, fronting on the canals and on the river, contained valuable docks which were used in connection therewith for loading and unloading said vessels."

River Front Lots

Artificial Canals

The Court further said (page 630) :

"The defendant drainage district, which is a public corporation, on January 17, 1900, connected its drainage channel, constructed for sanitary purposes, with said branch of the Chicago river, and large quantities of water have ever since flowed from said river into said channel, which diminished the supply of water in the river and in each of the canals, lowering the water six feet, which made the canals too shallow for the large vessels to enter the canals or reach the premises of the plaintiffs which fronted on the canals. Plaintiffs were therefore compelled to excavate and deepen the canals to the extent that the water had been lowered therein, which they did at a cost of $10,000. The docks along the canals and along the river were also rendered useless by reason of the water being lowered therein by the drainage channel, and plaintiffs repaired them at a cost of $15,000."

Main Channel Effect on Canals

After stating the facts the Court proceeded with the opinion as follows (page 634) :

"Appellants are the owners of sixty-six lots, all of which they claim were damaged by the act of the Sanitary District of Chicago in lowering the general level of the water in the south branch of the Chicago river. Seven of these lots front or abut on this branch of the river. The others front on canals, leading from the south branch at right angles to the general course of the stream. It is contended by appellee that appellants have no riparian rights appurtenant to those lots which do not abut on the river, and this presents the first question for our determination.

"At the time the canals were excavated, the real estate through which they extend was all property of one owner. More than twenty years intervened the construction of the canals and the opening of the principal

channel of the sanitary district, the opening of which reduced the level of the water. After the canals were opened the owner of the land subdivided the same into lots facing or abutting upon the canals, except a few immediately contiguous to and fronting upon the river. These lots the owner sold from time to time without any reservation.

"Under the law of this State, the owner of lots on each side of a river, such as the Chicago river, is also the owner of the bed of the stream to the center of the stream; subject only to the right of the public to the free and undisturbed navigation of the river. A riparian owner has the right to use the water in the stream. This includes the right to take a reasonable quantity of the water for his own purposes. The limitation and extent of the use of the water is, that it shall not interfere with the public right of navigation nor in a substantial degree diminish and impair the right of use of the water by other riparian owners.

Riparian Owners

"These canals had been continuously supplied with water for more than twenty years prior to the opening of the sanitary channel. This court has on several occasions held that the right to have water flow in an artificial channel and to flood land which it would not overflow naturally may be acquired by prescription. In other States it has been frequently held that one who, by an artificial channel or waterway, has taken water from the original channel and who has continued to divert and enjoy it, for a period beyond the Statute of Limitations as to real actions, acquires by prescription the right to use the water in that particular manner and to continue the diversion of it in the same way. It is suggested by appellee that these cases all involve the relative rights of private parties and that no such right can be acquired by prescription against the public. The right of the public in this stream is the right to navigate it. No right can be acquired by prescription which will interfere with this right of navigation. It does not appear from the declaration in this case, that filling these canals with water from the river interfered in anywise with navigation. In view of the length of the canals and the amount of water necessarily required to fill them to the level of the river, the diversion of the waters to the canals was an appropriation of the water adverse to the rights of other owners of abutting property, and as the appropriation did not violate the public right of navigation, the owner of each lot fronting upon either of these canals acquired, by prescription, the same riparian rights in the waters therein that he would have had if the canals had been natural waterways, and, under the authorities above cited, his title extended to the middle of the canal.

Rights by Prescription

"Section 13 of article 2 of the constitution of the State provides: 'Private property shall not be taken or damaged for public use without just compensation,' and the question is here presented whether the damages sustained by appellants are within this language of the constitution.

"Section 19 of the act for the creation of sanitary districts provides: 'Every sanitary district shall be liable for all damages to real estate within or without such district which shall be overflowed or otherwise damaged

by reason of the construction, enlargement or use of any channel, ditch drain, outlet or other improvements under the provisions of this act."

The Court further said (page 636):

"Now, if the owners of the various lots abutting on the canals in question have acquired by prescription the same right to the enjoyment of the use of water in these canals at the ordinary level that they would have, had these canals been natural and not artificial waterways, it is apparent that it is their right to have the water flow into these canals to the same height at it did prior to the opening of the drainage district channel.

Rights of Canal Lot Owners

"It is urged in opposition to this view that the title of the riparian owner is subordinate to such use of the water as may be consistent with or demanded by the public right of navigation, and that the rights of the plaintiffs are subject to the paramount authority of the State to make any and all improvements to facilitate navigation; and it is argued that as Section 24 of the Sanitary District act declares that the drainage channel is a navigable stream, consequently, reducing the level of the water in the Chicago river for the purpose of filling the sanitary channel was in the interest and for the purposes of navigation, and that as the rights of plaintiffs were subject to the rights of the public to make any and all improvements to facilitate navigation, the damages inflicted are not of a character for which recovery may be had. To this there are two answers: While it is true that the rights of the plaintiffs are subject to the public right of navigation, and that damages resulting in consequence of any work by the public for the purpose of improving navigation are damages for which no recovery can be had, still it must be manifest that the right of navigation which are superior to the rights of plaintiffs must be the right to navigate the south branch of the Chicago river and to improve navigation in that branch, or some stream or lake whose waters naturally flow into that branch or into which that branch naturally flows. Here the waters were taken and their general level reduced for the purpose of making navigable an artificial channel, and not for the purpose of facilitating the navigation of the south branch of the Chicago river or any stream or body of water naturally emptying into it or any stream or lake into which it naturally empties.

Subject to Public Rights

"Again it is evident, from an examination of the act for the creation of sanitary districts, that the primary and principal purpose of their creation under the statute is to provide for the preservation of the public health by improving the facilities for the final disposition of sewage and by supplying pure water. The fact that a navigable waterway may be created is a mere incident, and not one of the purposes for which a sanitary district is created.

Purpose of S. D. Act

"Appellee cites a large number of cases in which it has been held that there can be no recovery for damages resulting from a proper exercise of the police power for preserving and safeguarding the public health, and argues that the declaration herein does not state a cause of action, as the channels of the sanitary district were constructed for pur-

pose last mentioned under and by virtue of the police power of the State. This doctrine is applicable where compensation is claimed for taking property, or for damaging property not taken, where the damages result from some direct physical injury to the corpus of the property itself, or from the fact that the law prescribes some particular manner in which the property shall be used or some particular manner in which it shall not be used, and where the character or condition of the property, whether taken, or damaged without being taken, is such that it is necessary that it should be taken or damaged for the purpose of preserving the public health, or for some other purpose which sets in motion the police power; as where a slaughter-house or a soap factory, located in a city, is abated under regulations in reference to nuisances; where the erection of buildings of combustible material is prohibited within certain limits; the seizure and destruction of intoxicating liquors under prohibitory statutes; the seizure and destruction of gambling implements and apparatus under laws authorizing that course, or where the law requires the property owners to fill open cesspools in use by them upon their property.

"In the case at bar, however, there was nothing in the condition or character of the property of the plaintiffs which rendered it either necessary or desirable that it should be taken or damaged in the exercise of the police power. It is evident that lowering the level of the water obstructed ingress to and egress from the lots in question, and following the reasoning of this court in City of Chicago v. Jackson, 196 Ill. 496, we hold that such obstruction is a damage to private property for public use, within the meaning of section 13 of article 2 of the constitution of this State, for which compensation may be recovered from the sanitary district, under and by virtue of section 19 of the act authorizing the creation of the district.

Police Power Not Involved

"It appears from the declaration herein that when the level of the water was reduced, plaintiffs deepened the various canals passing their property so that there would be the same depth of water at their docks that there was before the opening of the sanitary district channel, and made such changes in the construction of their docks as were necessitated by deepening the canals, and they seek to measure their damages by the expense of making these excavations and changes, and contend that they cannot recover for damages to their property from acts which they permit to continue without making reasonable efforts to prevent them, and that it was their duty to make the excavations and changes and hereby lessen any damage that would be occasioned by interference with their business consequent upon the inability of vessels to land at their docks.

"Where the plaintiff, by the exercise of reasonable diligence, prevents or lessens damage which his property would otherwise sustain through the negligence of another, no doubt the expenditures that he has made in so doing may be considered in ascertaining the amount of his damages; but where property has been damaged, though not taken, by a public improvement, and the damages are of such a character that recovery may be had, the measure of damages is the difference in the value of the property before the

Measure of Damages

improvement was constructed and the value of the property after the improvement was completed.

" 'Where an action is brought to recover damages, where no part of the plaintiff's property has been taken, but merely damaged by a public improvement, the law is well settled that a recovery cannot be had unless the property claimed to be damaged has been depreciated in value by the construction of the public improvement. In other words, if the fair market value of the property is as much immediately after the construction of the improvement as it was before the improvement was made, no damage has been sustained, and no recovery can be had.' "

LITIGATION BETWEEN THE SANITARY DISTRICT OF CHICAGO AND THE ILLINOIS AND MICHIGAN CANAL COMMISSIONERS

In Volume 184 Supreme Court Reports, beginning at page 597 can be found the opinion of the Supreme Court of Illinois in the case of the Canal Commissioners vs. the Sanitary District, and the People ex rel Chiperfield, State's Attorney, vs. the Sanitary District, which were consolidated. These cases have reference to the provisions of Section 23 of the Sanitary District Act hereinbefore set forth which provided for the removal of a dam at Copperas Creek and a dam at Henry, under certain conditions and circumstances. The Court there said (page 599):

"The Illinois and Michigan Canal, it is alleged in the bill, is owned, controlled and possessed by the State of Illinois, and extends from the city of Chicago to the city of Peru, where it is connected with a system of water improvements in the Illinois river, consisting of the above mentioned dams; that the canal and locks and dams were constructed by the canal commissioners from appropriations made by the State as well as proceeds of revenues of the the canal; that the commissioners erected the lock and dam at Henry at a cost of $408,437.50, and the dam at Copperas Creek was constructed to the height of six feet and seven inches at a cost of $358,832.12; that the latter of these dams was constructed and in use in 1877; that the purpose and objects of the erection of these dams and locks were to make the Illinois river a navigable stream for boats and other crafts from Copperas Creek to Peru and to aid and facilitate the navigability of the Illinois river between those points, and thereby aid the canal for the purpose of trade and commerce; that prior to the erection of such dams the Illinois river had been of insufficient depth for navigation except in times of flood, but by reason of the construction of the dams a uniform depth at low-water mark had been produced between Copperas Creek and Peru which rendered the said river navigable for that distance and greatly augmented and increased the receipts of the canal; that during the last year there passed through the locks at Copperas Creek 523 crafts, of which 301 were steamboats and the balance barges in tow, loaded with various articles of merchandise; that the crafts so passing were of various sizes and tonnage, ranging from four to six hundred tons displacement. The bill charges the organization of the sanitary district of Chicago under an act of May 29, 1889, in force July 1, 1889, and then

charges that the sanitary district, by its trustees and by Alexandar J. Jones, Zina R. Carter and Joseph C. Braden, have for several weeks been confederating and conspiring together for the purpose of removing the dams at Henry and Copperas Creek forcibly and violently, and charges that such acts are illegal and without authority. The bill sets up certain proceedings of the board of trustees of the sanitary district, had on the 18th of October, 1899, by which they appointed a special committee to remove said dams; that afterwards, on the 10th day of November, the three trustees named met for the purpose of formulating ways for the removal thereof, and adopted a plan for their removal with the use of dynamite and other explosives to blow the same from the river and wholly remove and destroy the same, and that that committee is daily threatening to do so. The bill then states: 'The complainants aforesaid show unto your honors that the removal of the dams aforesaid is wholly unnecessary, reckless and wanton, and is not requisite to the proper use and requirements of the channel constructed by the defendant, the Sanitary District of Chicago, to enable the Illinois river at all times to safely, properly, rapidly and effectively carry away all the water, sewage and other refuse matter obtained from the said drainage channel at all times and under all conditions, and that the said dams as at present erected and existing will not constitute or be an obstruction, in any way, to the capacity of the Illinois river to carry away all refuse matter obtained from the drainage channel as aforesaid, but that, upon the contrary, by reason of the added volume of water so received from the said drainage channel should it be turned into the Illinois river, as is claimed by the defendants hereto, the navigation of the Illinois river from Copperas Creek to Peru would be benefited and increased by adding about twelve inches of water to the said river at its low and ordinary stage, and still the said river and the waters thereof would at all times be of ample capacity to safely meet the requirements and properly and effectively receive the discharge of the drainage channel and bear the same away without the removal of the said dams, or any change, alteration or modification of them.' The bill then alleges that the destruction of the dams would be of no benefit to the defendants in the conduct and use of the sanitary district, and their removal would lessen the carrying trade of the canal and prejudice the rights and interests of the people of the State of Illinois in the navigation of the Illinois river. The bill prays that the defendants be enjoined from in any way interfering, breaking, injuring, or destroying the dam at Copperas Creek and the dam at Henry, or any part or portion of either, or from wrecking or injuring any part or portion of the locks at said dams."

The Court further said (page 601):

"It was insisted on behalf of the sanitary district that by virtue of section 23 of the act of 1889, providing for the organization of such district, it was clothed with ample power to remove the said dams. This was denied by the complainants, and the question presented on this record is to be determined by the construction of section 23 of an act entitled 'An act to create sanitary districts and to remove obstructions in the Des Plaines and Illinois rivers,' approved May 29, 1889, and in force July 1, 1889.

"The part of that section requiring construction is as follows: 'In case a channel is constructed in the Des Plaines river as contemplated in this section it shall be carried down the slope between Lockport and Joliet to the pool commonly known as the upper basin of sufficient width and depth to carry off the water the channel shall bring down from above. The district constructing a channel to carry water from Lake Michigan of any amount authorized by this act, may correct, modify and remove obstructions in the Des Plaines and Illinois rivers wherever it shall be necessary so to do to prevent overflow or damage along said river, and shall remove the dams at Henry and Copperas Creek in the Illinois river, before any water shall be turned into the said channel. And the canal commissioners, if they shall find at any time that an additional supply of water has been added to either of said rivers, by any drainage district or districts, to maintain a depth of not less than six feet from any dam owned by the State, to and into the first lock of the Illinois and Michigan canal at La Salle, without the aid of any such dam, at low water, then it shall be the duty of said canal commissioners to cause such dam or dams to be removed. This act shall not be construed to authorize the injury or destruction of existing water power rights.'

"Under the legislation of the State of Illinois the Illinois and Michigan canal was placed in charge and control of canal commissioners, whose appointment was provided for. For many years the policy of the State with reference to the improvement of navigation in the Illinois river below La Salle, and thereby adding to the freight to be carried by the Illinois and Michigan canal, was expressed by frequent acts of the legislature. It appears from the averments of the bill that as early as 1867 the State began to consider the question of the improvement of the river by slackwater navigation. In 1867 the legislature passed an act to secure the improvement of the Illinois and Michigan canal and its extension, and to secure the improvement of the Illinois and other rivers, and it was provided that when the canal commissioners shall take possession of the Illinois and Michigan canal, the revenues derived therefrom, after making repairs therefrom, together with the unexpected proceeds of the sale of canal lands, shall be paid into the State Treasury and shall be and are appropriated for the construction of works named in the act, by section 10 of which provision is made for the construction of the lock and dam on the Illinois river between Peoria and La Salle. Under this provision of the statute the locks and dam at Henry, Illinois, were completed in January, 1872. The dam was of the height of six feet and four inches, and was constructed from revenues derived from the Illinois and Michigan canal. In 1873 the legislature of the State of Illinois passed an act authorizing the board of canal commissioners to construct a dam and locks at or near Copperas Creek, where it empties into the Illinois river, which latter mentioned dam was completed in October, 1887. These dams were placed under control of the canal commissioners, whose duty it was made to keep the same in repair and preserve and protect them. The erection of the dam at Henry,—a distance of about thirty-eight miles below Peru—has caused an increase of the depth of water at Peru of about two and one-half feet. The erection of the dam at Copperas Creek —about sixty miles below the dam at Henry—has caused an increase in

the depth of water at the foot of the dam at Henry of more than two feet. By these dams the navigation of the Illinois river has been improved so that during the period of navigation on our rivers, which is for about nine months in the year without being interrupted by ice, the river has steadily been available for purposes of navigation. Navigation over that part of the river did not exist prior to the construction of these dams except in time of floods, and was of so uncertain a character that the river was but little value in its availability for carrying purposes. By the construction of the dams it was rendered a valuable waterway, affording a cheap method of carriage of freights, etc., from various points along the river, and became a means of water communication of exceeding value to those points."

The Court then discusses the rules of construction applicable to statutes and then said (page 605):

"Under these principles of construction, the language of section 23, without the addition or rejection of words, may be read as follows: 'The district constructing a channel to carry water from Lake Michigan of any amount authorized by this act, may correct, modify and remove obstructions in the Des Plaines and Illinois rivers wherever it shall be necessary so to do to prevent overflow or damage along said river before any water shall be turned into the said channel, and shall (may) remove the dams at Henry and Copperas Creek in the Illinois river. And the canal commissioners, if they shall find, at any time, that an additional supply of water has been added in either of said rivers by any drainage district or districts, to maintain a depth of not less than six feet from any dam owned by the State, to and into the first lock of the Illinois and Michigan canal at La Salle, without the aid of any such dam, at low water, then it shall be the duty of said canal commissioners to cause such dam or dams to be removed. This act shall not be construed to authorize the injury or destruction of existing water power rights.'

"The word 'shall' being thus construed as 'may', the power conferred upon the sanitary district to remove the dams at Henry and Copperas Creek, in the Illinois river, is not mandatory, nor is the removal of the dams necessary or requisite to enable the sanitary district to carry out the purpose for which it was organized. It could not have been contemplated by the legislature of this State that property of the State, erected at a cost of over three quarters of a million of dollars, and whose retention is of great benefit to the people and materially adds to the navigability of the Illinois river and to the profit derived by the State out a the tolls of the Illinois and Michigan canal, should be destroyed with- and Copperasity existing therefor. The destruction of the dams at Henry unless it becam Creek was therefore not contemplated by the legislature heretofore adopte necessary to do so, and by the method of construction exists under such d the power of the district to remove the dams only

"The method by wi ditions.

during the long history ch the canal was controlled by the commissioners Illinois, was well known t the Illinois and Michigan canal, in the State of under the present constitu the legislature, and the legislation of the State ion, by which they had control of the canal,

was recognized in the section before us for construction. The legislation of the State with reference to the construction of the dams by the canal commissioners, and the control of those dams and the duty to protect the same under the legislation of the State, was also well known to the legislature, and under the transportation of sentences and the construction as to words heretofore made, no mandatory directions for the removal of the dams at Henry and Copperas Creek were given to the sanitary district, but the policy of the State with reference to the control of those dams by the State was recognized. The only mandatory direction in the statute with reference to the removal thereof is in this provision: 'And the canal commissioners, if they shall find at any time that an additional supply of water has been added to either of said rivers by any drainage district or districts, to maintain a depth of not less than six feet from any dam owned by the State, to and into the first lock of the Illinois and Michigan canal at La Salle, without the aid of any such dam, at low water, then it shall be the duty of said canal commissioners to cause such dam or dams to be removed. There is therefore no mandatory direction to the canal commissioners to remove these dams, but an express limitation on their right to do so until the conditions named in this provision exist. This limitation on the power of the canal commissioners to remove the dams until stated conditions exist, followed by mandatory directions as to their removal when such conditions are an accomplished fact, is evidence that there was no legislative intention to confer the power upon the sanitary district to destroy these dams, without reference to the fact whether their destruction was necessary for the purpose for which the sanitary district was organized.

"We hold that under the circumstances disclosed by this record the destruction or removal of the dams at Copperas Creek and at Henry, or either of them, was not rendered necessary for any purpose of the sanitary district. By this construction of the statute the slack-water navigation, to the extent it has been benefited by this great expenditure of the State, is preserved until it is determined, as a result of the construction of the sanitary district canal, that a necessity no longer exists for the preservation of the dams. Should theories as to the effect of the volume of water passing through the sanitary district canal, and its effect with reference to the increased current and depth of channel in the Illinois river, never, in fact, be realized, the slack-water navigation of the Illinois river is preserved, to the great benefit of the people living along the stream."

The above opinion was filed February 19, 1900, and a re-hearing was denied April 17, 1900.

DECISION WITH REFERENCE TO CONTRACT BETWEEN THE ILLINOIS AND MICHIGAN CANAL COMMISSIONERS AND THE SANITARY DISTRICT TRUSTEES.

This case was decided June 19, 1901, and re-hearing denied October 9, 1901. The opinion appears in Volume 191 Illinois Reports, beginning at page 326. In this case the Court said (page 327).

"The Illinois and Michigan canal, extending from the Chicago river to Peru, was constructed by the State of Illinois and is managed by the appellants as a board appointed by the Governor. In 1889 the act authorizing the formation of sanitary districts was passed, and the appellee, the Sanitary District of Chicago, was organized under said act. It has constructed a drainage channel, from said Chicago river to Lockport. This suit arises out of a contract between the canal commisioners and the sanitary district by which the sanitary district agreed to supply water to the canal. Some statement of the nature and history of the two enterprises, as shown by the evidence, seems to be necessary to an understanding of the questions at issue.

"The canal was opened for business in the year 1848. The first level of the canal leading from Chicago was constructed so that the water therein was about eight feet above Lake Michigan when the latter stood at what is known as 'datum,' which is the low-water mark in Lake Michigan in the year 1847. This first or upper level of the canal is also called the 'summit level,' and extends from Bridgeport, where the canal connects with the Chicago river, at a point about five miles from Lake Michigan, south-westerly about twenty-eight miles, terminating in a lock called 'Jack's lock,' about two miles north of Lockport, where the canal takes a new and lower level. To supply the canal with water a dam was built across the Calumet river at Blue Island and a channel was cut from thence to the canal. As a further source of supply a feeder from the Des Plaines river was provided, and pumping works were erected at Bridgeport to pump water from the Chicago river into the canal. These pumps were used during the dry season of the year. The canal has a slope of one-tenth of a foot to the mile from Bridgeport to Lockport, so that the surface is about three feet lower at Lockport than at Bridgeport. To maintain this level a constant supply of water is required. As the city of Chicago grew and turned sewage into the Chicago river the city became interested in having more water pumped out of said river into the canal, to induce a flow from Lake Michigan into the river instead of allowing the sewage to be carried out into the lake, where the city obtained its water supply. Consequently, in 1858 new and larger pumps were put in at Bridgeport, pumping over 20,000 cubic feet per minute, and the cost of the new pumps and of operating them was divided between the city of Chicago and the canal trustees. The city continued to grow and to discharge more sewage into the river, and in 1865 the legislature authorized it to deepen this summit level of the canal to cleanse and purify the river by drawing a sufficient quantity of water from Lake Michigan through it and through the summit level of the canal to carry the river water and sewage away by means of the canal. The city was to have a lien upon the canal, and the deep cut was completed in 1871, and after the Chicago fire the city was reimbursed for the expenditure. For a number of years after the deep cut was completed there was a sufficient depth of water in the canal from gravity flow to answer the needs of navigation without pumping. The dam across the Calumet at Blue Island was then removed. In 1883 it had again become necessary for the city to pump from the Chicago river, and it established pumps at Bridgeport which

pumped from 40,000 to 50,000 cubic feet of water per minute out of the river into the canal. This was done by the city for its own protection, to keep its sewage out of the lake, and it operated the pumps until it was relieved by turning the sewage into the drainage channel of the sanitary district. The pumps raised the water from the Chicago river into the canal, whence it flowed very slowly toward Lockport. When the sanitary district channel was opened the city had no further interest in pumping water into the canal.

"In 1892 the sanitary district commenced cutting its channel, which it claimed to be completed in the latter part of 1899. The canal and drainage channel are practically parallel from Chicago to Lockport. Both connect with the Chicago river and draw their supply of water from Lake Michigan through the river. The inlet to the sanitary channel is at Robey street, and the inlet to the canal is about 2,500 feet east, toward the lake. The supply for the sanitary channel is therefore drawn past the inlet to the canal. While the canal and drainage channel are parallel, they are in no way connected with each other. The act for the formation of sanitary districts provides for a commission to be appointed by the Governor to ascertain whether a channel of the character and capacity required by the act, and upon their report that such is the case the Governor is directed to authorize the water and sewage to be let into the channel. The commission to examine the drainage channel was appointed in May, 1899, and on January 2, 1900, they reported the channel, in substance, complete. The Chicago river is a navigable body of water under the charge and control of the Federal Government, which granted permission to the sanitary district to connect its channel with said river. The canal commissioners discovered that the admission of water into the drainage channel would lower the level of the water in the Chicago river at the inlet to the canal from two to two and a half feet, and, of course, they knew that the city of Chicago would stop pumping water into the canal. At the instance of the canal commissioners the Attorney General filed an information in the nature of a bill in equity in the circuit court of Will county to restrain the sanitary district from lowering the level of the water in the Chicago river. On the petition of the sanitary district this information was removed into the circuit court of the United States, on the ground that a Federal question was involved, and that information is still pending. The city of St. Louis was also threatening to enjoin the sanitary district from opening its channel, and the Governor of this State refused permission to open it unless it would preserve navigation on the canal. The sanitary district was very desirious of opening the channel to turn in the water before there should be any interference on the part of the city of St. Louis, and on December 21, 1899, it entered into the written contract with the canal commissioners which is the foundation of this suit. By that contract the sanitary district agreed that for the period of four months after opening its main channel it would supply the summit level of the canal with a volume of water equal to the average volume which had been supplied to said canal by the pumps at Bridgeport for the year 1899,—not less than 35,000 cubic feet per minute; that it would lower the lock at the junction of the canal with the Chicago river prior

to April 1, 1900, so as to maintain a depth of six and one-half feet of water over the mitre-sills of said lock, and that after the expiration of four months it would maintain throughout the summit level of the canal a navigable depth of six feet of water. The volume of water to be supplied for the purpose of maintaining this navigable depth of six feet was to be determined by the needs of navigation. The obligation was perpetual, and the sanitary district was to have the right to enter upon the canal in order to make such excavations in the summit level as might be necessary to secure said six feet of water, if it should find that method more economical than to pump that amount of water into the canal. After the execution of the contract and the report of the commission the water was turned into the drainage channel and the sanitary district entered upon a performance of the contract. It re-built the lock at the entrance to the canal and paid the city of Chicago for operating the pumps at Bridgeport until July 16, 1900, when it took charge of them. It maintained a navigable depth of six feet of water throughout the entire length of the summit level of the canal. To maintain said depth of six feet it is necessary to raise the water two and two-tenths feet above datum before mentioned, which is a point generally established and used for the purpose of municipal and other levels and surveys in and around Chicago.

"On November 1, 1900, the sanitary district notified the canal commissioners that on and after November 15, 1900, it would cease to pump water into the canal, as provided by the contract, and that it claimed the contract was null and void and of no legal effect. The canal commissioners then filed their bill in the circuit court of Cook county in this case on November 9, 1900, to enforce the specific performance of said contract, and praying for an injunction against the sanitary district from ceasing to supply the summit level with an amount of water sufficient to maintain a navigable depth of six feet, and from violating the terms of said contract. The sanitary district answered the bill, and upon a hearing the court decreed that said district specifically perform the contract from April 1 to November 15 in each year, and that during said portion of each year it should be enjoined from refusing or failing to comply with the contract, and that it should pay the costs of the suit. The decree was unsatisfactory to both parties,—to the sanitary district because it ordered a specific performance of the contract, and to the canal commissioners because it limited the time during which water should be supplied from April 1 to November 15 in each year, and did not require the water to be supplied whenever it was needed according to their judgment. Each of the parties, therefore, prayed an appeal. The canal commissioners perfected their appeal to this court and are the appellants here, while the sanitary district appealed to the Appellate Court for the First District and is the appellee here. The question which of the appeals was properly taken is raised by motion of appellee to dismiss the appeal to this court, and that motion must first be disposed of."

The Court further said (page 332):

"The sanitary district also contends that the suit is not one in which the State is interested, within the meaning of said section 88, and that the State has no more interest in this suit than in a suit between two counties

or two public agencies, or a suit involving any other matter of a public nature. The State, as such, is not interested in suits of the character mentioned, but in this case the litigation concerns the property and interests of the State. The interest here is not such a remote one as the State may be said to have in a suit of an individual with a tax collector or where there is an attempt to collect a fine or a penalty, but it is a direct interest in the litigation. The canal commissioners act in their official capacity for the State, whch is the owner of the canal. The total cost of the canal to the State has been in the neighborhood of $10,000,000, and the cost of the deep cut, for which the city of Chicago was reimbursed, was about $3,000,000. It extends through a number of counties, where it is a local benefit, but it is maintained by the State at great expense. It has not been self-supporting for many years, and nearly every legislature has appropriated large sums of money to supplement its constantly dwindling revenues. A statement of the gross tolls taken on the canal shows that they have decreased from $300,000 in 1865 to an average of less than $40,000 during the last five years. The State makes up all deficiencies, and maintains a board of canal commissioners, with their equipment, officials and employees, to operate the canal as a State enterprise. The suit being one in which the State is directly interested, the motion to dismiss the appeal is overruled.

"As the cross-errors question the action of the circuit court in granting any relief by way of specific performance, they are naturally the first to be disposed of. The principal grounds of objection by the sanitary district to the decree are, that the contract is ultra vires; that to perpetually supply the canal with water, or to maintain it, is not within the powers conferred by its organic act, and therefore its officials had no power to enter into the agreement to furnish such supply; that the contract itself is of such a nature that a court of equity should not enforce it by a decree for specific performance, and that it is oppressive, and was made under such circumstances of coercion that it should not be enforced.

"By the act under which the sanitary district is organized it is empowered to construct and maintain a channel for carrying off and disposing of drainage, including sewage of the district; to make and establish docks adjacent to any navigable channel created under the act, and to lease, manage and control such docks, and control and dispose of any water power incidentally created. It is authorized to raise funds for its corporate purposes by taxation of the district. The canal commissioners do not contend that funds to maintain and operate the canal can be raised by taxes levied on the sanitary district, nor that the sanitary district can operate the canal, or assist materially in the maintenance and operation of it, as a primary enterprise of the sanitary district. Nor it is contended that a corporation of the character of the sanitary district is ever estopped to deny its authority to enter into a contract, but it is insisted that by its charter it was authorized to make the contract in question. The sanitary district may sue and be sued, contract and be contracted with, and make any contract necessary or proper to carry into effect the purpose of the corporation. It may take or damage private property for its corporate purposes, and may acquire, by condemnation, purchase or otherwise, any

right of way or property needed for such purposes. It is claimed that it has no authority to lower the level of the Chicago river below what it had been, which was practically the same as the level of Lake Michigan, and if it does so and injures the canal it must pay the damages, and therefore it may contract to pay money to avert such an injury or promise to pump water for the same purpose.

"The argument that the sanitary district cannot lower the level of the river or the summit level of the canal, but must restore the canal to its former condition, is based, in the first instance, upon the seventeenth section of the act to create sanitary districts. That section is as follows: 'When it shall be necessary in making any improvements which any district is authorized by this act to make, to enter upon any public property or property held for public use, such district shall have the power so to do and may acquire the necessary right of way over such property held for public use in the same manner as is above provided for acquiring private property, and may enter upon, use, widen, deepen and improve any navigable or other waters, waterways, canal or lake; Provided, the public use thereof shall not be necessarily interrupted or interfered with, and that the same shall be restored to its former usefulness as soon as practicable: Provided, however, that no such district shall occupy any portion of the Illinois and Michigan canal outside of the limits of the county in which such district is situated for the site of any such improvement, except to cross the same, and then only in such a way as not to impair the usefulness of said canal, or to the injury of the right of the State therein, and only under the direction and supervision of the canal commissioners: And, provided further, that no district shall be required to make any compensation for the use of so much of said canal as lies within the limits of the county in which said district is situated except for transportation purposes.'

"The section so relied upon does not require the sanitary district to maintain the former depth of water in the canal, since the conditions do not bring it within the terms of the section, which relates to a physical entry upon property and authorizes such entry upon certain conditions. There is no connection between the drainage channel and the canal. They each connect with the Chicago river at points about half a mile apart. The complaint is, not that the sanitary district has entered upon property of the canal or used it in any way, but that by permission of the Federal Government the sanitary district is drawing so much water from Lake Michigan through the Chicago river that the surface of the river has been lowered from two to two and a half feet at the point where the water is taken from the river into the canal and the gravity flow is thereby reduced. There has been no entry upon the canal, and its navigation has not been affected by any entry upon it so as to require it to be restored to its former usefulness. * * *

"In this case, the evidence shows that the officials of the sanitary district, to meet the demands of the Governor and canal commissioners, went far beyond any purpose or object of preventing the injury that would be done to the canal by lowering the water in the Chicago river. If the drainage channel had never been constructed or the level of the Chicago

river in any manner affected there would not be a navigable depth of six feet of water in the canal. With the exception of the period after 1871, when the canal was deepened and there was a gravity flow of water from the Chicago river sufficient for navigation, there has never been a time when there was a depth of six feet from such gravity flow. In 1871 the waters of Lake Michigan stood at an average of twenty inches above datum—the low-water mark of 1847. A chart published by the Engineering Society of the city of Chicago, in evidence, shows that fact, and that the water in that year was as high as thirty-four inches above datum. The average height was above datum up to and including the year 1890. There is also in evidence a report of the deep waterway commission to the Secretary of War, showing that the level of Lake Michigan has been permanently lowered at least a foot since about 1890 by the deepening of the channels of the Detroit and St. Clair rivers. Since 1890 the average height has been about at datum, and in 1892, 1893, 1895, and 1896 the average was below that mark. The average height of the water would not support navigation in the canal if the river were on a level with Lake Michigan, and the water in the lake is frequently so far below datum that a gravity flow from the river on a level with it would leave very little water in the canal. Since 1883 there has never been a time that there was a navigable depth of six feet of water without the aid of the pumps, which constantly threw large quantities into it. The sanitary district is under no obligation to continue the pumping which the city of Chicago did for the purpose of keeping the sewage out of the lake. It also appears that the cost of operating the pumps that were supplying the canal with water according to the contract would be at least equal to the tolls taken on the canal.

"If the contract is regarded as a legal one and enforceable at law, its terms are such that a court of equity should refuse to enforce it specifically. To do so would require the taxation of the sanitary district to maintain the canal at a height that would not exist if the district had never interfered with the Chicago river. It would require the sanitary district to confer a benefit upon the canal in addition to compensating for any injury to it. While the level of the water in the lake had averaged about at datum for years before the drainage channel was opened, the decree requires the sanitary district to raise the canal two and two-tenths feet above datum."

The court reversed the decree and remanded the case to the Lower Court with directions to dismiss the bill.

In the case of MORTELL vs. CLARK, et al., Volume 272 Ill. Sup. Ct. Repts., page 213, the Supreme Court said with reference to the act of 1903:

" * * permits the crossing of the Illinois and Michigan canal near Sag bridge and provides for the abandonment of certain portions of said canal. Counsel for appellant argue that this is in violation of the Federal grant of 1822, under which the Illinois and Michigan canal was constructed, which provides, among other things: 'If said ground shall ever cease to be occupied by and used for a canal suitable for navigation, the reservation and grant hereby made shall be void and of none effect.' The

canal was built under the authority of the act of Congress of March 2, 1827, the act of 1822 having been mutually abandoned by the State and Federal governments. This Federal act did not provide just where the canal should enter Lake Michigan, simply stating that the land was granted for the purpose of opening 'a canal to unite the waters of the Illinois river with those of Lake Michigan.' The sanitary district's main channel as now constructed practically complies with this act and furnishes a canal more suitable for navigation than the Illinois and Michigan canal. Furthermore, the Sag channel or cut-off is required to be navigable by said act of 1903, and the proof shows that the Calumet river is navigable to the point where it is intersected by the Sag channel. This cut-off would therefore also practically comply with both of said Federal acts as to furnishing part of the canal for connection of the Illinois river with Lake Michigan. 'If the location and establishment of harbor lines by these commissioners is actually in violation of the laws of the United States, their vindication may properly be left to the Federal Government.' Moreover, under the reasoning of the Federal courts on very similar questions, we do not think it can be held that this act is violative of the provisions of either of said Federal acts. The reasoning of these cases also answers the argument of counsel for appellant that the construction of the Sag channel and its subsequent operation will be in violation of the permits of the war department of the United States as to the flow of water from Lake Michigan through the main and Sag channels of the sanitary district."

THE SAG CHANNEL

In the case of Mortell vs. Clark, et al, last referred to, the complainant filed a bill in the Circuit Court of Cook County attacking the constitutionality of the Act of 1903, and while the situation with reference to the proposed Sag Channel and surrounding territory is somewhat analagous to the situation in Evanston and surrounding territory, as set forth in the case of Judge vs. Bergman, et al, hereinbefore set forth, the observations of the Court in the Mortell case with reference to the improvement and the objects and purposes of the Sanitary District are very interesting. The Court there said (page 202):

"Comparatively little testimony was taken on the trial of the case. It is somewhat difficult, in the condition of the record, to get an accurate understanding of all the facts discussed in the briefs and involved in this hearing. An auxiliary drainage channel or adjunct to the main channel of the sanitary district is in process of construction, and is to extend from said main channel at about the Sag bridge easterly along the Sag valley to a point east of Blue Island until it connects with the Little Calumet river near its intersection with Stony creek. The plan is to build this proposed sewer to extend south and west from the intersection of Baltimore avenue and the north line of Ninety-fifth street to a point a little west of Sag channel's intersection with the Calumet river and connecting with controlling and pumping works about a mile east of

Calumet Sewer

Blue Island. The sewage and contents of said sewer are to be transferred into the Sag channel by means of these controlling and pumping works." * * * (Page 204):

"This proposed sewer is sixteen feet in diameter at the controlling works and is graduated to a smaller size, until at its northerly and easterly end it is ten and a half feet in diameter. The territory through which this sewer is to extend is known as the Calumet region in Illinois. Most of it is flat, low land, and land of the same description extends across the State line into Indiana, a distance of approximately fifteen or twenty miles. The portion in Indiana using Lake Michigan as an outlet for sewage contains approximately 50,000 people, and the population of the so-called Calumet region, according to the last Federal census, is a little over 134,000. The Calumet river has two branches, both rising in Indiana, one called the Grand and the other the Little Calumet, the latter being the larger stream of the two. Both of these branches flow to the west from Indiana, and after crossing the Illinois boundary flow to the west and north and then turn and flow to the east and north until they join as the Calumet river proper, which runs into Lake Michigan at South Chicago. The Calumet river, from Lake Michigan to the fork, has been improved to a depth of about twenty or twenty-one feet below city datum or lake level. From this point up to where the controlling works are to be located on the Little Calumet, that river is from six to twelve feet deep. The Calumet river varies in width from its mouth to the proposed controlling works from about one hundred and fifty to three hundred feet. In low water it is a sluggish stream. The proposed sewer is to take the sewage from all the city sewers that run into the Calumet river, the Little Calumet river or Lake Calumet and carry said sewage to the controlling works. The principal city sewers thus intercepted are about twenty in number, varying in size from three and a half feet in diameter to ten and a half. Four of them are located east of the Calumet river, the others west of the Calumet and Little Calumet rivers and Lake Calumet. Several sewers, especially those that run into Lake Calumet, simply carry storm water and are called storm-water sewers.

Calumet Region

City Sewers

"Counsel for appellant argue that the evidence shows that a large part of this district, especially around Lake Calumet, is vacant or sparsely settled territory, which will be greatly benefited by this proposed improvement without being compelled to pay a special assessment therefor, as it would be required to do if the improvement were made under the Local Improvement act by the city of Chicago. They further contend that this region which the proposed sewer crosses has an adequate sewer system, with main trunk sewers covering the entire territory around Lake Michigan, Halsted Street and Indiana avenue, which is fully adequate for the present population and conditions, and that under plans prepared by engineers for the city within recent years there could be easily constructed trunk sewers having an outlet

Calumet Territory

into the Calumet rivers to take care of the sewage and storm drainage for the vacant and unoccupied property in this region not now having adequate drainage and sewerage facilities. Counsel for appellees argue that the evidence shows that the population in that district is now approximately 150,000 people; that two of the cribs for the water supply of the city of Chicago lie approximately two miles off shore, within three or three and a half miles of the mouth of the Calumet river; and that the sewage emptying into the Calumet river and its branches and Lake Calumet passes through the Calumet river into Lake Michigan, thus polluting the water supply of that part of the city of Chicago and thereby endangering the health of the people of the sanitary district; that the intakes at said cribs provide a water supply for a large portion of the population of the city of Chicago—upwards of 800,000 people—and the water mains supplying the rest of the city are connected with the mains supplied from these cribs, and that unless the Calumet sewer is constructed to divert the sewage from Lake Michigan to the Calumet-Sag channel, the sewage discharged into the Calumet rivers will, during a portion of each year, be carried into Lake Michigan, polluting the water supply of a large portion of the inhabitants of the sanitary district .

Population

"We think the evidence shows, without contradiction, that the proposed sewer, when constructed and in operation, will intercept all the various city sewers and sewer systems now maintained by the city of Chicago in that region and divert the flow of those sewers from Lake Calumet, the Calumet rivers and Lake Michigan into the sanitary district Sag channel by means of the pumping and controlling works. There is nothing in the allegations of the pleadings or as otherwise presented in this record that tends to show that this proposed sewer is to be used as a local sewer providing for house drainage, but the evidence all tends to show that when it is constructed it will cut across the sewers now maintained by the city of Chicago, connecting with them at certain points, so that the sewage now flowing through them will flow through this proposed sewer into the Calumet-Sag channel and not out through the Calumet rivers into Lake Michigan.

Sag Channel and Sewers

"Many facts are found in the record with reference to the cost and extent of the work of the various channels and adjuncts of the sanitary district and of the intercepting sewers and pumping works built by the city of Chicago, with or without the financial assistance of the sanitary district. We do not deem it necessary to set out in detail all the facts or all the items of expense, amounting to many millions of dollars, and all a part of a common plan or purpose to divert the sewage of the city of Chicago and vicinity from Lake Michigan into the channels of the sanitary district, thus preventing the contamination of the water supply of said city and suburbs, which obtain water from Lake Michigan. It appears that the construction of the channels of the sanitary district may also result in creating a waterway from Lake Michigan which

Cost

will ultimately extend to the Illinois and Mississippi rivers. The fact that a navigable waterway, however, will be created by the digging of the main channel of the sanitary district is a mere incident and not one of the purposes for which the sanitary district was created. We will have occasion to refer hereinafter to certain facts that have not been set out.

Purpose and Result

"One of the principal points urged by counsel for appellant is, that when this sewer is completed it will be merely a local improvement and not properly an adjunct of the sanitary district. The original Sanitary District act, as well as the act of 1903 under which the Calumet district was made a part of the sanitary district, both provide, in substance, that the sanitary district trustees are authorized to establish, construct and maintain one or more channels, drains, ditches and outlets, 'together with such adjuncts and additions thereto as may be necessary or proper to cause such channels or outlets to accomplish the end for which they are designed, in a satisfactory manner.' It is practically impossible to lay down any hard and fast rule by which it can be determined what is or what is not an 'adjunct' or 'addition,' within the meaning of the Sanitary District act. Counsel for appellant argue that instead of building this sewer the sanitary district should have planned to deepen and widen the Little Calumet and the Calumet rivers, so as to allow the sewage now emptying into these rivers and Lake Calumet to be carried away by the flow of water from Lake Michigan into the Sag channel. While it is suggested in the pleadings that it is planned to deepen and widen the Calumet rivers for the purposes of navigation in the future, there is no proof in the record as to whether this would be a practical way to dispose of the sewage now emptying out of the sewers into said rivers. Whether this channel should be deepened for the purpose of diverting the sewage from ultimately flowing into Lake Michigan or whether the present plan of building this sewer is proper, is a legislative question not subject to review by the courts. If the deepening of these rivers for the purpose of diverting the sewage from Lake Michigan could, under the law, be considered an adjunct or addition to the main channel of the sanitary district, we cannot see how it can very well be argued that the building of this sewer, if it accomplishes the same purpose, will not necessarily be considered such an adjunct or addition. This court held in Judge vs. Bergman, 258 Ill., 246, that the building of a sewer in Evanston for the purpose of intercepting the sewage of that city and diverting it from Lake Michigan into one of the channels of the sanitary district could properly be held to be an adjunct, addition or auxiliary channel of the sanitary district. It was there held that the building of such intercepting sewer to prevent the pollution of the waters of Lake Michigan was in furtherance of the purposes of the sanitary district. We think the proof in this record shows clearly, as it did in the case last cited, that the building of this

Courts Cannot Make Plans

Bergman Case Decision

sewer was necessary to further the purposes for which the sanitary district was constructing the main channels of its district. * * * (Page 209).

"The improvement here proposed has few, if any, of the characteristics of a local improvement. It is designed for the general public benefit, for the protection of the water supply of the sanitary district and the preservation of the public health. It is not only necessary and proper to accomplish the purposes of the district satisfactorily, but is absolutely essential to prevent a total failure of the channels of the district from accomplishing said purposes. The evidence in this record is conclusive that the purpose of the construction of this sewer is to divert from Lake Michigan the sewage discharged into the city sewers already constructed and to transfer it by means of this sewer and pumping works into the Sag channel and then into the main channel of the district. The argument that without any further improvements this will drain a large portion of the vacant and unoccupied territory in the Calumet district, and also necessarily will drain Lake Calumet so as to make this a valuable city property, is not borne out by this record. So far as we can judge from this record, it will be necessary, before this vacant territory can be adequately supplied with drainage and sewage facilities, to construct main trunk sewers north and south connecting with this intercepting sewer. The same would have to be done for most, or all, of this vacant or sparsely settled territory in this region in order to give it satisfactory sewerage and drainage facilities, if the outlet of such sewers were to be the Calumet rivers instead of this sewer.

Not a Local Improvement

"The argument that this work ought not to be done until the drainage and sewage for that portion of the Calumet region in Indiana is also diverted from Lake Michigan, we think is a legislative and not a judicial question. The necessity, location and character of a public improvement is a legislative question, and if the discretion of the legislative body is honestly exercised it is not subject to review. The general rule is, that where legislative or discretionary powers are conferred upon municipal corporations the courts will not interfere unless in the exercise of such discretion there is fraud, manifest oppression or gross abuse. A somewhat similar question as to legislative authority was before this court in Gage vs. Village of Wilmette, 230 Ill., 428, and it was there held that the courts would not prevent the municipal authorities from constructing a large outlet sewer on the ground that the plans and work of the sanitary district for draining that section of the country had not yet been perfected or completed. There is no clear proof in this record as to what is the outlet for the sewage and drainage of that portion of the Calumet district in Indiana. We would infer that the outlet for part of it is the Calumet river, but that most of this populated territory in Indiana, if it has any outlet into Lake Michigan, has it further south than the Calumet river. There is no proof in this record as to the effect, if any, the flowage

Calumet Region in Indiana

of sewage from the district in Indiana south of the Calumet rivers would have in polluting the waters of Lake Michigan so as to affect the water supply of the sanitary district. We think it is obvious from this record that the diversion of the sewage by this sewer from Lake Michigan will materially promote the health of the people of the sanitary district, regardless of what may be done with the sewage and drainage of the Calumet region in the State of Indiana. The courts must presume that the sanitary district authorities, in building this sewer, are acting in compliance with the law, unless it is clearly shown that they are acting from dishonest and fraudulent motives.

Health Promoted

"Counsel for appellant, as we understand their argument, contend that it is unlawful to construct this sewer, even though it be solely for intercepting purposes, from the funds of the district raised by general taxes, since several other intercepting sewers in the city of Chicago and said sanitary district have been constructed at a cost of some $6,000,000 out of the funds of the city and not from the funds of the sanitary district, the inference being that such sewers were paid for by special assessment. Neither in the allegations of the pleadings nor the oral testimony is there any showing that such intercepting sewers were constructed as local improvements by special assessment. So far as anything is shown here, they may have been constructed out of funds of the city raised by general taxes. However that may be, no authority has been cited, either from this court or any other, that would justify us in enjoining the construction of this intercepting sewer on the ground that other intercepting sewers have been constructed by the city."

THE ACT OF 1903 HELD TO BE CONSTITUTIONAL

The Court then discussed the arguments pro and con and held that the act is constitutional.

ELECTRICAL DEVELOPMENT

The original Sanitary District Act, as hereinbefore shown, provided among other things that the Board of Trustees should have power to make and establish docks adjacent to any navigable channel made under the provisions of the Act for drainage purposes, and lease, manage and control such docks, and also to control and dispose of any water power which may be incidentally created in the construction and use of such channels or outlets, and in no case shall said Board have any power to control water after it passes beyond its channels, waterways, races or structures into a river or natural waterway or channel or water power and docks situated on such river or natural waterway or channel.

Docks Water Power

The Act of 1903, which was held constitutional by the Supreme Court of Illinois in the case of Mortell vs. Clark, et al, as hereinbefore shown, is the act under which the connection was made between the

old channel and the Illinois and Michigan Canal below Lockport. The channel as at first constructed had no provision for boats passing out of the lower end. Under the Act of 1903 the Calumet-Sag Channel was also constructed, as hereinbefore shown, and the Illinois and Michigan Canal crossed over Summit, thereby causing the abandonment of the Illinois and Michigan Canal between Lockport and Chicago. Under this Act the power plant was installed at Lockport, transmission lines were constructed between Lockport and Western Avenue, Chicago, and the electricity brought from Lockport and distributed through Chicago. That Act after clothing the Board of Trustees with authority to use such power, provides:

Power Plant

"That the power made available by the works constructed under the provisions of this act shall be converted into electrical energy and shall be transmitted to the various cities, villages and towns within said sanitary district or adjacent to the main channel of said sanitary district and may be used in the lighting of said cities, villages and towns, or parts thereof, or for the operation of pumping plants or machinery used for municipal purposes or for public service, or may be disposed of to any other person or corporation, upon such terms and conditions as may be agreed to by the said sanitary district; provided, however, that it shall be the duty of said sanitary district to utilize so much of said power as may be required for that purpose to operate the pumping stations, bridges and other machinery of said sanitary district."

Electrical Energy

It thus appears that by the original Act creating the Sanitary District the duty was imposed upon the Trustees to provide for the drainage of the area within the boundaries of the District by furnishing outlets for drainage and sewage.

The Act of 1903 added the territory provided for the Evanston and Calumet Channels, increased the navigation feature so that the channel became navigable to the people of all the State by providing an outlet at the lower end, and made direct provision for the utilization of the water power by permitting the Trustees to develop such water power into electrical energy to be transmitted to the various cities, villages and towns within said Sanitary District or adjacent to the main channel, to be used by them for lighting purposes under agreements with the Sanitary District, provided the necessary power is provided for pumping plants or machinery used for municipal purposes or for public service.

Act of 1903

The history of the work of the Sanitary District Trustees and their forces in completing the works, erecting and equipping the power plant at Lockport, building transmission lines and working out agreements with the City of Chicago and other cities and towns within the District in order to carry out the purposes of the Act of 1903, would be entirely too voluminous for a report of this kind. Any attempt to epitomize such

History

history in this report would not be justified, because such history should be compiled by the Department of Electrical Development in charge of the Electrical Engineer of the Sanitary District. Many construction problems were involved in the work, which would probably be included in a similar report compiled by the Chief Engineer of the Sanitary District. This report of the Law Department, to be used in connection with reports of the other Departments as aforesaid in compiling a concise history of the Sanitary District, can only properly include reference to the foregoing matters insofar as the Law Department has been called upon from time to time for work in connection with the legal problems that arose in connection therewith. But to confine this report here simply to such problems would not produce anything like a connected and readable story, and it will be necessary therefore to merely refer briefly to the history of the growth and development of the Electrical Department in order that the legal matters mentioned may be thoroughly understood.

Construction Problems

Law Department

Shortly after the passage of the Act of 1903 the work contemplated by that Act was undertaken by the Board of Trustees, and reference will be made in the second part of this report to the work of the Law Department in carrying on condemnation proceedings to acquire the necessary property and right of way for such work. Several very large contracts were also drafted and in some cases complicated litigation arose between some of the contractors and the Sanitary District, which involved large claims and entailed great expense to the District and much labor upon the part of the Law Department.

Condemnation Suits

Under date of March 16, 1906, President McCormick of the Board of Trustees addressed a communication to the Finance Committee of the City Council of Chicago (S. D. Proceedings, Page 11351), in which he stated that by authority of the Board of Trustees he was sending this communication; that on February 13, 1906, the Sanitary District sent a letter to all of the municipalities embraced within the District, in which it was stated that:

President's Report 1906

"The development of water power created by the Drainage Channel has reached a point that enables the Trustees of the Sanitary District to state a time when delivery of the electrical energy will be made to the sub-station located at the city limits and the canal. The date will be January 1, 1907, and the Trustees are prepared to enter into contracts with any and all municipalities within the limits of the Sanitary District for such electrical energy as may be required, for municipal purposes, at a cost price of $26.40 per horsepower per year, on a basis of 24-hour service."

First Delivery

He therein stated that the total cost of development and transmission was $3,500,000. He gave the estimate of cost in detail, the total fixed charges at $161,137.94, total

Cost

operating expenses at $248,079.76, and after giving further interesting data in detail and propounding certain questions to be answered by the City of Chicago, he said:

"When the full flow of water is available in the Canal, which will probably be within six or seven years, the power can be increased to 31,000 horsepower with an additional outlay of $450,000. The true cost will then be reduced to $14.97, and it is the intention of making a provision for reduction to this figure in all contracts made at this time, to the effect that all municipalities entitled thereto may secure the benefit of the power at cost to the Sanitary District.

"The interests of the taxpayers demand that practical use be made of the power from the date it will be ready for delivery, and such power as may not be contracted for by municipalities, for their own use, will be advertised for sale. Should the aggregate power required by municipalities exceed that available, the supply to each will be prorated on an equitable basis."

After setting forth correspondence between the City Electrician and the President of the Sanitary District and discussing two separate plans which he was of the opinion should be disregarded, he then proceeded to say:

"The third plan would be to fix such a price to the municipalities as would cover the cost of maintaining the District, and apply the remainder of the earning power of electricity to benefit the other municipalities within the Sanitary District, by furnishing them power at less than the market price, and less than it can be produced by steam."

Price to Municipalities

He stated that this would appear to be the correct plan, were it not that the District was possessed of a small income from the renting of land owned by the District; that money obtained from renting such land approximately equals taxes levied upon it, the cost of management and police protection, and there remained only the cost of operating two sewage pumping stations; that the question then arises as to whether it is advisable to charge the cost of operating these pumping stations against the income of the electrical power or to raise the cost of taxation; because the imposing of a tax for the operation of two pumping stations would add to the confusion of the taxing system of Cook County, it therefore appeared advisable that this cost should be paid out of the income to be derived from the electrical power. He further stated:

"A taxpayer, at first glance, might think that he is being benefited by having his streets lighted at a cost of $15 a horsepower, rather than at $26 a horsepower, but when he considers he must make up the deficiency in his taxes, it becomes evident that no benefit accrues.

"We therefore think, excluding the legal reasons which prevent the charge of a lesser sum, that true financial judgment would dictate the charging of the operation of the pumping stations against the profits of the electrical power. * * *

"The act which relates to the development of electrical power by the Sanitary District specifically provides that, before the Sanitary District sell any power whatsoever, it must first apply so much as is necessary to run pumping stations and other machinery controlled by the Sanitary District. In the face of this provision the pumping stations at Lawrence Avenue and Thirty-ninth Street were equipped with steam machinery. The letter of the law thus being broken, the spirit should be upheld by paying for the operation of the steam pumps out of the profits from the sale of the electricity which should have been used for turning these pumps.

Power for Works

"In addition to the foregoing, the fact that the Sanitary District embraces considerable area without the confines of the City of Chicago, part of which will, in all probability, be unable to take advantage of the opportunity presented by the development of this electrical power, raises legal difficulties in the way of furnishing the City of Chicago with electricity at a smaller cost."

He then sets forth an opinion of the then Attorney for the Sanitary District, in which after quoting provisions of the Act of 1903 he says:

"While the section above quoted does not compel the sale of this water power by the District to the various municipalities situated within its limits or adjacent to the Main Channel, yet it is quite apparent that one of the objects sought to be accomplished by the Legislature in the enactment of this law, was the use of this water power for municipal purposes, provided suitable terms could be agreed upon between the District and such municipalities desiring this power.

Opinion of Attorney

"The Courts, as a general proposition, hold that the officers of a municipal corporation have no power or authority to donate or give away its property, or to sell the same for such a price below its market value as would amount to a gross neglect of duty or a violation of the trust reposed in such officers.

"It has also been held, however, that where a municipal corporation possesses authority to sell property and decides upon the terms of sale, the courts will not annul the sale merely upon the ground that the bargain was an improvident one; yet, if the price at which the officers of the municipality propose to dispose of its property is clearly much less than the market value, the courts are disposed to restrain by injunction such disposition of the corporate property.

"As we take it, the Trustees of the District are confronted with this proposition: Can they dispose of this water power to the various municipalities within and partially within the District, to be used only for municipal purposes, at a price substantially less than the fair market value of this power if sold to private parties? If this power could be disposed of for public uses so that all of the taxpayers of the Sanitary District might reap the benefit resulting from a purchase by the various municipalities of this power at less than its fair cash market value for private purposes, we are inclined to the opinion that the District would have the power so to do, and that an injunc-

tion would not lie in that case at the suit of any taxpayer, because he would not be injured by reason of a sale at less than the market value.

"In the event, however, that a sale should be made to any or all of the municipalities at a price less than its fair cash market value, and in the further event that a person owning property situated in some locality of the District, which locality would not reap any advantage whatever by reason of a sale of this power, at less than its market value for private purposes, then the courts would probably, at the suit of such taxpayer, prevent the disposition of this power at a sum substantially less than its market value, for the reason that an asset of the District, created by the expenditure of taxes collected from all the property owners of the District, is proposed to be disposed of at such a price as to produce a plain injury to a taxpayer whose property is situated in a particular part of the District which gets no benefit from the low price at which such power is sold.

"We are informed that the estimated cost to the District of producing said power is $26.40 per horsepower. What this power is worth in the market is a matter of more or less doubt, but we are informed that it probably could be sold at a price of $30 per horsepower, or possibly slightly in excess thereof.

"Assuming the above statements of facts to be correct, we have little doubt that the District could dispose of this power to the various municipalities situated within or partly within the District, for municipal purposes only, at $26.40 per horsepower, provided that all of the taxpayers of the various municipalities within the District should receive the same benefit from a purchase at such a price, and we are also of the opinion that a sale at that price for municipal uses only would be upheld by the Courts, even if such price is slightly less than a price for which this power might be sold, in small amounts, to private consumers."

Comments of the Press

In this report of the President reference is made to interesting statements by the public press, as follows:

THE CHICAGO JOURNAL, under date of February 15, 1906, stated:

"It is gratifying to learn that the Drainage Board has offered to supply cities within the drainage district with electric power at cost * * *

"The Board is now prepared to supply 15,500 horsepower on May 1, 1907, and expects to increase this to 31,000 horsepower in the course of a few years. The current will be delivered at the sub-station, South 48th Avenue and the Drainage Canal, for the low price of $26.40 per horsepower a year for 24 hours' service.

"Chicago should take immediate advantage of this offer, which will result in a considerable saving to the taxpayers."

THE CHICAGO-RECORD HERALD, under date of February 15, 1906, stated:

"The Sanitary District trustees have made a formal offer to the municipalities within the limits of the district to sell them the elec-

tricity developed by the canal water power at a price which, it is estimated, will just cover the cost of development and operation. Contracts will be made for a term of years, and when later on a greater flow of water in the canal provides a greater supply of electricity the Board holds out the prospect that the prices can be materially reduced to correspond to the lowered cost.

"This is the proper attitude to take toward the problem of the disposition of canal power, and the businesslike manner in which the board has acted is highly creditable to it."

THE CHICAGO TRIBUNE under the same date stated:

"The works for the development of electricity at Lockport from the flow of the Sanitary Canal are nearing completion. By the end of the year the trustees expect to be able to furnish 15,500 horsepower. The municipalities within the Sanitary District are to have the first right as consumers, and at cost. * * *

"The power and transmission works will then have cost approximately $3,500,000, and interest, taxes, depreciation and operating charges are estimated at $409,217 per year. This would give for 15,500 horsepower a cost price of $26.40 per horsepower per year for 24 hours a day, and this is the figure at which the trustees offer to supply the demands of the various municipalities. If the current is only taken for 12 hours per day, the price will be $20. The trustees add that when the full flow is available, six or seven years hence, the power supply can be doubled by an additional expenditure of $450,000, and that the cost price will then be $14.97 per horsepower, instead of $26.40

"The City of Chicago is now producing in its four electric light stations something like 6,000 horsepower at a cost of about $40 a horsepower and is supplying thus 6,700 lights. It is also renting 500 lights from the Edison Company. Taken together, these lights provide about one-fourth of the entire street mileage now lighted. The rest of the public lighting of ordinary city streets is done by 25,000 gas and 5,500 gasoline lamps. Thereon there are many park and boulevard lamps.

"It is obvious that the first use to which the electrical product of the canal works should be put is that of public lighting. The City of Chicago could use 6,000 or 7,000 horsepower for electric lights already maintained, and their number ought to be increased for the supply of districts now lighted by gas.

"Even at $26.40 per horsepower there would be an annual saving on the present number of electric lights of nearly $100,000, and if the City only took the power for lighting purposes, leaving it available for other purposes by day, the cost would be thereby reduced. A corresponding saving would presumably be possible in park and boulevard lighting."

THE CHICAGO DAILY NEWS under date of February 16, 1906, stated:

"With the action taken by the Sanitary District trustees regarding the sale of electricity developed by the water power of the drain-

age channel one of the great benefits expected from the canal is brought much nearer to realization. The offer of the trustees is direct and businesslike." (Then refers to the total cost per horsepower, etc., after which appears the following):

"Members of the former Board proposed to sell the canal power on a commercial basis, holding that they were compelled by law to make a profit for the District. The present trustees evidently are planning to make the price at all times practically that of cost. If they have the right to do this it is the proper policy, provided it works no injustice to any taxpayer within the Sanitary District. * * *

"Upon the Council now devolves the duty of making preparations to accept the District's offer and use the power which it has for sale. The sooner the City begins to make use of the canal power, the sooner the citizens will enjoy the benefits of improved service and the saving of money."

THE PRESIDENT, in concluding this communication to the City Council, said:

"Finally, let me impress upon you that it is the purpose of the Trustees, when the necessities of the Sanitary District have been cared for, to apply all profit upon the same to reducing the cost to the various municipalities, and that the Sanitary District will hold itself ready to increase the amount furnished to each of them, pro rata, up to its total output, as fast as they are able to take."

Reduction of Cost

PRESIDENT McCORMICK in his annual report for 1907 (S. D. Proceedings, 1908, page 30), said:

"Work was first started on the power house in 1905, but it was not entirely completed until October of this year (1907). A roof was placed on the building in the early part of this year and the installation of machinery commenced. Under a supplemental contract with the Wellman-Seaver-Morgan Co., only three units were installed, the fourth being held in their factory until such a time as a test can be made for efficiency on the three units now completed. The understanding is that, if the units installed do not reach the efficiency guaranteed, the fourth unit will be rebuilt and the existing units changed and rebuilt one at a time. The water wheels were tested the first time on September 8, and the readjustment of bearings, with which there was considerable trouble, was immediately started and completed on the three units on November 21, at which time they had been operated for practically two weeks without shutting down. The plant was officially started and the high tension current placed on the lines November 26, at 2:20 P. M. Three units are ready to be placed in service."

When Work Started

"From the moment that the machinery in the power house at Lockport was installed, it was put into operation to furnish service for street lighting and for commercial purposes. Defects had to be remedied without closing down the plant. With an installation of three units completed, your engineers were able to keep one or two

running while adjusting a third. The work was made more difficult by the frequent recurrence of lightning storms of unusual severity which occasionally broke across the lightning arresters and threatened to destroy the generators. Induced charges on the transmission lines arc across to the insulators and occasionally destroy them. In spite of all troubles, service to the sub-station was kept up, excepting for a short period during one night in August. The lightning storms were a blessing in disguise, for, at the very beginning of our operations, they gave us opportunity to discover the best methods of protecting the power plant against electrical disturbances.

Power Plant

"Advice was sought of the best known electrical engineers in the country, and your chief Electrical Engineer made a tour of inspection to the best known power plants in this country. With the information gained in this way, the Electrical Department has been able to install the most perfect system of line protection on any transmission line in the world. From the operation of the appliances now in place, I am convinced that when the protection has been completed the line will be indestructible.

Line Protection

"Work in the main sub-station has consisted of installation of bus-bars, switches, switchboards, etc., for the distribution of current. Construction out of the sub-station has been carried on with the view of furnishing power to all municipalities and municipal plants within the Sanitary District. The following main transmission lines have been constructed:

Sub-Stations

"One to the West Parks.

"One north on Leavitt street to Lincoln Park and the Wilmette pumping station.

"One south on Western avenue to Morgan Park and Blue Island, with a spur running toward the Thirty-ninth street pumping station.

"It has been found advisable to build additional sub-stations on Leavitt street near Fullerton avenue, on Forty-eighth avenue near Twelfth street, and one on Ashland avenue near Thirty-fifth street. These sub-stations will insure perfect distribution of current for both public and private uses.

"The selling of current to private consumers has been in charge of Mr. W. D. Ray, an educated engineer, experienced in the management of power companies.

"The District is now furnishing current to 278 companies and individuals for varying purposes. The total so-called 'connected load' is 5,410 horse power. The gross income from private consumers during the month of November was $6,576.34. The District has contracts outstanding on which service has not yet been delivered, to the extent of 3,300 horse power, which will produce an additional income of $7,600.00 per month.

Consumers

"The amount of power sold is small for two reasons—first, that the District has not wished to push its sales to such an extent that it might find itself unable to meet any public demand, and second, because of the difficulty it has had in delivering its current."

In the PRESIDENT'S Annual Report for 1909 (S. D. Proceedings, 1910, Page 75), he said:

Growth

"The mushroom-like but substantial growth of the Electrical Department of the Sanitary District will challenge comparison with that of any power plant, public or private, in the world. * * *

"The complete figures of the Electrical Department for the year 1909 are not yet at hand, but from such figures as we have we know that the net profits are not far from $194,000.00. These profits have been earned in spite of the fact that current is furnished by the Sanitary District, to the public bodies which have chosen to purchase its power, at prices approximating 20% of the market price for electricity and approximating 30% of the cost of producing current by steam. * * *

Net Profits 1909

"Upon the completion of the power house in December, 1907, until the month of May, 1909, when for the first time a profit was made above all the charges which accountants believe proper, there was constant anxiety lest the project prove a failure, or at least that success be so long deferred that public outcry would be aroused for the sale of the plant. Indeed, the outlook did not appear propitious on the first day of January, two years ago, with an investment nearing $4,000,000.00; with a sub-station in Chicago with no customers in the commercial class, with the right to transmit current through the public streets disputed; and in the presence of well-organized, militant public service corporations spreading over the entire field, having contracts with a large proportion of the power users, and determined to give no ground to any kind of a competitor, so formidable, indeed, that if a distributing system was laid out in any portion of the city by the District there was always the danger that consumers would not care to be connected with it, or that the competing company, with its vast business, would reduce its rates in that portion of town to a point where current could not be sold at a profit, thus bankrupting the District, while it sustained itself by higher prices in those parts of town where the District could not afford to go. With this danger in mind, it was deemed prudent to proceed slowly and, accordingly, the first two lines were projected, one north on Rockwell street from the sub-station, and another east on Forty-third street to the Stock Yards. On both of these lines strong systems have grown up, bringing in good revenue, but not sufficient in themselves to support our plant.

History

"In the meantime, the District was completing transmission lines to convey current to public bodies; one line to the whole West Park system; one south on Western avenue, which has now reached Blue Island; later, a conduit north on Leavitt street to supply Lincoln Park and the Wilmette pumping station. It was appreciated that these lines, built for public purposes, could be used for the sale of commercial power, the more so that the public use was almost entirely during the nighttime, while the commercial demand was during daylight. The de-

Transmission Lines

velopment of consumers in increasing numbers has made it possible, even necessary, to install local sub-stations to insure good service. To these sub-stations run two or more main lines which can be used independently, and from them radiate distributing lines. These transmission lines are now loaded nearly to their capacity, while the power plant, even under present conditions, as shown by the graphic map, can furnish double the power which is now taken from it. Plans for a larger distribution system, including lines to the new city hall and county building, were under way when negotiations were begun with the officials of the City of Chicago, for increasing its lighting service, that promised to result in great economy to the City and to the Sanitary District and to the very great advantage of the public at large. The City of Chicago, taking its arc-lighting current from the Sanitary District since 1908, has built transmission lines from its various sub-stations to the terminal station of the Sanitary District at Western avenue. These lines, to some extent, parallel ours and also reach into parts of the city where our service has not yet reached and which it is hard to reach, for a number of reasons. Not only are these lines not loaded down to their maximum carrying capacity but, as pointed out before, they are loaded only in the night-time, leaving them free for a large amount of power distribution during daylight.

City Lighting

"It has been proposed by your Honorable Body to buy these lines from the City and to furnish current to the City at the sub-stations for municipal street-lighting. The many advantages of such an arrangement are readily seen. The City is relieved of the care of high voltage lines and the Sanitary District is given entire charge over these high-voltage lines where surges, due to abnormal conditions, once set up, go over the entire system and cause trouble. The City is given ready cash wherewith to increase its lighting system, while the Sanitary District is given, at a cost not greater than original construction, additional feeders over which to market its surplus current, and the general public is saved the unnecessary waste which would be caused by having the city lines loaded down with current at night and Sanitary District lines loaded down with current by daylight, and both of them idle one-half of the time. The use of these city lines will make it an easy matter to furnish service to the city hall, county building, criminal court building and public library and to many police stations and fire department houses; also, in time, to many public schools. It will give us immediate access to the South Park system, the only park system which is not now taking Sanitary District current, and is therefore paying twice as much as is necessary for its light.

Saving

"The line to Halsted street, in particular, will enable us to bring current within one block of the old Harrison street pumping station where, with the erection of a modern electrical pump, water can be forced through the mains at a cost of .300 of a cent per thousand gallons, instead of at the present cost of over .512 of a cent.

Value of Water Power

"It is high time that the public should realize the enormous value of its water power, which is a matter of greater importance, beyond doubt, than any other public issue before this community today. It cannot be contradicted that the application of the power of the Sanitary District to all the public enterprises within its boundaries will result in a saving of not less than $1,000,000.00 per year, and that the surplus power can be sold, bringing in a large income, the amount of which, of course, will depend upon the amount of surplus energy."

THE CICERO CASE

The Town of Cicero filed a petition in the Circuit Court of Cook County for a writ of mandamus directed to the City of Chicago and the authorities of that City to compel them to furnish water at the boundary line between the said town and city from the water-works of Chicago, in sufficient quantities to supply consumers within said town, at no greater price than is charged for like quantities, through meters, to consumers in Chicago. (210 Ill., Repts., Page 290.)

The petition sets out section 26 of the act entitled 'An act to create sanitary districts, and to remove obstructions in the DesPlaines and Illinois rivers,' which was approved May 29, 1889, and in force July 1, 1889, and then alleges that the City of Chicago is in a sanitary district formed under the provisions of said act, owns a system of water-works and supplies water from a lake, which is saved from sewage pollution by the ditch which has been constructed in said district; that petitioner is an incorporated town within said district and borders on the city of Chicago; that it has not now, nor did it have at the time said district was created, any system of water-works; that petitioner has applied to the corporate authorities of said city to furnish water at the boundary line between said town and city as provided by said section 26, but that the city refused to comply with such request. The petition further alleges that since the formation of such district the town of Cicero has paid into the treasury of the district, in the form of taxes collected from citizens of the town, more than a million dollars.

The answer of respondent admits all the allegations of the petition, except it denies that petitioner has paid into the treasury of said district any money in the form of taxes, and denies that the city of Chicago is within the sanitary district, and alleges that a very large portion of the city lies outside the boundary of the district. It avers that its water-works is owned by it in its private capacity; that its water-works system was built many years ago and paid for by taxes levied on property situated within its limits, and is operated with money received from citizens of Chicago who are supplied with water, and avers that the refusal of the city to comply with the request of said town has not deprived the latter of any of its rights.

To this answer petitioner replied that the object in creating said district was to turn the sewage from the district away from Lake Michigan, so that the entire district could have pure water from the lake; that prior to building the canal it was impossible for the city

of Chicago to obtain pure water; that the legislature has recently passed an act for the annexation of further territory to said Sanitary District of Chicago, and that the town of Cicero will be further taxed for drainage purposes in said district.

CONSTITUTIONALITY OF SECTION 26 OF THE ORIGINAL SANITARY DISTRICT ACT AND SECTION 1 OF THE ACT OF 1903 DETERMINED.

The Court said in the Cicero Case, (Page 293):

"Appellant questions the constitutionality of section 26 of the act to create sanitary districts, which is found at page 347 of Hurd's Revised Statutes of 1901, and section 1 of an act approved May 14, 1903, found at page 113 of the session laws of 1903. The sanitary district organized under the first mentioned act included within its limits the more populous and the greater part of the city of Chicago, but did not include the whole thereof. Section 1, supra, enlarges the corporate limits of the sanitary district, and adds thereto those portions of the city of Chicago which were not included in the district as originally organized. This is said to be a violation of section 31 of article 4 of the constitution of 1870, which reads as follows:

Section XXVI

" 'The General Assembly may pass laws permitting the owners of lands to construct drains, ditches and levees for agricultural, sanitary or mining purposes, across the lands of others, and provide for the organization of drainage districts and vest the corporate authorities thereof with power to construct and maintain levees drains and ditches, and to keep in repair all drains, ditches and levees heretofore constructed under the laws of this State by special assessments upon the property benefited thereby.'

"We are unable to give our assent to this proposition. The question is, had the legislature the power to change the boundaries of this sanitary district? In our judgment, the section of the constitution above set out has no bearing on the question.

"Prior to the adoption of the present constitution the legislature had the power to alter the boundaries of municipal corporations at will. The change of county boundaries in the earlier history of the State furnished an example of the frequent exercise of this power.

"This court has had occasion to consider the operation of the constitution of 1870 upon this power.

" 'A municipal corporation is purely of legislative creation, for local government, in places where it is presumed the public welfare will be subserved thereby. Our constitution contains no restriction as to the organization of cities, towns and villages or the changing and amending or repeal of their charters, and, consequently, no restriction in respect to uniting or dividing cities, towns and villages, or annulling their charters, save only that it cannot be by local or special law, but must be by a general law; and it is familiar law that

in the absence of constitutional restriction the legislature may provide for the organizing, uniting, dividing or annulling such corporations, in such manner as it shall deem best to promote the public welfare. * * *

"'The only prohibition against the formation of municipal corporations by local or special legislation is in section 22, article 4, of the constitution. "Sanitary districts," or "drainage districts for sanitary purposes," are not enumerated in that section. The municipal corporations expressly mentioned are only "cities, towns and villages,' and the rule hereinbefore alluded to, that the expression of one is the exclusion of another is applicable. * *' We held in Owners of Lands v. People, 113 Ill. 296, that a drainage district was not within the prohibition of this section, and, on principle, that must be conclusive here.

"All municipal corporations are subject to legislative control, and may be changed, modified, enlarged, restrained or abolished to suit the exigencies of the case. The only restriction on the power of the legislature is, that under the present constitution no local or special law shall be passed incorporating cities, towns or villages or changing or amending their charters.

"'Such corporations are subject to the legislative control, and may be changed, modified, enlarged or destroyed by general law, to meet the legislative judgment of the public welfare. It was within the legislative power and discretion, at the time, to enact such a charter as that incorporating the town of Cicero, and it was within its power to enact the law by which it has been diided and territory taken from it. The legislature may obtain the consent of the people in the locality to be affected, or not, as they may deem best, and the question whether the consent of a majority in the territory to be annexed or the consent of the whole town shall be required is one which addresses itself solely to the legislature'."

The Court then said (Page 295):

"In the light of these authorities and of the oft announced doctrine that the constitution of this State is to be deemed a restriction upon the legislative department and not a grant of power to the lawmakers the conclusion is irresistible that the legislature has the power to change the boundaries of a municipal corporation organized for sanitary purposes."

Act of 1903 Section 1 of the Act of 1903 is therefore a valid exercise of the law-making power.

The Court then proceeded to discuss section 26 of the original Sanitary District Act, with which provisions Cicero was chiefly concerned, and after discussing a number of authorities held against the City of Chicago and decided that under the terms of Section 26 the City of Chicago was bound to furnish water to the people in the Town of Cicero at the same rates that such water was furnished to people in the City of Chicago.

This case is here mentioned because of its reference to Section 1 of the Act of 1903 enlarging the boundaries of the Sanitary District, and that act, and particularly Sections 5 and 6 thereof, constitutes the authority under which the work of the Electrical Department of the Sanitary District was planned and has been conducted and developed.

Pertinency of case

THE ACT OF 1903 AGAIN REVIEWED.

JOHN N. FAITHORN, Receiver of the Chicago Terminal Transfer Railroad Company, filed a bill in the Superior Court of Cook County on July 9, 1909, praying that the County Treasurer be restrained from selling for unpaid sanitary district taxes certain property of the said company. After full hearing the bill was dismissed for want of equity, and the Supreme Court said (242 Ill. Rep., page 508):

"The property on which this tax was levied is situated in that part of the Sanitary District of Chicago which was annexed to the District under the provisions of an act entitled, 'An act in relation to the Sanitary District of Chicago,' etc. * * * It is contended that said act is in contravention of sections 9 and 10 of article 9 and sections 13 and 22 of article 4 of the constitution. This act was held constitutional in City of Chicago vs. Town of Cicero, 210 Ill. 290. While all of the provisions of the constitution here invoked by appellant were not discussed by this court in that case, yet the reasoning of the opinion, in effect, disposes of all the questions raised by appellant in this case. The chief arguments advanced here were pressed upon the attention of the court in that case. The main contention of appellant in this case is, that the act is unconstitutional because the legislature could not provide for the annexation of the additional territory to the Sanitary District without a vote of the people. In discussing that question in the former case, after a review of many of the authorities cited by the appellant in this case, we said (p. 295): 'All municpal corporations are subject to legislative control, and may be changed, modified, enlarged, restrained or abolished to suit the exigencies of the case. * * * The legislature may obtain the consent of the people in the locality to be affected, or not, as they may deem best, and the question whether the consent of a majority in the territory to be annexed or the consent of the whole town shall be required is one which addresses itself solely to the legislature.' The doctrine there laid down has been for many years the astablished law of this State."

In the case of MORTELL v. CLARK, hereinbefore mentioned and quoted from, the prayer in the bill was that the Act of 1903 be held unconstitutional (272 Ill. Rep., p. 201), and the court in that case said:

"The Act of 1903 is an 'Act in relation to the Sanitary District of Chicago, to enlarge the corporate limits of said District, and to provide for the navigation of the channels created by such District, and to construct dams, water-wheels, and other works necessary to develop and render available the power arising from the water passing through its channels, and to levy taxes therefor.' This act has been held constitutional by this court in the cases of City of Chicago v. Town of Cicero,

210 Ill., and Faithorn v. Thompson, 242 Ill. 508, and its constitutionality was assumed in Judge v. Bergman, supra. The only new question as to its constitutionality raised here is that it violates section 13 of article 4 of the constitution, in that it amends the Sanitary District act by referring to its title, only, the said act of 1903 not being an independent act in itself, counsel relying especially on the reasoning of this court in Galpin v. City of Chicago, 269 Ill. 27, and Holmgren v. City of Moline, 269 Ill. 248. We do not think those cases control here. This court has had frequent occasion to construe this constitutional provision. Perhaps one of the most exhaustive reviews in any of the opinions is to be found in People v. Crossley, 261 Ill. 78. After referring to practically all the decisions of this court and others in different jurisdictions, we held that a statute, may by reference to a particular statute or sections thereof, adopt the same, and the effect thereof is to make the particular statute or the sections thereof a part of the new statute, and that where an act is complete within itself and does not purport, either in its title or in the body thereof, to amend or revive any other act, it is valid, even though it may, by implication, modify existing statutes. The wording of the title and the body of said act of 1903 in our judgment brings it clearly within the reasoning of People v. Crossley, supra, and not within that of Galpin v. City of Chicago, supra. This act does not purport by express language, either in its title or in its body, to repeal, amend or revive any other law by reference to its title or otherwise. In its form it is a complete and independent enactment. The act in question is not violative of said provision of section 13 or article 4 of the constitution."

PERTINENT STATEMENTS BY EDWARD B. ELLICOTT, ELECTRICAL ENGINEER

Report

In 1916, Edward B. Ellicott, Electrical Engineer of the Sanitary District, made a report to the President and Board of Trustees on contracts for the street lighting system installed by The Sanitary District of Chicago for the City of Chicago. In this report, among other things, he said:

Chicago System

"In the year 1887, the City of Chicago built a small arc lighting plant for the purpose of lighting the bridges crossing the Chicago River at points between Rush Street and 12th Street. This small experiment proved to be the seed which has grown the largest of all municipality owned street lighting plants.

"The growth of the system was slow, as the early opposition to municipal ventures of this character was both active and effective, and as a result the lighting system consisted of only 1,253 lamps on January 1st, 1897, an average growth of 125 lamps a year for the first ten years. At this time the demand for better lighted streets became so insistent that the City authorities, failing to secure reasonable rates for rented electric lighting service, decided to increase the municipal lighting system as rapidly as finances would permit. * * *

"Through various economical measures, but in part due to the economies brought about by the larger number of lamps in use, the average cost of maintenance of the lamps on the streets had been reduced from $212.00 a lamp per year in 1868 to $52.93 a lamp per year in 1907.

"This short history of the public lighting system brings it to the time that the Sanitary District first entered into the important work of lighting the streets of Chicago.

Agreement in 1907

"In the year 1904, the Sanitary District began the development of the hydro-electric power plant at Lockport, and in December, 1907, was prepared to deliver electrical energy in Chicago. In July of 1907, the City of Chicago had agreed upon a price to be paid the Sanitary District for the necessary energy to operate its street lighting system, and had at an earlier date planned the work of changing over its steam stations to electric driven stations, and had also commenced to increase largely its street lighting system by the direct application of the energy to the new lamps that were being installed.

Stations and Equipment

"The steam driven stations were provided with electric motors to replace the steam engines, and transmission lines were installed from the existing stations to the Sanitary District Terminal station at 31st Street and Western Avenue, to which point the energy from the power plant was transmitted at high voltage and transformed to a suitable voltage for distribution purposes.

The City also built during 1908 and 1909 some additional substations designed to use the energy directly through transformers, and connected to these stations the necessary distribution circuits for street lightning purposes. These new lights, 5,538 in number, could not have been added to the old system without constructing a new and expensive steam power plant, which the City's financial condition would not have permitted. The use of energy purchased at such a low rate from the Sanitary District, and the low cost of installation made possible by eliminating the expensive steam station, enabled the City to add these additional lamps, bringing the total number of lamps up to 12,246, in the year 1910.

Cost Reduced

The City authorities were desirous of further increasing the lighting system of the City, as the results of operation under the new conditions of using Sanitary District energy had proven entirely satisfactory and the cost of maintaining each lamp had been reduced from $52.93 per year under steam operation to $38.16 per year using Sanitary District energy.

Unlighted Streets

The City, however, could not finance an extension to its lighting system under economical conditions. During the development of the system it had been the practice to light a few important streets in each of the wards within a reasonable distance of the power stations. This method, which was made necessary because of lack of available funds, left much of the territory in an unlighted or very poorly lighted condition. To carry out a comprehensive system of street lighting in the different

sections to be lighted, and to add additional lamps to the circuits on streets not properly lighted, required the rebuilding of practically all of the old circuits and the dismantling and rebuilding of all the old power stations, to secure a uniform system of operation and distribution.

The system at that time consisted of an almost equal number of direct current and alternating current arc lamps, of many different designs, including the open and enclosed types. The circuit capacities differed and no standard of construction had been followed for any great time, with the result that the cost of repairs and maintenance was excessive and successful operation was rendered difficult.

Policy of Trustees

The policy of the Trustees of the Sanitary District had been to supply at cost of production, all the energy the municpal bodies could use. The Trustees had in several instances advanced the money needed to install the equipment necessary for the greater use of energy. The Trustees offered a similar proposition to the City Council and after several weeks of discussion a contract was finally entered into. During the discussions the engineers made plain to both parties to the contract that the rehabilitation of the old system was as imperative as new lighting and would involve nearly as much expense. The contract as finally drawn covered the installation of a modern street lighting system and the remodelling of the old system to conform to the new and modern lighting system, which was to be installed. After the details of this proposed contract had been arranged the City Finance Committee insisted that the Sanitary District should undertake the substation operation of all City lighting stations then in use and those to be built under the proposed contract, and should also maintain all 12,000 volt transmission lines then owned by the City and all new ones to be installed. The City would not pay more than a nominal charge for this additional obligation and the contract was finally closed for a period of 7 years with a substation operating charge of $1.00 a lamp per year, to be added to the rate of $15.00 a horsepower year energy charge.

City Contracts

"The work covered by the original, and three supplemental contracts with the City of Chicago, covering the extension and rehabilitation of the municipal electric lighting system, has been completed. As a whole it represents by far the most extensive street lighting contract that has ever been carried out by anyone in this country, or any other country. The original contract does not contain any details and only recites in a general way what is intended to be done, therefore the scope of the contract, as finally carried out, is contained in detail in this report.

"Briefly stated, the original contract provided for:

Original Contract

"A—The operation and maintenance of all substations and the transmission system for a period of seven years, at $1.00 a light per year.

"B—The installation of 10,000 additional street arc lighting units of 450 watts each, or their equivalents in other forms of street lighting units.

"C—The building and equipping of at least three new sub-stations.

"D—The installing of the necessary transmission lines and distributing system to supply the new lights.

"E—The rehabilitation of certain parts of the existing street lighting system, which was in bad condition, and changing the old equipment to modern equipment.

"As the work progressed it was found necessary to make certain changes and additions to the contract, and to provide therefor, three supplemental agreements were executed.

"The first supplemental agreement covered a change of certain alternating current arc lamps instead of direct current lamps, as provided. **First Supplement**

"The second supplemental agreement provided for 78 additional arc lamps for Dearborn Street. **Second**

"The third supplemental agreement added 1,000 new lamps, making a total of 11,000—450 watt units, adjusted certain construction conditions, and further provided for the substitution of all old types of lamps, making the system modern throughout. **Third**

"The text of the contracts will be found in the last pages of this report." (Ellicott's Report).

The original contract was finally made effective by signature of the proper officials, on October 27, 1910. A period of 39 days, or until December 5th, was required to make an examination of the substation apparatus, arrange for transfer of the property, and engage such men as the Sanitary District desired to employ. From the date of December 5, 1910, the Sanitary District has operated and maintained all of the substations required for City lighting service. This date represents the first work done under the contract, and all that the Sanitary District could do until the City Electrician carried out the first part of the clause in the contract covering the location of lamps to be installed. **Original**

This clause required that the lamp locations should be furnished at the rate of 500 each month, and when 3,000 lamps had been located, a substation location for the operation of these lamps was to be decided upon and construction commenced. The locations for the balance of the lamps were to continue at the rate of 500 each month. The first 500 lamp locations were due on April 27, 1911, but were not received until October 5, 1911, or 5 months late. The first 3,000 lamp locations, necessary to decide the substation location, should have been furnished on September 27th, but were not furnished until March 18, 1912, a delay of 5 months. **Lamp Locations**

This report is in the form of a bound volume and contains a wealth of information in detail as to the growth and development of the lighting system of Chicago prior to and after the time that arrangements were made with the Sanitary District for electric current. All of these details will probably be in the report of the Electrical Engineer. **Ellicott's Report**

In the course of his report Mr. Ellicott, among other things said:

"Although the Sanitary District organization was complete for the purpose, it was more economical to handle certain classes of work by sub-contracting. By doing this the work could be handled more expeditiously and more could be accomplished in a given time, since the Sanitary District forces could be engaged on a certain class of work while the sub-contractor was engaged elsewhere on other work. It was decided by the Sanitary District that the following work should be let to contractors, provided reasonable prices could be obtained:

Summary

1. Erection of substations.
2. Installing equipment in substations.
3. Changing over old substations.
4. Erecting brackets and line equipment.
5. Erecting pole lines.
6. Painting poles.

"The following work was to be done by the Sanitary District forces:

1. Installation of temporary electric substation equipment.
2. Installation of all conduit lines.
3. Installation of all cable.
4. Inspection of contract work.
5. Installing new lamps.
6. Cutting and rearranging old circuits to place new lamps in service.
7. Erecting poles at isolated locations, and installing equipment on same.
8. Installation of entire ornamental tungsten light system.
9. Installation of entire ornamental bases, poles and equipment.
10. All engineering work in connection with layout of new substations.
11. Purchase of material by contract or on open market.
12. Accounting and checking of work performed and material handled.
13. Supervision of all work done under the contract.

"The City's part was only that of platting lamps and pole locations, laying out the new conduit lines, and checking the work done."

"The general plan of procedure in handling the work can be shown concisely and briefly in a synopsis:

1. Survey and layout—by City.
2. Submission of plans to Electrical Engineer of Sanitary District.
3. Forwarding of plans to Construction Department, for checking.
4. Checking of Plans by Construction Department.
5. Estimating cost of materials.
6. Submission of Estimate to Electrical Engineer and to City Electrician.
7. Writing up Cost Orders on work covered.

8. Ordering material required.
9. Delivering material to storehouse and thence to job, or direct to job.
10. Turning over work to Foreman.
11. Checking of work by City Inspector.
12. Issuing of daily time and progress reports.
13. Recording work done on record maps.
14. Sending of monthly cost reports and bills to City.
15. Sending reports to City on lamps installed.

"After the checking of the original plans, which was done, first to determine whether or not the particular work came under the terms of the contract, and second, to find out the probable cost and the amount of material required, the next process was to issue a cost order against the work called for and requisition the material needed. Where a large amount of work of a certain kind was to be done, requiring a considerable quantity of standard material, it was advisable to solicit competitive bids and issue specifications. This was always the cheapest method of ordering cable, steel poles, malleable iron brackets and cross arms, pole bases, windlasses, pole doors and lamps. It was also usually followed in ordering such material as insulators, wire and station apparatus. Certain other material, however, such as conduit, cement, sand, stone, steel and fibre pipe, etc., in fact material usually carried as standard stock, could be obtained just as economically and with much more expeditious delivery, by ordering on the open market, as by ordering on contract. The ordering of material was done by the purchasing department, on requisition issued by the Construction Department. The material was ordered either for delivery on the job or at the storehouse. All of the very heavy material, such as poles, and all cable, except the single conductor cable, was delivered on the job to avoid the high cost of handling it two or three times. All lighter material was delivered directly to the storehouse, where it was checked, and whence it was delivered as required. Upon receipt of necessary material, a work order with its accompanying prints and directions was forwarded to one of the gang foremen. If the work was being done by a contractor, the plans and work order were given to the contractor, and inspectors were assigned to check and report on all labor and material used."

CONTRACTS BETWEEN THE SANITARY DISTRICT AND THE CITY OF CHICAGO.

The original contract was dated October 27, 1910. The first supplemental agreement was made in November, 1912; the second, on January 2, 1913; the third on June 11, 1914, and the fourth on July 9, 1914.

LAST AGREEMENT.

After negotiations and many conferences between the representatives of the Sanitary District and the City of Chicago a comprehensive agreement or contract was entered into between the District and City

under date of January 1, 1918, which appears in the Proceedings of the Board of Trustees of the Sanitary District for May 22, 1919, (Pages 609-621). This contract recites that the parties entered into an agreement October 27, 1910, and thereafter at different times four supplemental agreements were executed; that the District has fully completed the work to be performed by it under the terms of all of said agreements and has furnished the electrical energy for said electric street lighting system of the City for a period of seven years from the date said service was first begun, which period expired December 8, 1917, and having considered the mutual covenants and agreements, the contracting parties agreed:

Provisions

(1) That the provisions of the original contract and 4 supplemental agreements had been fully complied with by the Sanitary District.

(2) That the District delivers and transfers to the City possession and use of certain enumerated sub-stations.

(3) That the District transfers possession and use of certain sub-stations constructed under the terms of the agreements and now belonging to the City.

(4) That the District specifically transfers to the City all electrical equipment in the 39th Street Pumping Station.

(5) That under the terms of the original agreement the City yielded to the District certain sub-stations, the use of which was later discontinued, and they, with the electrical equipment, were at that time delivered to the City.

(6) That under the terms of the original agreement the District turned over to the City all property, supplies, material, electrical devices, etc., belonging to the City which were not needed or required to be used in the reconstruction and operation of the electrical lighting system for the City.

(7) That the City agreed that all electrical equipment which has been or may hereafter be installed in sub-stations of the City and the grounds of the same by said District, and that is now, or may become, property of said District and is used by it in supplying electrical energy to other municipalities or commercial consumers, may remain in the said sub-stations as now installed and connected, rent free, for the space occupied during the period of this agreement, the District to maintain and repair at its sole cost and expense all such equipment, etc.

(8) The District agrees that all equipment installed by it for the City under said agreements in the 39th Street Pumping Station and grounds may remain as at present installed and connected, rent free for the space occupied by the same during the period of the agreement. The City agrees to operate, maintain and repair at its sole cost and expense all such equipment.

(9) The City agrees that on termination of the agreement the District shall be entitled to occupy, rent free, the space occupied by electrical equipment under Section 7 for six months, and for such further additional time as may be necessary for the purpose of removing the equipment.

(10) The District agrees that on termination of the agreement the City shall be entitled to occupy, rent free, the space occupied by the equipment specified in Section 8 for a period of six months and for such additional time necessary for the purpose of removing the equipment.

11) The City agrees to give and grant during the period of the agreement the right to use free of cost all 12,000 volt transmission lines or cables belonging to the City used by the District in supplying electrical energy to sub-stations of the City. The District agrees to operate, maintain and repair at its cost and expense all such transmission lines or cables, provided that any repairs made necessary by reason of the action of electrolysis shall be paid for by the City. The District may perform the work specified or let contracts to the lowest responsible bidder. The District's Electrical Engineer and the Commissioner of Gas and Electricity of the City shall determine first whether any repairs to such transmission lines or cables are necessary by action of electrolysis. If so, the District shall make such repairs at once, the City to pay the cost for same on demand. In case of failure of both parties to agree, arbitration shall be had as provided in Section 45 of this agreement.

(12) In case the District itself performs any work specified in this agreement for the City, the cost of the same shall be determined as follows: There is then set forth in this Section in detail the procedure, manner and method of determining such case.

(13) The City agrees to repair and maintain at its sole cost the synchronous motors of the City located in the Halsted street, Rice and Lincoln streets and R. A. Waller sub-stations. The City agrees to operate said motors within their respective rated capacities during the hours specified in the street lighting schedule Exhibits "B" and "C" in such a manner and at such times as the Electrical Engineer of said District or his duly accredited representative shall direct. The City shall pay sole cost and expense of such operation with the exception of the cost of the electrical energy used in such operation, which electrical energy shall be furnished by said District to said City free of cost.

(14) The city grants to said District the right during the period of this agreement to use, free of rent therefor, the H. N. May sub-station of said City together with all steam producing, generating, transforming and other electrical equipment contained therein, and the District hereby agrees to maintain and keep during the period of this agreement said sub-station and said steam producing, generating, transforming and other equipment in as good repair as when delivered to said District by said City, depreciation from ordinary wear and tear excepted.

(15) The City has under construction a new plant for the generation of electrical energy by steam known as the "Bridewell Plant," from which energy will be transmitted into the existing electric street lighting system of the City and to new sub-stations and lighting circuits now in the course of construction, for the purpose of affording to said City more electrical energy for street lighting, or

other municipal purposes than at the present time exists. It is agreed that the new and existing electric light plants of said District may be interconnected in such a manner as may be agreed upon by the Electrical Engineer of said District and the Commissioner of Gas and Electricity of said City, so that in case of an accident or in an emergency, electrical energy may be transmitted to the plant or plants of the party hereto requiring the same by the plant or plants of the other party hereto.

(16) It is agreed and understood that either party may use, free of cost, such conduits, poles and space in sub-stations and the grounds connected therewith of the other party as the Electrical Engineer of said District and the Commissioner of Gas and Electricity of said City shall jointly determine will not unnecessarily interfere with the use by the other party of such conduits, poles and space.

(17) It is agreed that the District has supplied the City with electrical energy from December 8, 1917, to December 31, 1917, both inclusive, at the rate specified in the original agreement and has maintained and operated said sub-stations from December 31, 1917, to March 31, 1918, both dates inclusive, in accordance with certain terms heretofore agreed upon between the parties. The City therefore agrees to pay said District on demand at the rate of $15.00 per horse power a year or $1.25 per horse power a month for all electrical energy delivered to said City between December 8, 1917, and December 31, 1917, said electrical energy to be metered at the primary side of said sub-stations and to pay for all electrical energy consumed by said City between January 1, 1918, and the expiration of this agreement at the rate hereinafter specified. The City agrees to pay the District on demand the actual cost of all salaries, labor, material and supplies furnished by said District in the maintenance and operation of said sub-stations between December 8, 1917, and March 31, 1918, plus a sum equal to 15% of such actual cost of salaries, labor, material and supplies.

(18) The City agrees to repair, maintain and operate, at its sole cost during the term of this agreement all the sub-stations of the City (except the H. N. May sub-station during the period it is under the control of the District) together with all electrical equipment contained therein used in connection with the electric street lighting system of said City. If the City shall delay or neglect or refuse to make any repairs to any of its equipment in its sub-stations necessary for the operation of equipment of said District connected therewith then the District may make such repairs or replacements to the equipment of said City at the cost of said City, said cost to be computed in the manner specified in Section 12 of this agreement and paid to said District on the receipt of bills therefor with interest thereon at the rate of 5% per annum until paid. The City also agrees to operate at its sole cost, under the supervision and direction of the Electrical Engineer and Load Dispatcher of said District, all the electrical equipment of said District in said sub-stations.

(19) The District shall make such rearrangements or changes in

the cables of said City as the Electrical Engineer of said District and the Commissioner of Gas and Electricity of said City may agree are necessary and advisable. When such rearrangements or changes are made for the mutual benefit of said District and said City, said City shall pay to said District on demand its proportion of the actual cost of same; when any such rearrangements or changes are made for the sole benefit of said District, said District shall pay the cost of such work, and when any such rearrangements or changes are made for the sole benefit of said City, then said City shall pay to said District on demand the actual cost of such work, which cost in all instances shall be computed in the manner specified in section 12 of this agreement.

(20) The District agrees to furnish and maintain, ready for use by said City, during the term of this agreement, which is hereby fixed for a period of five years from the date hereof, for street lighting purposes, electrical energy in the form of three phase alternating current, delivered at a frequency of approximately sixty cycles per second and a difference of potential between phases of approximately 12,000 volts, to the amount of 10,000 kilowatts, which is hereinafter designated as the "firm power" and said City agrees to pay each month for said amount of electrical energy, whether the same was used by said City in such month or not, subject, however, to any deductions from the total amount of electrical energy furnished said City under this agreement which may be allowed said City for interruption due to the causes specified in section 30 of this agreement.

(21) If the City from time to time requires the use of a greater amount of electrical energy for its street lighting purposes than the firm power specified, then said District agrees to furnish and maintain, ready for use by said City, such greater amount as may be required, but not to exceed an amount of 2,000 kilowatts in addition to said firm power. In case the District is released from furnishing electric current to supply the 22nd street pumping station, then said firm power shall be increased to 11,000 kilowatts and the greater amount of electric current to be furnished said City shall be increased to 2,600 kilowatts. If any greater amount of electrical energy is furnished by said District to said City under this Section 21 of this agreement, then said City agrees to pay said District for such greater amount on the maximum demand basis specified in section 26 of this agreement.

(22) The District agrees to furnish and maintain, for use by the City, the amount of electrical energy hereinabove specified each and every day of the term of this agreement during the hours specified in the tables attached marked Exhibits "B" and "C" and Exhibit "D" and made a part hereof.

(23) The District agrees to deliver said electrical energy in the manner specified in Section 22 of this agreement at the terminals of the disconnecting switches in the existing sub-stations of said City; also to the terminals of the disconnecting switches of the electrical equipment installed in the thirty-ninth street pumping station of said District; also to disconnecting switches in new sub-stations to be con-

structed by said City known as "South Chicago," "Southwest" and any other sub-stations which may be constructed by said City, provided said City furnishes and installs at its expense the necessary transmission lines or cables to transmit said electrical energy to said new and other sub-stations.

(24) The City agrees that all the electrical equipment used by said City in the operation of its street lighting system shall be suitable to receive the electrical energy furnished by said District and of standard design and construction, and shall be operated and maintained by said City, at its sole cost and expense, in a manner to secure and obtain the highest efficiency and best operation of said system and of the electrical system of said District. The said City also agrees to equip the lighting circuits of its electric lighting system and the 12,000 volt transmission circuits terminating in its stations and sub-stations, with such approved protective devices as are in commercial use and to operate the same in such a manner as will protect the electrical equipment and circuits of said District from damage and interruptions in service, due to lightning, grounds, short circuits and other causes. The Electrical Engineer of said District and the Commissioner of Gas and Electricity of said City shall jointly determine whether the said equipment and operation are such as to meet the requirements of this section and in case they are unable to agree then the determination of such questions as have arisen hereunder shall be determined by arbitration as specified in Section 45 of this agreement.

(25) The City agrees to pay the District for all electrical energy furnished $1.25 per kilowatt per month on the number of kilowatts constituting the maximum demand for the month, which maximum demand shall be determined as is specified in Section 26 of this agreement. This Section provides the manner of submitting bills and manner of payment.

(26) The maximum demand for any month shall be determined by maximum demand, curve-drawing or other instruments or meters installed by said District in the sub-stations of said City, and shall be the highest average kilowatt demand indicated or recorded by said instruments or meters in any thirty-minute interval during such month.

(27) The electrical energy shall be measured at the points of delivery or the nearest available places. This section provides for the instruments to be used and that the City shall furnish space for such instruments, rent free.

(28) The District shall have the right at all times to inspect and test said instruments or meters, and if the same are found to be defective the District may repair or replace the same, at its option, provided five days' notice in writing is given by the Electrical Engineer of said District to the Commissioner of Gas and Electricity of said City of the intention of the District to test, repair or replace said instruments or meters, so that the City may have a representative present. Said City shall have the right at all times to inspect and test said instruments and meters provided that five days' notice is given by the

Commisisoner of Gas and Electricity of said City to the Electrical Engineer of said District of the intention to make such test.

(29) Provides the manner and method of testing the accuracy of such measurements and the procedure in case of any defective service in that regard.

(30) If the District shall be prevented from furnishing and delivering said electrical energy, or in case the City shall be prevented from receiving said electrical energy at any of its sub-stations by strikes, riots, insurrections, floods, fires, lightning, explosions, act of third parties, acts of the State or Federal authorities, War Boards or Councils or from any other cause reasonably beyond the control of either party hereto, then the District shall not be obliged to furnish and deliver such electrical energy at such sub-stations, and the City shall not be obliged to receive such electrical energy, during the period of interruption of service, but nothing herein contained shall be construed to permit the District to refuse to furnish and deliver said electrical energy or permit the City to refuse to receive the same as soon as the cause of interruption of service is removed and each of the parties shall be prompt and diligent in removing and overcoming such cause or causes.

(31) Provides the manner and method of determining when no charge shall be made to the City for current during such period of interruption.

(32) The District agrees to furnish all materials, supplies, electrical equipment and labor that are necessary to rearrange, change, protect or rebuild all exposed or unprotected transmission lines, lighting circuits, cables or other electrical equipment which are now in place, under, in or on viaducts and elevated structures, subways and in streets, alleys or public places of said City connecting therewith so as to safeguard the public and minimize the liability of personal injuries resulting from electrical energy passing through the same at a total cost of not to exceed $80,000.00; also agrees to paint the electric light poles and equipment thereon belonging to said City at a total cost of not to exceed $60,000.00, the cost of doing said work to be computed in the manner specified in section 12 of this agreement. The District may itself perform the work specified or let contracts therefor to the lowest responsible bidder and the City agrees to furnish to said District free of cost all permits which may be necessary to perform the work specified. In case any such work is required at such places and under such conditions as will make it necessary (by reason of ordinances, existing contracts, or for any other reason) to have the work or a part of same done by the City, by railroad, or other public service corporations, or by contractors who have agreed to maintain streets under the terms of paving contracts, then the cost of such work or such parts of same as may be thus performed by them shall be paid by said District and shall thereupon become part of the "contract costs" specified in section 12 of this agreement, and shall be repaid to said District by said City as specified.

(33) It is agreed that no part of the above specified work shall

be done by the District itself or no contract for same shall be let or awarded by said District to the lowest responsible bidder therefor until complete plans and specifications for such part and the form of contemplated contract therefor shall have been prepared by the Commissioner of Gas and Electricity of said City and submitted to and approved by the Electrical Engineer of said District.

(34) It is agreed that during the progress of any work performed by said District or any of its contractors therefor under any of the terms and provisions of this agreement that the Commissioner of Gas and Electricity of said City shall have the right to inspect, at sole cost and expense of said City, all materials, supplies and electrical equipment used in such construction work or any other work done under the terms of this agreement and to reject any and all such materials, supplies and electrical equipment which in his opinion do not conform to the plans and specifications prepared therefor.

(35) The District agrees to render monthly statements of the amounts of money expended during each and every month of the life of this agreement for the costs of construction and contract costs of the work specified in accordance with the terms and provisions hereinbefore set forth in the following manner: Then in Paragraphs "a", "b", "c", "d", "e", "f' and "g" of this section is set out in detail the procedure in this regard.

(36) It is agreed that in case said Commissioner of Gas and Electricity of said City shall fail, refuse or neglect to examine and approve or disapprove said monthly statements within thirty days after the receipt of same then said statements shall be assumed to be correct and the work therein shown whether performed by the District itself or by other parties, shall be considered accepted by said City; and provides that in case any question or dispute shall arise within said period of thirty days, concerning the performance of the work to be done under this agreement, then such question or dispute may be determined by arbitration in the manner specified in section 45 of this agreement.

(37) The District agrees to advance to the City the sum of $1101.80 to be used by the City in paying a bill of the Chicago Union Station Company for material, supplies and labor furnished by said Company for the installation of two additional ducts for said City on Harrison street, from the manhole at the City's shaft near the west bank of the Chicago river, which work should have been performed by said District but was ordered done by said Chicago Union Station Company. The City agrees to repay the said sum April 1, 1920 with interest thereon at 5%.

(38) The City assumes (except as otherwise provided in the paragraphs of this section) all responsibility for all loss, damage or expense to persons or property which may in any wise directly or indirectly be occasioned by the following:

(a) Making repairs, replacements or betterments by said District to all 12,000 volt transmission lines or cables belonging to said City and used by the District made necessary by electrolysis.

(b) In the operation, maintenance and repair by said City of the electrical equipment installed by said District for said City in the 39th street pumping station of said District and from electrical energy escaping from or passing through said electrical equipment.

(c) In the operation, maintenance and repair of all the sub-stations of said City (except the H. N. May substation during the period it is under the exclusive control of said District) together with all the electrical equipment contained therein, and from electrical energy escaping from or passing through said sub-stations and electrical equipment.

(d) In the operation, maintenance and repair of the entire street lighting system of said City (except to the extent the said District has herein assumed operation, maintenance and repair and the making of all necessary betterments or replacements to the 12,000 volt cables of said City) including all distributing lines, arc circuits and all electrical equipment used in connection therewith, and from all electrical energy escaping therefrom or passing through the same.

(e) In the operation by said City of the electrical equipment of said District which has been installed by said District for its own use in the sub-stations of said City and grounds connected therewith, and from all electrical energy escaping from said equipment because of the negligent operation of the same by the employees of said City.

(f) In the use by said City of conduits and poles of said District and use of space in the sub-stations of said District and on the grounds connected therewith, and from all electrical energy escaping from said conduits and poles so used by said City if caused by such use. And said City agrees and does hereby undertake to indemnify and save harmless said District from all liability.

(39) The said City agrees to indemnify and save the District harmless from all judgments, damages, costs or expenses which may be sustained by said District by reason of suits for damages against said District brought by certain individuals named therein, which suits were at the time of the approval of said contract pending in the Courts of Cook County; and by reason of other suits for damages for personal injuries, deaths or loss of services, earnings and expenses, now pending or which may at any time hereafter be brought against the District by any person or persons or their representatives wherein it is claimed that the District is liable either solely or jointly with said City, or jointly with the City and others, for damages, personal injuries, death or loss of services, etc., alleged to have been caused by electrical energy generated by said District and transmitted over or through or escaping from the street lighting system of said City, including all transmission and distribution wires, arc circuits and all electrical equipment owned or controlled by said City and used in connection therewith; and by reason of any other suits wherein it is claimed that said District is jointly or severally liable for damages for personal injuries, etc., alleged to have been caused by the negligent operation, (or) maintenance and (or) repair of the entire street lighting system of said City, including all transmission and distribution

wires, arc circuits and all electrical equipment owned or controlled by said City and used in connection therewith; and also from all costs and expenses incurred by said District in defending said suits above specifically named, such other suits, or any of them.

(40) The District assumes (except as otherwise provided in section 40) all responsibility for all loss, damage or expense to persons or property which may in any wise directly or indirectly be occasioned by the following:

(a) In the operation, maintenance and repair and the making of all necessary replacements and betterments by said District to all twelve thousand volt transmission lines or cables belonging to said City and used by said District in the furnishing and delivering of electrical energy over said transmission lines or cables, except such repairs and the making of all replacements and betterments to such transmission lines or cables rendered necessary by the action of electrolysis, and excepting loss, damage or expense occasioned by the electrical energy ecaping from or passing through said transmission lines or cables by reason of electrolysis.

(b) In the use, operation and repair by said District of the H. N. May sub-station and the steam producing, generating, transforming and other equipment contained therein and all electrical energy escaping from or passing through the same during the period said sub-station and equipment is under the exclusive control of said District.

(c) In the maintenance and repair by said District of all electrical equipment which has been installed by said District in the sub-stations of said City and on the grounds connected therewith and from all electrical energy escaping therefrom due to a lack of proper installation, maintenance and repair.

(d) To the use by said District of conduits and poles of said City and space in the sub-station of said City and on the grounds connected therewith and from all electrical energy escaping from said conduits and poles so used by said District, or caused by such use.

(41) All question as to liability for loss or damage to persons or property not specifically herein assumed by the parties hereto, due to the concurring negligence, wrongful act or omission of the respective parties or their officers, agents, employees or contractors and the money to be paid therefor, if any, by the respective parties hereto shall be submitted to arbitration in the manner specified in Section 45 of this agreement.

(42) It is provided that in case a suit or suits shall be begun against either party hereto for or on account of any alleged damage or injury for which, under the terms of this agreement, the other party hereto shall be liable, in whole or in part, the party so sued shall give to the other party reasonable notice in writing of the pendency of such suit, and thereupon the other party shall and will assume the defense of said suit or participate in its defense, and shall and will save harmless the party so sued from all loss, costs and expense of defending such suit, or from its proportion thereof, as the case may be. This section provides in detail the procedure in such cases and the language

thereof will have to be carefully considered whenever occasion arises for its application to any of said suits.

(43) Each party shall give notice in writing to the other party of any claim in excess of $50.00 made upon it for which such other party may be solely or jointly liable under the terms hereof, and no claim in excess of $50.00 shall be settled by either party hereto without the consent of the party so notified unless the latter shall for fifteen days after receipt of notice neglect to give consent or within said time shall advise that such claim will not be contested.

(44) In every case of death or injury suffered by employees of the respective parties hereto in carrying out the terms and provisions of this agreement, where under any law first aid, medical, surgical and hospital services are required to be furnished and compensation to be paid any such employees or his beneficiary, the party hereto whose employee is injured or suffers death shall make payment in accordance therewith and the other party hereto agrees (if under the terms of this agreement it is responsible for such injury or death) to reimburse the party making such payment for all payments so made whether initial or successive periodical payments.

(45) Provides for the manner and method of arbitration as to the subject matter of any of the provisions of the sections of said contract.

(46) Provides that as to any obligations incurred by the City of Chicago under said agreement, provision shall be made by said City by proper appropriation of funds necessary for that purpose, and if necessary, for a tax levy.

THE ELECTRICAL DEPARTMENT SHOWS A PROFIT.

The foregoing shows in a very brief way the history of the growth and development of the Electrical Department and indicates some of the many difficulties encountered by the Trustees in carrying on this great work. The obstacles encountered from time to time were indeed discouraging, but persistency and courage finally overcame them and the success which has finally been secured is compensation enough to these public spirited men who have given their best thought and energy to the solution of this great problem, and who by solving it have given to the taxpayers of the Sanitary District an asset which they will appreciate when they become familiar with the facts in connection therewith.

Brief History

A complete report by the Electrical Engineer will show in detail the work from year to year and month to month in constructing the works necessary to supply current for lighting the streets of Chicago, and it is interesting to note here in that connection that the obligations of the City under said contracts to pay the Sanitary District for such service accumulated from time to time, and notwithstanding the financial condition of the City Treasury and the limited bonding power of the City, the Sanitary District continued to furnish such current

and it increased the amount thereof for the use of the City of Chicago in lighting its streets, relying upon the ultimate ability of the City officials to find a way in which to discharge its financial obligations to the Sanitary District. From time to time suits were instituted against the City for the amounts due the District under such contracts and the City officials acting in good faith interposed no opposition thereto, and as a result judgments were entered. The City officials, further acting in good faith, promptly certified to the accuracy of these judgments and waived the City's right to have said judgments reviewed by the higher courts.

Faith of Trustees Justified

Finally the hopes of the contracting parties were realized and the confidence of the officials of the Sanitary District in the ultimate ability of the City of Chicago to pay these obligations was shown to have been fully justified. At the election in April the people of the City of Chicago passed favorably upon the proposition, whereby the City of Chicago should issue bonds bearing interest at 4% and use the proceeds thereof to liquidate judgments against the City, which were bearing 5% interest. As a result of this the City of Chicago, through its proper officials in July, 1919, paid and discharged its indebtedness to the Sanitary District as evidenced by four judgments, which with interest aggregated a sum of money somewhat in excess of $5,300,000. The Sanitary District accepted bonds of the City of Chicago in that amount and satisfied said judgments in full.

City Bonds

Judgments Paid

In this connection it is well to here repeat statements set forth in the preambles and order adopted by the Board of Trustees on June 26, 1919 (Proceedings, Page 829), that the cost to the Sanitary District has approximated $4,500,000.00 and the Sanitary District had received therefrom a revenue of upwards of $8,725,000, realizing therefrom a net profit after charging off depreciation and interest on the investment of approximately $2,300,000, which is directly in the interest of and for the benefit of the taxpayers of and in The Sanitary District of Chicago.

Profit to Taxpayers

In addition to the foregoing it may be well to here call attention to the fact that this result has been achieved not alone through furnishing current to the City of Chicago, but illumination has been furnished for the park systems at a saving to the taxpayers. Current has also been furnished to other cities and towns within the Sanitary District and whenever surplus current has been available after supplying the power necessary to operate the works of the Sanitary District, and furnishing illumination for the City of Chicago, the park systems and other cities and towns in the District, the current has been sold to other consumers.

Consumers

THE SANITARY DISTRICT OF CHICAGO AS A TAXPAYER

While the Board of Trustees of The Sanitary District of Chicago is clothed with the power to levy taxes and to issue bonds, the District has also been held repeatedly by the courts of this State to be a taxpayer as well. It will be interesting to consider these cases, and while in them the courts adhered to certain rules which have been formulated to suit the conditions in and in connection with the Sanitary District, the decisions indicate that the Courts of Illinois have not gone as far as the Courts in many other States in exempting municipal corporations such as The Sanitary District of Chicago from taxation. An examination of such cases clearly indicates that if this question should be fairly and squarely presented to the Supreme Court of Illinois so that the case could not be decided upon any other issue, that the Court would hold that all property owned by the Sanitary District is necessarily public property used for corporate purposes, which means public grounds used for public purposes, because the Sanitary District has no power to own and hold any property unless it is used for its corporate purposes, and that, therefore, all property owned by the Sanitary District, however used by it, must necessarily be exempted from taxation.

Public Grounds

The Sanitary District of Chicago has no other method of acquiring assets than by levying taxes. Of course it has the power to issue bonds, but this is only a method of postponing taxation because it is compelled under the Statute to levy taxes for the interest and principal of such bonds.

Assets

The Sanitary District Act also provides that any revenue acquired from the use of docks or from the sale of water power or electric current after paying the necessary costs and expenses in connection therewith may be applied to corporate purposes, and that would have the effect of reducing taxation.

The Sanitary District of Chicago is not, and of necessity cannot be, a private corporation in any sense so far as its assets and liabilities are concerned, and to compel the Sanitary District to pay taxes on any of its property only means in the end that it shall necessarily increase the amount of its tax levy in order that it may in turn pay the taxes thus imposed. On the contrary it seems clear that if it were exempted from such taxation the amount of its tax levy from year to year would be accordingly reduced.

As briefly as possible, attention will be called to the cases on this subject:

The Constitution of the State of Illinois, Article 9, Section 3, Hurd's Revised Statutes, 1917, page LXIX, provides as follows:

"The property of the state, counties, and other municipal corporations, both real and personal, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation; but such exemption shall be only by general law. In

the assessment of real estate incumbered by public easement, any depreciation occasioned by such easement may be deducted in the valuation of such property."

THE REVENUE ACT, Chapter 120, Section 2, Hurd's Revised Statutes, 1917, page 2421, provides as follows:

"All property described in this section to the extent herein limited shall be exempt from taxation, that is to say: * * *

"Fifth. All property of every kind belonging to the State of Illinois.

"Ninth. All market houses, public squares or **other public grounds used exclusively for public purposes**; all works, machinery and fixtures belonging exclusively to any town, village or city, used exclusively for conveying water to such town, village or city; all works, machinery and fixtures of drainage districts, when used exclusively for pumping water from the ditches and drains of such district for drainage purposes."

It is thus plain that the framers of the constitution of 1870 intended that there should be an exemption of the public property of municipal corporations but provided that such property should be exempted only by general law.

Martin Case

In Sanitary District vs. Martin, 173 Ill., 243, decided in 1898, certain lands lying in DuPage and Lockport townships were assessed in the year 1894. The court there (page 248) states that the same rule of

" 'Strict construction of statutes' exempting property from taxation belonging to private persons or corporations has been applied to municipal corporations also"

and in referring to the expression "public grounds" (page 249), said:

"The 'public grounds' exempt from taxation referred to in this paragraph would therefore, under this rule of construction, be construed to be grounds which are open for the designated use of the public generally and this would seem to be exemplified by the qualifying clause 'used exclusively for public purposes.' "

The court further states:

"It can hardly be said that the lands of the appellant **are open to the use of the public generally for drainage purposes.** The court below has found that these lands were all necessary for the purpose of constructing the channel for the said district, and its adjuncts thereof, for the purpose of drainage of said Sanitary District in accordance with the provisions of the act of the legislature authorizing the creation of said district, and that said lands have been used and were acquired by said district exclusively for said purpose."

District Lands

And after considering the statute the court said (page 251):

"We think it can hardly be said that these provisions give the public the right to use this channel except that after its completion it is declared to become a navigable stream which would give the public an easement of passage over the water in the same but no right to use the same as a drain or

Public Use

channel for sewage seems to have been given or reserved. The drain or channel to be constructed is intended apparently wholly and solely for the benefit of the inhabitants of the Sanitary District and not for the benefit of the public at large. The district is authorized to make and establish docks, and to dispose by lease of any water power for its own benefit that may be created in the construction and use of the channel. In this way it is quite possible that the district may derive a large revenue from the use of the channel. It seems to us that it is plain from all the foregoing provisions that the public outside of the limits of the district have due interest in the same, and that these lands in Will County are not 'public grounds' in the sense those words were used by the legislature, nor are they to be 'used exclusively for public purposes.'"

It appears that in this case the Supreme Court limited the meaning of "public grounds" in a manner not intended by the legislature, particularly when the constitutional authority is considered in connection therewith.

Hostile Taxation

It is said in McCullock vs. Maryland, 4 Wheaton, 316, that "the power to tax is the power to destroy" and there is nothing to prevent hostile elective officials in outside taxing districts from taxing public improvements that may be constructed in their districts by foreign municipalities to such an extent that they pay practically the entire local cost of government.

Exemption

In spite of this limitation the Supreme Court has, however, in this decision, placed some limitation on the right of a municipality to tax improvements constructed by foreign municipalities. The Martin case indicates that where a public structure is so situated that it may be used by the people of the territory where the structure is erected outside of the confines of the municipality which creates the structure, in other words, if as to such municipality it is public grounds at all times being used for a public purpose it is exempt from taxation.

Hanberg Case

The Supreme Court had occasion to consider the Martin case in Sanitary District vs. Hanberg, 226 Ill., 480. Here the question was as to land situated within the Sanitary District and Justice Cartwright interpreted the previous ruling in the Martin case as follows:

"Under these rules we held in the case of Sanitary District of Chicago vs. Martin, 173 Ill. 243, that lands of the Sanitary District included in its channel or right of way outside of the district are not exempt from general taxes. The lands in that case were situated in Will County, and were not regarded as used exclusively for public purposes for the reason that the channel of the district and its uses were solely for the benefit of the inhabitants of the district. **The public outside of the district have no right to use the drain or channel for sewage and that part of the channel is a mere conduit for carrying off the sewage from the Sanitary District.** The only beneficial use of the public

Outside Public

in that part of the channel is a mere easement of channel over the water for the purpose of navigation. It is therefore held that the authorities of Will County could lawfully levy said taxes upon said land."

Referring to the land within the Sanitary District the court said (page 483):

"It cannot be denied that the drainage to be provided by the drainage district and the disposition of the sewage of the district is a public purpose of the highest character, involving the health and welfare of the inhabitants of the district, and that the **general public within the district** are entitled to the use of the channel therein and the benefits derived from it. The channel was made and is being maintained by taxation of the inhabitants of the district, which could only be done for a public purpose, and undoubtedly they may compel the performance of the powers conferred upon the trustees to provide for the drainage of the district by constructing and maintaining channels, drains and outlets for sewage. We do not regard it as essential that the public use should embrace the people of the whole state, but, on the contrary, many uses are exclusively public in their nature and involve no private right or interest, which are limited in area or in the persons benefited by the use. It does not seem that a purpose would cease to be public on the mere ground that the benefits are confined to the inhabitants of a particular municipality. The use of the lands in question is public in the same sense as the use of market houses and public squares, **and we think that the lands within the district included within the channel and right of way and devoted exclusively to the purpose of drainage and carrying off the sewage of the district are exempt from taxation.** * * *

Lands in District Exempt

"The district has leased part of its lands to private individuals, and such lands, not being used for public purposes, are subject to taxation. In some cases lands were assessed and taxed parts of which were so leased while the other parts were exempt. It is therefore contended that the whole tax was void. Where legal and illegal taxes are blended so as to be incapable of separation the entire levy will be avoided. But we do not regard that rule as applicable to this case. The exemption does not extend to all property of the municipal corporation, but it is a qualified exemption of such portions of the property as are used exclusively for public purposes. The exemption is to be construed strictly against the right claimed, and where the sanitary district owns a single tract of land which has been assessed as a whole and leases a part of it, it is not unreasonable that the district should make known to the assessing officers what portion is used exclusively for the public purpose. The district may use its property either for public or private purposes, and it would not be reasonable to require assessing officers to examine its leases for the purpose of determining exactly what portion is exempt from taxation. Moreover, it does not appear from the record that there may not be an apportionment of

Leased Lands Not Exempt

Construed Strictly

the tax as between the part of the tract leased to individuals and the part used for the public purpose." * * *

Here the Supreme Court made very clear its reason for deciding in the Martin case that property of the Sanitary District was taxable outside of the boundaries of the Sanitary District and the reasoning in the Martin case as interpreted in the Hanberg case makes it also clear that under the Supreme Court ruling if property is used exclusively for a public purpose (and there can be no question that all of the property within Cook County outside of the confines of the Sanitary District which belongs to the Sanitary District is used exclusively for the public purpose), and if in addition to that the people of the locality have the right to use it for drainage and sewerage, it then becomes "public grounds used exclusively for a public purpose."

Effect of Use for Drainage

In the case of Sanitary District vs. Gifford, 257 Ill., 424, questions of taxation of Sanitary District property outside of Cook County again arose. Here the grave effect of the Supreme Court's ruling in the former cases was clearly shown. The taxation is made on such an exorbitant rate that the local assessors in Will County were attempting to pay most of the cost of local government by taxing the improvements of the Sanitary District. The court, however, held that the bill of the Sanitary District was insufficient and it adhered to the decisions in the Hanberg and Martin cases heretofore referred to.

Gifford Case

In Sanitary District of Chicago vs. Board of Review of Will County, 258 Ill., 316, the Sanitary District went before the Board of Review of Will County and sought to have its tax assessment reduced. There it is held that as the property was assessable and the question was one of double assessment rather than of assessing exempt property, the action of the Board of Review was final.

Board of Review

In Sanitary District vs. Young, 285 Ill., 351, the Sanitary District sought to enjoin the County Clerk from extending taxes against its property in the townships of Lockport and Dupage. The court's holding in that case is set forth in the following language (page 359):

Young Case

"The channel and the improvements below the controlling works are used for the generation of electric power for the benefit and profit of appellant. That channel and all the improvements are essential, more or less, to the production of such power. **Their creation was solely for the benefit of appellant and the people in the district.** The public has no right to the use of any of such construction except for the purposes of navigation. The public has a mere easement in the channel and its improvements for the purposes of navigation. The new channel and the improvements therein are all taxable in the townships of Lockport and Dupage, as has been previously determined by this court (Sanitary District vs. Martin, supra; Sanitary District vs. Hanberg, 226 Ill. 280; Sanitary District vs. Gifford, supra). The

Burden Placed Upon District

public's right to free navigation of the channel was exacted of appellant because of the destruction of the Illinois and Michigan canal for navigation purposes from Joliet to Chicago by reason of appellant's constructions across it, and is a burden cast on appellant by the acts of the legislature, and which burden it has to assume so as to have and enjoy the grants and privileges in those acts that are beneficial and profitable to it." * * *

Much of the case has to do with questions of practice and in arriving at its decision the court holds itself bound by the Martin, Hanberg and Glifford cases, supra. Yet this case illustrates the peculiar situation, which has been permitted by such decisions to obtain in Illinois, that we have already pointed out and even though such decisions permitted, as is shown in this case, an unfair, unjust and improper system on the part of a local assessor of causing the taxpayers of the Sanitary District to bear practically all the burdens of taxation in one particular municipality. When it came to the question of passing on procedure the court said (page 369):

Unfair System

"The charge as to the personal property, as shown in the second group of allegations heretofore referred to, is, in short, that appellant was assessed for personal property in the various school districts, when, as a matter of fact, it had no personal property of any kind or character in said school districts on April 1, 1915, and never had such property before or since that date, and that the assessors were, by proper schedules, well informed of those facts before assessing such property. After giving such information to the assessors, appellant had no reason whatever to suppose that they would make any assessment against it for personal property supposed to be owned by it in said school districts or controlled by it, and which, in fact, it did not own, possess or control. It had a right to assume that the assessors would respect its rights and obey the law and make no assessment against it on property that it did not own, possess or control. It was required to do no affirmative act, other than the presenting of said schedules to the assessors, to prevent its being assessed for property in said school districts that it did not own, possess or control. The same rule is applicable in a case of this kind as where a party is assessed and taxed for property that is exempt from taxation or where he is taxed and assessed by parties having no power or authority to assess the property, or where the assessing and taxing officers assess and tax property that is not in their territory or jurisdiction. In all such cases the aggrieved party has his remedy by injunction to enjoin the assessment and collection of such taxes, although he also has an adequate remedy to be relieved from such assessment before the board of review. The two remedies are cumulative, and the party so aggrieved may pursue either remedy—the one by injunction or the one by applying to the board of review. The only limitation in such cases is, that where he elects to pursue the

Personal Property

Two Remedies: Must Choose

remedy before the board of review he will not be allowed to abandon it and then go into equity, but he may go into equity in the first instance and have relief. (Illinois Central Railroad Co. vs. Hodges, 113 Ill., 323; School Directors vs. School Directors, 135 id., 464; Searing vs. Heavysides, 106 id., 85; First Nat. Bank vs. Holmes, supra; Moline Water Power Co. vs. Cox, 252 Ill., 348). One of the reasons for a court of equity entertaining jurisdiction in such case is, because the acts of the assessor or of the taxing authorities are unauthorized by law—i. e., their acts are concerning property over which they have no jurisdiction. * * *

Chancery Jurisdiction

At the same time there was also presented to the Supreme Court a question of taxation of transmission lines and spoil banks.

Sanitary District vs. Young, 285 Ill., 423, the court held this to be real estate and not personal property and said (page 425):

"The poles and towers which carry the transmission lines of appellant are located wholly on its real estate. Under paragraph 12 of section 292 of the Revenue Act it must be held that the transmission lines are a part of the realty and assessable as such, there being no special statutory provision requiring such property as this to be assessed as personal property. The spoil banks are clearly a part of the real estate upon which they were placed when the excavation for the canal was made. The material comprising the spoil banks was part of the soil when excavated, and its character as land was not changed by reason of its displacement from the bed it originally occupied. It became incorporated with and a part of the soil where it was deposited. (Lacustrine Fertilizer Co. vs. Lake Guano and Fertilizer Co., 82 N. Y., 476): The transmission lines and the spoil banks being a part of the real estate were necessarily included in the quadrennial assessment of that real estate made in 1915. * *

Spoil Banks and Transmission Lines

"The Sanitary District is a municipal corporation. Its stockholders are the taxpayers of the Sanitary District. Its duty is to provide an outlet for the sewage and drainage of the Sanitary District, thus to keep the water of Lake Michigan pure, and while it is given authority to take advantage of certain incidental sources of profit that may arise, such as the rental of docks, the rental of lands and the development and sale of electricity, all these are purely incidental to the primary purpose. No individual makes a profit from any activity of the Sanitary District. The only possible benefit that individuals receive by such activities is a reduction of their taxes or in the municipalities in the Sanitary District or along the line of the channel in having their streets lighted at a low rate. It is a mistake to assume that the Sanitary District is in the electrical business. It is not. It has only developed the incidental power created by turning the water of Lake Michigan through its channel and even the elec-

Privileges and Benefits

trical energy that is thus developed is sold to municipalities at cost and the money that is required to pay the interest on bonds and other charges of that nature is secured from the sale of the day load. This truly is a municipal enterprise as opposed to a private one and is one in which the people of the Sanitary District are vitally interested and it is not one that should be subject to the whim or caprice of any local assessors either within or without Cook County, who are not in the Sanitary District.

Electrical Plant

"By the original act creating the Sanitary District the duty was imposed upon the trustees to provide for the drainage of the area within the boundaries of the Sanitary District by furnishing outlets for drainage and sewage. It was authorized as an incident thereto to take advantage of the dock facilities created. It was required to dig a main channel large enough to furnish navigation and it was contemplated that water power created as an incident to the construction of the channel could be taken advantage of. The act of 1903 adds territory, provides for the Evanston and Calumet channels, increases the navigation feature so that the channel becomes navigable to the people of all of the state by providing an outlet at the lower end and makes direct provision for the utilization of the water power by permitting the trustees to develop such water power into electrical energy, but it will be observed that by Paragraph 6 of the Act of 1903 it is made mandatory upon the trustees that such energy shall be "transmitted to the various cities, villages and towns within said Sanitary District or adjacent to the main channel" and while the permissive form is used it probably also is mandatory that such electricity be used in the "lighting of said cities, villages and towns or parts thereof or for the operation of pumping plants or machinery used for municipal purposes or for public service." It may in addition dispose of such electrical energy to other persons or corporations upon such terms and conditions as may be agreed to by the Sanitary District trustees. When we say that the second clause is mandatory we mean, of course, that is true providing the conditions are such as to availability that it can be used.

PUBLIC PURPOSE is defined by Bouvier in Rawle's 3rd Revision, page 2766:

"As employed to denote the objects for which taxes may be levied, it has no relation to the urgency of the public need or to the extent of the public benefit which is to follow. It is on the other hand merely a term of classification to distinguish the objects for which, according to settled usage, the government is to provide, from those which by the like usage are left to private inclination, interest, or liberality. People vs. Township Board, 20 Mich., 452, 4 Am. Rep., 400."

And the same definition is quoted in Words and Phrases, Volume 6, page 5815.

In the earlier decisions in this country when the interests of the people were not so varied or business so diversified and when the population was comparatively small there was a tendency in certain

jurisdictions to hold that the test of a "public purpose" was whether the municipality operated or used the particular structure or agency in what was termed a "governmental" or a "proprietary" capacity and whether such capacity was "governmental" or "proprietary" was usually determined by the test as to whether it was used in connection with an agency that was operated for gain or which was purely in furtherance of a recognized governmental power, such as the police power, where no profit could by any chance be derived. The later decisions, however, have gone a long way toward eliminating entirely the earlier thought on this subject. The great congestion of people within large cities, the tremendous increase in population with the consequent changes in business and social necessities have caused a clearer knowledge of the true principles of law on this topic to become almost universal.

In a note to Traverse City vs. Blair Township, Annotated Cases, 1918-E, page 85, the author states:

"Although a municipality owning and operating a water, gas or electric plant or other similar public utility, furnishes service to the residents of the municipality and derives a revenue therefrom, the plant is deemed to be property of the municipality used for a public purpose, and as such is not subject to taxation."

Public Property

and many authorities are cited in support thereof from many jurisdictions.

Hence, the true rule seems to be that a public or governmental purpose, considered in relation to the law of taxation, is any "purpose" from which the public, as distinguished from private citizens, receives a benefit.

In Styles vs. Newport, 56 Atl. (Vt.), 662, a question of taxing a water works system was involved. The reservoir and aqueduct of the system lay in a different town. The city supplied water to its own inhabitants for a profit and also sold water to another city. The court held that the reservoir and aqueduct were not taxable nor was the property lying within the town of Newport, but that portion of the system used for supplying the separate municipality was taxable and in referring to the decisions as to proprietary interests of a city as affecting the law of damages, after citing a number of ceses, the court said (page 664):

"These cases certainly determine that the use is private as distinguished from municipal, but they cannot be taken as a conclusive determination that the use is private within the meaning of the laws relating to taxation. In supplying water for domestic purposes, the municipality is acting both for the public good and for corporate gain. Serving this double purpose, the property may be subjected to liability as private, or protected from liability as public, according to the nature of the demand. The individual suffering from negligence and the municipality seeking revenue approach the question from different lines. When the municipal owner disputes the right of its sister municipality

Distinction in Use

to tax the system, it is no answer to say that the use is so far private as to permit a recovery of compensatory damages." * * *

(Page 666): "The question of public use may be tested in another way. Taxes can be levied only for public purposes. We take it that a tax levied to establish and operate this system would not be made invalid by the fact that the plant was designed to meet both domestic and municipal needs. * * The use being public in its nature, the taking of compensation does not require that it be otherwise treated. * * The fact that an incidental profit may accrue to the municipality, and that this may in time become available for the payment of general corporate expenses, will not subject the system to taxation as serving a private use. The use will remain public, notwithstanding this incidental result of the system adopted for its support; and, if the working of the system is not what it should be, the regulation of municipal affairs is always in the hands of the legislature."

A Test

In TRAVERSE CITY VS. BLAIR TOWNSHIP, 157 N. W. (Mich.) 81, the city brought an action to recover taxes paid by it under protest which had been assessed against its electric light and power plant located within the territorial limits of defendant's township and based its right to recover upon a statute which exempted from taxation lands owned by any county, township, city, village or school district and buildings thereon used for public purpose. The court said (page 82):

"While in distinguishing the purely governmental powers of a municipality from its authorized business activities in supplying itself and its inhabitants with a certain class of utilities and conveniences for which in places of concentrated population there is a general need, and which it is recognized under present conditions of civilization public welfare demands, the latter are sometimes referred to as private business enterprises, perhaps because such wants may be and sometimes are supplied for profit by private parties; yet in the final analysis they are in no true sense private business or private property when operated and owned for public benefit by a municipality under constitutional or statutory authority. No question of private gain or private support is involved: The benefits, whether in direct profits or in protection of health, property, or life, accrue to and all losses fall upon the public generally. The only underlying support for all such public business activities is taxation, and taxation can only be for public purposes. Possible confusion of terms is cleared up and the real difference pointed out in the recent case of Wood v. Detroit, 155 N. W. 592, as follows:

" 'The distinction between powers governmental in character and those private in character, as exercised by municipal corporations, does not involve the abrogation of the distinction between private municipal activity and private individual activity. To employ a seeming paradox, private municipal activities are all of them public. What has been called private in municipal activity is, nevertheless, public when contrasted with purely private enterprise and adventure.

* * * There is not, and there cannot be, any merely local power to tax persons or property, and municipal activity may still be, and it is the command of the Constitution that it shall be, restricted, limited, by the limitation of the power to tax, to borrow money and to exploit the municipal credit.'

"That after supplying its own direct, municipal needs the city furnished light or power to private parties and received a revenue therefrom, in no way detracts from the municipal or public purpose for which such authorized public utility was owned and operated. Neither is it of importance whether the enterprise was in itself profitable or unprofitable; it remained public property, owned and operated as an authorized public utility for municipal purposes and the general welfare, dependent for its credit and existence upon public support by taxation to whatever extent its necessities required."

In STATE VS. COLLINS, 37 Atl. (N. J.) 623, a county purchased land for its poor farm in an adjoining county. The court held it was land devoted to public use and not taxable and said (page 624):

"Decisions limiting general words of exemption in charters of private corporations to such property as may lawfully be held for charter purposes are not authority for the defendant's contention. In such cases the legal implication is in favor of the power to tax, while, as against municipal corporations, the legal implication is the other way. As to individuals or private corporations, there must be express words to exempt; as to public corporations, there must be express words to tax."

In PERTH AMBOY VS. BARKER, 65 ATL. (N. J.) 201, the statute exempted properties of counties, school districts and taxing districts when used for public purposes. The Township of Madison attempted to tax property owned by the city situated outside of the city upon which were the powerhouse, railroad shed, one hundred acres of land and certain personal property used for the public water supply of the city and the court held that it was exempt even though not within the limits of the city as land used for a public purpose.

The Supreme Court of New York went so far as to hold that property in Brooklyn, before Brooklyn was annexed to New York, which belonged to the City of New York and was used as a landing for its ferry even though controlled by lessees not made liable was therefore exempted from taxation. People ex rel Mayor of New York vs. Assessors of the City of Brooklyn, 19 N. E. 90.

And in a note to STATE EX REL TAGGART VS. HOLCOMB, 50 L. R. A. (N. S.) 243 on page 245, the author says:

"It may be stated as a rule, deduced from the holdings and inferences of the courts in the decisions herein cited, THAT THE PROPERTY OF ONE MUNICIPALITY LOCATED IN ANOTHER IN THE SAME STATE IS EXEMPT FROM TAXATION, IF IT WOULD BE EXEMPT IF LOCATED WITHIN ITS OWN TERRITORIAL BOUNDARIES, unless express legislation has changed the rule, the only decision to the contrary being Newport vs. Unity, infra. (68 N. H. 587, 44 Atl. 704).

"The rule just stated appears to be so well established that a great many cases involving facts which bring them within the scope of this note turn upon the question as to whether or not the property is devoted to a public use, and as to whether the municipality is acting in its governmental capacity, and there is very little discussion of the fact that the property is located in another jurisdiction; sometimes there is the mere statement of the fact. The plain inference from all such cases, no matter which way decided, is in favor of the rule above stated, since the question upon which the case turns is but a test to determine whether or not the property would be taxable if located within the municipality imposing the tax."

If the property is "public grounds" used for "public purposes" it is exempt wherever found and the intent of the legislature, even if the Supreme Court, relying on a supposed contrary rule, should for a time err, is that all real property devoted to public use belonging to municipal corporations shall be exempted from taxation whether within or without the confines of the municipal corporation.

Note:

The expression "public grounds used exclusively for public purposes" does not differ from "public land used exclusively for public purposes." "Ground is land, earth or soil" (Bouvier's Dictionary) and may include an improved town lot. Ferree vs. School District, 76 Pa. 378. Hence the expression "public land used exclusively for public purposes" would be no different from "land owned by the public used exclusively for public purposes." Therefore there is no variation in the expression from those heretofore considered.

THE SANITARY DISTRICT OF CHICAGO AS A TAXING BODY

Section 5 of the original Sanitary District Act is as follows:

"All ordinances making any appropriations shall, within one month after they have passed, be published at least once in a newspaper published in such district, or if no such newspaper of general circulation is published therein, by posting copies of the same in three public places in the district; and no such ordinance shall take effect until ten days after it is so published, and all other ordinances, orders and resolutions, shall take effect from and after their passage unless otherwise provided therein."

Appropriations

Section 6 of the Act is as follows:

"All ordinances, orders and resolutions, and the date of publication thereof may be proven by the certificate of the clerk, under the seal of the corporation, and when printed in book or pamphlet form, and purporting to be published by the board of trustees, and such book or pamphlet shall be received as evidence of the passage and legal publication of such ordinances, orders and resolution, as of the dates mentioned

How Proved

in such book or pamphlet, in all courts and places without further proof."

Section 12 of the Act, among other things, clothes the Board of Trustees with power to levy and collect taxes for corporate purposes upon property within the territorial limits of such sanitary district, the aggregate amount of which in any one year shall not exceed one per centum of the value of the taxable property within the corporate limits as the same shall be assessed and equalized for the county taxes for the year in which the levy is made. This section also provides for the procedure with reference to levying and collecting taxes.

Board Powers

The General Assembly in 1919 amended the Revenue Act with reference to valuations of property and tax levy thereon, and separate amendments were adopted by the General Assembly with reference to each taxing body, including The Sanitary District of Chicago. While the procedure is changed somewhat the general result is not affected.

Tax Amendments

Section 7 of the Act of 1903 provided for an additional tax levy for three years not exceeding one-fourth of one per cent of the value of the taxable property within the corporate limits of said district as the same shall be assessed and equalized for state and county taxes for the year in which the levy is made for the purpose of meeting the expenditures arising from the exercise of the powers conferred by Sections 5 and 6 of the Act of 1903, which have hereinbefore been presented with reference to the development of water power and electric current.

Additional Levy, 1903

The Sanitary District Act does not in terms provide for a general appropriation bill or budget. The necessity for the Sanitary District to appropriate by ordinance all moneys which it expects to expend for any particular purpose was stated by the Supreme Court of Illinois in the case of People ex rel Stuckart vs. Day, 277 Ill. 543. The court there said:

No Budget Required

"The statute is to be interpreted as a whole to ascertain the legislative intent, and while we have been accustomed to the making of appropriations by separate bill on account of the provisions of the Cities and Villages act and the act for the management of the affairs of Cook County, it is clear from a consideration of the entire act that the General Assembly intended appropriations to be made by the trustees for the purpose of the sanitary district and that they should be made by ordinance. Every such ordinance must be published at least once in the district, in a newspaper of general circulation, since there are many such newspapers in the district. This provision is for the security of the taxpayer, who can only protect himself from unlawful expenditures by knowing, before he contributes his money, for what purpose it is to be expended. It was not the intention of the General Assembly that the taxpayer should be in ignorance of the manner in which it

Day Case

is intended to spend money collected by taxation. * * * There is some point in the process of levying and collecting taxes and paying out the money at which the money is appropriated to some purpose, and when that point is reached the appropriation must be by ordinance published as required by section 5."

After the Supreme Court rendered this opinion the Board of Trustees of the Sanitary District decided that it was advisable to pass an appropriation ordinance, specifying for what purpose the taxpayers' money was to be expended. Ordinances making appropriations for the year were passed for the years 1917 and 1918. These were in the form of a summarized appropriation ordinance with schedules. These ordinances were published in accordance with Section 5 of the Sanitary District Act in a newspaper of general circulation, but the supporting schedules were not so published, nor were they made a part of the appropriation ordinance, and the question arose whether the supporting schedules should be merged into the appropriation ordinance, thus making the appropriation ordinance in as great detail as the supporting schedules had heretofore been made. Undoubtedly the method adopted in 1917 and 1918 of passing appropriation ordinances with detailed supporting schedules is the correct method, but believing that the appropriation ordinance itself should in certain instances contain more detail as to the items of expenditure in order to comply with the suggestions of the Supreme Court in the Day Case, the Board of Trustees in passing an appropriation ordinance for 1919 incorporated what was theretofore known as the supporting schedules as a part of the appropriation ordinance itself, thereby giving every possible detail in which any taxpayer might possibly be interested.

Budget Plan Adopted

On February 6, 1919, the present Attorney for the Board upon request prepared for the Finance Committee the following opinion:

"I am of the opinion that if action upon the Appropriation Ordinance is postponed it will be necessary to publish as to all orders for the payment of money since January 1, 1919, within thirty days from the date of such orders; in other words, if the Annual Appropriation Ordinance is adopted on February 13, 1919, then such orders passed on January 2d, 9th, and, to be well within the zone of safety, those passed on January 16th, should be published; and, if action on the Appropriation Ordinance should be further postponed such publication of orders should be likewise continued until the Appropriation Ordinance is adopted.

Opinion of Attorney

BRIEF AND ARGUMENT

"Under the Cities and Villages Act such corporations are required to adopt an Appropriation Ordinance within three months from January first of each year, and when adopted no further appropriations can be made during that year.

"The Act creating the Sanitary District and defining its powers does not restrict the Board of Trustees in the matter of making appropriations. The one duty imposed upon the Board in this connection is found in Section 5 of the Act, which provides that "all ordinances making any appropriations shall one month after they are passed be published at least once in a newspaper published in such District," etc.

No Restrictions Upon Board

"Until a few years ago no Annual Appropriation Ordinance was passed by the Board. Even as late as 1915 there was none adopted. The so-called Day Case involved an attack upon the validity of the Sanitary District tax levy ordinance for that year, and the Supreme Court there said that "the ordinance levying the tax was an ordinance making an appropriation and came within the terms of Section 5." The Court sustained the tax levy as to the bond issue, but held it invalid as to the other items, amounting to nearly $5,000,000.00. In this same case the court further said: "There is some point in the process of levying and collecting taxes and paying out the money at which the money is appropriated to some purposes, and when that point is reached the appropriation must be by ordinance published as required by Section 5."

Previous Custom

Notice

"It seems clear from the language of the Statute and that of the Supreme Court that the all important thing for the Board of Trustees to do is to publish Appropriation Ordinances (or orders, which amount to the same thing), and if that statutory requirement be complied with there is no limitation upon the Sanitary District as to the number of Appropriation Ordinances or orders which may be passed in any one year."

Only Publication Is Required

"The Sanitary District voluntarily adopted an Ordinance, which provided that an Appropriation Budget or Ordinance should be prepared and adopted within three months from the first day of each year. No statute required such action, and that Ordinance can be modified or abrogated at any time by the Board of Trustees.

Voluntary Acts

"After the pending Appropriation Ordinance shall be adopted, additional Appropriation Ordinances can be passed and included in the Tax Levy Ordinance. All of these could be postponed and incorporated in the Annual Tax Levy Ordinance, provided the purposes for which appropriations are made shall be as definitely and fully set forth as in the pending Appropriation Ordinance.

Additional Appropriations

"The Supreme Court in the Day Case clearly sustains the foregoing statements.

"The liberality of the General Assembly in giving the Trustees of the Sanitary District so much freedom of action in making appropriations from time to time has been approved by the Supreme Court, but that tribunal also has said that Section 5 as to publication must be strictly complied with.

One Requirement

"To sustain the Tax Levy Ordinance for 1919 it will, undoubtedly, be just as important to show a strict compliance with the provisions of Section 5 of the Statute as it is to properly describe the purposes for which appropriations are to be made." (Conclusion.)

In the recent case of People ex rel Stuckart, County Collector, vs. Chicago, Burlington & Quincy R. R. Co., in which the opinion of the Supreme Court was filed on June 18, 1919, objections to the Sanitary District Tax Levy were overruled, while as to some other taxing bodies objections were sustained. The objections to the Sanitary District Tax Levy were:

Tax Levy Sustained

1—The Trustees did not apply, etc., net profits from water power and docks to payment of bonded indebtedness before levying a tax therefor.

2—The levy of $450,000.00 for loss and cost of collection of taxes for 1917 was excessive.

3—Items in appropriation ordinance for sewers were void because District had no power to tax for such purpose.

The Court held as to the first objection that there are numerous uses to which profits from water power and docks may be put, any one of which would tend to reduce taxes. That the Trustees may in their discretion apply such profits to bonds or corporate purposes.

Trustees' Discretion

As to the second objection the item for loss and cost of collection was included in the item "for all other corporate purposes" and the Court held that the proof was not sufficient to sustain the objection thereto.

As to the third objection the Court held that the power of the District to build sewers was passed upon in Judge vs. Bergman, 258 Ill. 246 (Evanston District) and Mortell vs. Clark, et al, 272 Ill. 201, (Calumet District).—Rehearing recently ordered.

DEEP WATERWAY

As hereinbefore shown, the Supreme Court has repeatedly decided that the purpose of the Sanitary District is to take care of sewage within the District and provide pure water by diverting all sewage from the lake front. The Sanitary District Act was passed as a result of many years of agitation, investigation by Commissioners, public meetings and articles written by Engineers and laymen. It appears that many members voted for it because of the purpose expressed in the Act, while others voted for it because they believed it to be a start toward a Lakes to the Gulf Waterway.

PRESIDENT McCORMICK in his Annual Report to the Trustees, December 23, 1908, (Proceedings 1398) discussed the deep waterway and said:

"The deep waterway is a subject in which the members of the Board are vitally interested—as citizens and as trustees. All matters concerning the deep waterway concern the Sanitary District. Indeed, as the Sanitary and Ship Canal came as a growth of the waterway idea, so has the new waterway movement sprung from the Sanitary District.

"The attention of Congress was called to this movement in a memorial addressed by the Board of Trustees eight years ago and resent to Congress each session. The state movement for a deep waterway has come as a result of the untiring efforts of your Board before the last legislature. It will be remembered that this Board presented to the legislature two years ago two comprehensive bills for the development of the deep waterway, the extension of the Sanitary District channel as a deep waterway and the preservation of publicly created water power for the public. In spite of the lobbies sent down by water power interests, your Board persisted in its fight. The original bills were not passed, but public opinion was aroused and certain measures were adopted leading toward a deep waterway. These were the so-called 'Navigability Bills' and the resolution for a constitutional amendment authorizing the state to issue $20,000,000.00 worth of bonds to construct a deep waterway from Lockport to Utica. The constitutional amendment has been approved by the people and the legislature is now at liberty to enact such legislation as will carry out the people's will in the most comprehensive and economical way.

Memorial to Congress

"Aside from the question of cost of the actual construction, the great difficulty confronting the state is how to acquire the right of way without paying enormous prices for the alleged water power rights of the Economy Light and Power Company.

"The situation, as it stands today, from the mouth of the Des-Plaines river to the Sanitary District power house, is this: The Economy Light and Power Company is in possession, by purchase from individuals and by lease from the state, of such ground as gives it a theoretical head of fifteen feet. This is the so-called Dresden Heights location. The shores of Lake Joliet are owned by individuals and by the Sanitary District, where the District has acquired property upon paying damages for overflow.

Economy Light and Power Co.

"At the head of Lake Joliet the Economy Light and Power Company is the owner of property giving about a seven foot head. The Sanitary District is now condemning this property to enable it to properly carry its flow. North of it the Sanitary District owns in fee, by condemnation proceedings and by the consent decree of 1898, a head of approximately twelve feet. At Jackson street, in the city of Joliet, the Economy Light and Power Company is in possession of a dam and water power plant built at the expense of the Sanitary

District and turned over to the Economy Light and Power Company ten years ago. The Economy Light and Power Company has a lease on this dam running until 1916, which, however, may be abrogated by the legislature at any time without payment of compensation to the company. I do not anticipate that there can be any friction between the state and the Sanitary District over the property owned by the latter. This property was acquired at a great cost and upon it millions of dollars have been spent. Unquestionably, the state will be willing to pay the Sanitary District fully for any Sanitary District property the state may take for its own purposes. The case of the Economy Light and Power Company is different. Not one of its possessions did it acquire in an upright and straightforward manner. It is now trying to make use of tactical advantages to extract profit at the expense of a great public improvement. It has certain legal rights, and these legal rights must be respected; but it is only just that public officials, recognizing these rights, should exert all the rights and legal powers of the state to undo the wrongs already committed and recover public property improperly alienated."

Position of State

"The position of the state in relation to the Economy Light and Power Company is tenfold stronger than was the position of the city of Chicago in relation to its street car companies, therefore, there should be but little delay in obtaining for the state a settlement that is as favorable to the public as was the final traction settlement.

"Let us review the rights of the Economy Light and Power Company. This company was reorganized a few years ago and taken into the Commonwealth Edison system. At that time it issued $2,000,000.00 of fifty-year five per cent bonds, secured upon all its property. The company owns considerable real estate in the vicinity of Dresden Island, but this real estate is without value except when used in connection with the state property leased from the Canal Commissioners.

"Judge Mack, in his recent decree, held that the lease of the Economy Light and Power Company from the state was not a lease in perpetuity, but a mere twenty-year lease, four years of which have already expired.

"The property of the Economy Light and Power Company at the south end of Joliet, I have already stated, is being condemned by the Sanitary District for sanitary purposes. This land was bought when the old syndicate proposed to join it to the land owned by the Sanitary District and create a water power. The only part of the property of the Economy Light and Power Company now returning a revenue is that leased at Dam No. 1. This lease, because of the nominal annual rental, and because of an exorbitant rate received from the city of Joliet for street lighting, produces for the company large net profits. It is to be remembered that this lease can be abrogated by the state at any time without payment of compensation to the company. Therefore it is clear that the state can deal with the Economy Light and

Lease of E. L. & P. Co.

Power Company upon such terms as the state sees fit to lay down. A fair settlement would be for the state to reimburse the company the sum expended by it for right of way and to allow the company to continue operating at Dam No. 1 until the state is ready to tear out this dam for the purpose of its waterway. Another plan that would relieve the state of all embarrassment from the company north of Lake Joliet would be to cut a waterway from the canal of the Sanitary District where this channel is crossed by the bridge of the Elgin, Joliet and Eastern Railway, to run a channel in a direction south by east to the valley of Hickory creek and down that valley to Lake Joliet. This would have the advantage of passing through cheap real estate and would overcome any question of the rights of the Economy Light and Power Company north of Lake Joliet.

South of the DesPlaines river there are no complications in the acquirement of the right of way until Marseilles is reached. Here is a dam and water power where the flow of the Drainage Canal is utilized. **Marseilles**

"Every property owner on the DesPlaines and Illinois rivers has a right to be paid for any land overflowed by the waters of the Drainage Canal. In certain cases, individuals claiming water power rights, which they say increased the value of their property tenfold, have filed suits against the Sanitary District for damage due to overflows. In other words, they take this position: That they may recover money for having their land overflowed on the theory that the land is damaged, and, again, shall receive money because their land is overflowed on the theory that the land is enormously benefited. Undoubtedly the selfish interests will fight a vigorous campaign of misrepresentation, as they have done in the past. Yet, as this subject is now so prominent in the public mind, I have every confidence that a plan fair to the public will be adopted. **Overflow**

"As to the values of the water power to be created, they are as follows: The total fall from the level maintained above Dam No. 1 to the natural level of the river at Utica is 93 feet. It appears to be the plan to divide this fall into four levels; the first at Lake Joliet to be 32 feet, the second near Morris to be 20 feet, the third at Ottawa to be 20 feet and the fourth near Utica to be 21 feet. **Water Power Value**

"A radical improvement of the Illinois river south of this point will give an additional head of ten feet, which, however, cannot be counted upon, as the United States government has taken no steps towards this work.

"The flow through the Sanitary and Ship Canal, as required by law, is now 400,000 cubic feet per minute. Presumably the population of the District will increase, so that by the time the water power plants of the state are constructed, the Sanitary District will flow 500,000 cubic feet per minute. By mathematical computation, or by practical experience, we find that seventy per cent of the theoretical horse power of the water power plant can be converted into elec-

tricity. It is fair to assume that by good business management, a net income of $25.00 per horse power may be obtained. The rental value of electric power, as if, for instance, the power plants of the state were to be rented as a whole, would be considerably less than $25.00 per horse power, $20.00 per horse power would be as high as could be expected. The income to be obtained by the state may then be estimated on either basis; either that the state shall manage its water power plants efficiently and obtain an income of $25.00 per horse power or, that the state shall rent plants to private companies, receiving therefor $20.00 per horse power.

Electrical Energy

"Management by the state will necessitate the building of many transmission lines, such as are being built by The Sanitary District of Chicago, and a great outlay of capital. In time, the state may look forward to a flow of 600,000 cubic feet of water per minute being furnished by The Sanitary District of Chicago, and may hope, with a successful outcome of the suit pending between the Sanitary District and the United States government, for an eventual flow of 840,000 cubic feet of water per minute. This, however, will not be before the population of the Sanitary District requires it. It is clear that under conditions whereby the Sanitary District must pay damages for the overflowed lands, and not receive a water power development corresponding to its investment, it cannot be expected to expend its taxpayers' money, in order to produce water power for others, except as is necessary for sanitation.

Federal Suit

"Strange, indeed, are the arguments advanced, that there is imposed upon the Sanitary District the duty of improving the navigation of the South Branch of the Chicago river. What improvements have been made to navigation have been incidental to sanitation, as they must be under the law.

Strange Arguments

"Now come forward people asking that the Sanitary District either voluntarily, or under the command of new legislation, levy taxes and spend money for improvement of the South Branch of the Chicago river for the benefit of navigation. That there is, and can be, no equity in such a suggestion, needs no demonstration. If a duty is imposed upon the Sanitary District to improve navigation and harbor facilities, that duty extends as much to the North Branch of the river as to the South Branch, and to the main river even to and beyond its mouth.

"Taxes levied upon a whole community should be expended as nearly as possible to bring equal benefits to the whole community. Thus far the expenditures have been a great general public benefit; also a special private benefit to dock owners of the South Branch of the Chicago river. If it is to become a policy to make river and harbor improvements by general taxation, let the benefit be spread to cover the whole city."

In the PRESIDENT'S REPORT for 1909, presented to the Board on January 26, 1910 (Proceedings Page 75), he said:

"So in the waterway question the elemental principles of right and equity, of hydraulics and navigation, brought forward in 1907, are now fought by the private interests on one hand and submerged in impractical visions on the other. The visionaries have played into the hands of the grafters by refusing to support any other than their own schemes, while the self-seeking 'interests' have taken advantages of the visionaries by throwing their whole strength into framing plans which their own acumen tells them to be impossible. **Various Interests**

"The DesPlaines and Illinois rivers between the dams at Joliet and Marseilles are sixty-seven miles in length. They have been surveyed for improvement a number of times, and, with the exception of one report, which, on its face, was made with the idea of turning over all water power to private companies, all authorities are substantially agreed upon the proper form of improvement, which is the construction of dams at certain points and the excavation of channels in certain portions. **Dams**

"All authorities substantially agree upon the location of these dams. The only open question is as to the size of the channel to be obtained by the improvement.

"In their present state the DesPlaines and Illinois rivers between Joliet and Marseilles are navigable, not in law—at least not in the law of Illinois, for the Supreme Court has so decided it—but in fact. The Supreme Court can determine the law, but it cannot alter the facts. These streams are navigable; I know it because I have navigated them, and without difficulty. They can be improved, greatly improved, by the erection of dams and embankments, and the cost of these improvements can be entirely paid from the water power created at these dams. **Navigable Rivers**

"That does not, of course, mean that a channel of any size that man may wish can be created in these rivers and paid for from the water power developed. Navigation on the Illinois River below Marseilles is profitable, though limited, because the Illinois does not furnish a through transportation line, nor does it run between any two large centers of population. Navigation on the Drainage Canal is practically nil, owing to the fact that the Drainage Canal ends 'in the air,' with no market at its inner end. But between the southern end of the Orainage Canal and the northern end of navigation in the Illinois River lies a navigable stream, blocked by dams, around which there are no locks, which is easily capable of improvement. Open up this stretch at whatever depth you will, and navigation will grow upon it and its own growth and development will determine the depth and size of channel which should be used.

"The man who will be for no canal unless it is for a given size has no more intelligence than the man who would be opposed to any but a four-track railroad to connect two towns whose only method of communication is a mountain trail. Railroads are always laid out

single track and increased as the traffic provides money for their increase.

"The major plans before the last General Assembly are both impossible of accomplishment. They could not be otherwise except by extraordinary coincidence. The proposal of a twenty-four foot canal was made because the present Drainage Canal happened to be twenty-four feet in depth. The fourteen-foot water-way was adopted because such a water way had been suggested in a government report. An amendment to the constitution for a bond issue in the sum of $20,000,000 was presented to the voters because $20,000,000 was a nice round sum and not calculated to frighten the taxpayers.

Proposed Canal

"Now, the ingenuity of man is called upon to find ways and means of spending $20,000,000 upon canals of twenty-four feet and fourteen feet in depth respectively. The situation is exactly that presented to the Committee on Local Transportation in 1905, when Traction Expert du Pont presented to the committee plans for a municipally owned street railroad without data to show the cost of the road or the income to be derived therefrom. Estimates are presented to the public for the twenty-four and fourteen-foot channels without sufficient investigation upon which to make accurate figures. Were either plan adopted it would be necessary to spend from one to two years in surveys and in testing the materials to be encountered, and the result of these surveys would be what? No one can tell.

"Disposing of the twenty-four-foot plan as too preposterous for consideration, we come to the fourteen-foot plan of the Internal Improvement Commission. This plan proposes to construct a channel, never less than twenty feet deep to Joliet, nor less than fourteen feet from Joliet to Utica, and to equip power houses with machinery, for the sum of $19,500,000, provided the entire right of way is furnished free! This idea is predicated upon the confiscation of the real estate, channels and retaining walls of the Sanitary District from Lockport to Patterson Island in Joliet, which are worth in their present condition much over $2,000,000. This hardship seems unnecessary, especially in view of the fact that the Sanitary District has already spent one-half of that sum upon actual construction, and in view of the fact that it is to furnish, at a cost of $75,000,000, all the water for the state water power, and must maintain at its own expense, as shown before, the Chicago River and the Drainage Canal, while the state proposes to maintain the balance of the channel free of cost to the neighboring property. * * *

ONLY FEASIBLE PLAN FOR WATERWAY DEVELOPMENT

"The plans under discussion being unfeasible, what can be done that will solve the question? Only this: Construct the dams at Brandon's Road, Dresden's Island, Marseilles and Utica. Erect the powerhouses, put in the machinery, build the transmission lines, and

sell the power so as to obtain the maximum income as early as possible. Where excavation is necessary, do as much excavation as will allow boats navigating the Illinois River below Ottawa to navigate to Chicago, for it is plain that no considerable number of boats that cannot go to Peoria will ever leave Chicago. Then, with the income from power and the income from lockage, if lockage is charged, maintain the channel and make such improvements from Chicago to Grafton as time demonstrates will be of the greatest general importance. Traffic will develop the type of ship which can best be used, and, this being developed, the irregularities of the channel can be arranged to accommodate its passage.

"The plan of correct construction and correct financing having been adopted, to allow the water power plants to get their just share of revenue, it becomes a matter of small importance whether the state pays the Sanitary District the value of its property from Lockport to Brandon's Road, or whether the Sanitary District constructs this stretch of canal. The Sanitary District is but a municipality, like Chicago, Joliet, Kankakee, Rock Island, Waukegan and other cities, an agency of government, and whether it sells its own bonds and, through its engineers, does construction work, or whether it buys power from the state at a fixed figure for the benefit of its citizens, are alike matters of indifference.

"With a waterway thus constructed there will be immediate traffic in coal, from those mines immediately adjoining the Illinois River, which, loaded in the barges or scows, can be towed south, or north to Chicago. Water borne coal should find a ready market in Chicago among the many factories on the river banks, while the river, wandering in all parts of the city, will afford an opportunity for team docks from which coal can be hauled for domestic consumption. Farm products within teaming distance of the river will be shipped by water, but I hardly think it probable that grain will ever be loaded on railroads and afterwards discharged into barges. I am convinced that the extension of the present lighterage service on the Chicago River will carry the wares of our wholesale houses the full length of the Illinois River and perhaps farther still. A limitation upon the usefulness of the water way will be placed unless, at the cities along its banks, docks with modern unloading machinery are installed. This should be done under state or municipal regulation or else, history repeating itself, there will grow up a great corporation which, by owning all the available dockage, will create for itself a monopoly. Monopoly of water borne freight appears to be fully as threatening as monopolistic control of our railroads. The big railroad lines control the commerce of the Atlantic, while it would hardly be exaggeration to say that the channels and locks at Sault Saint Marie make a private way for a few big industrial corporations. The formation of the ten million dollar water transportation company in Saint Louis may be a valuable step towards water transportation. It also

Traffic

Farm Products

Monopoly

is a sounding warning to be public authorities to protect the public interests. I cannot consider the letter of the secretary of that company to the Governor of Illinois, requesting that the Sanitary District be compelled to open its lock for navigation, as entirely ingenuous. He speaks of the reduction in cost of transportation through the large canal over that through the small canal, but carefully omits all reference to the lockage charges, which would have to be paid to the state for transportation through the Illinois and Michigan Canal, but which need not be paid, under the law, to the Sanitary District for the use of its lock. His request is for the Legislature to call upon the Sanitary District to expend $12,000 in the first instance, and $5,000 annually thereafter, in operating the lock. Clearly, this is a form of subsidy in whatever terms it may be expressed.

Subsidy

"I have always considered it extremely doubtful whether the lockage charges upon traffic would pay the up-keep of the new waterway, and for that reason have been the more urgent for a comprehensive development of water power to carry this expense. I have never been able to see the logic of those who believed that it was ethical and right for a governmental body, at great expense to itself, to improve a waterway, donating the incidentally created water power to whomsoever was astute enough to get it, for the purpose of allowing free navigation to a few large corporations utilizing the waterway, and to call upon the general taxpayers to carry the whole burden.

Unfair Plan

"In years past it appeared difficult to persuade the more conservative of our citizens that the public development of water power could be sound policy, but now, from the experience of the Sanitary District, we have such incontrovertible proof of enormous public benefit as to place the question beyond dispute.

"The proposed power plants in the DesPlaines and Illinois rivers should, by proper electrical equipment, confer like benefits upon all cities and towns within 100 miles of any power plant. But this can only be done, as pointed out before, if the State, in its legislation, shall provide for the construction of transmission lines; it will never be done if the power is turned over at the power houses to private corporations."

IS THE DESPLAINES RIVER NAVIGABLE OR IS IT NOT?

The Attorney General of Illinois on the relation of the Governor filed an information in the Circuit Court of Grundy County in the nature of a bill in equity to restrain the Economy Light and Power Company from erecting a dam across the DesPlaines river and to cause the removal of that portion of the dam already constructed, and to prevent injuries to property of the state. After a hearing the Bill of Information was dismissed for want of equity.

The Supreme Court of Illinois reviewed the case (241 Ill. 290 to 365). Among other things it was contended that the DesPlaines river

is a navigable stream and that the proposed dam would constitute an obstruction to navigation.

Resourceful and industrious Counsel gathered all of the historical and legal data which they could find and assembled it in voluminous briefs. From this the Supreme Court framed and set forth at great length a complete history of the DesPlaines River, as well as other streams in the Chicago and Joliet district. No useful purpose would be served by copying it into this report. If you are interested in that history it can be found in any law library. The Supreme Court concluded by saying:

Des Plaines River Not Navigable

"After the most careful consideration of this question we are of the opinion that the DesPlaines River in its natural condition is not a navigable stream and that the rights of the parties to this suit must be determined upon that basis." (241 Ill. 338.)

WHAT THE U. S. SUPREME COURT SAID

The case was taken to the United States Supreme Court, which granted the motion to dismiss on the ground that the question of navigability of the DesPlaines River, wholly within the State, is purely one of fact and the State Court having decided that it is not navigable, there was no right left to review; that there was no Federal right involved in the obstruction or use by private owners of a non-navigable stream wholly within the State. (U. S. Supreme Court Reports, Vol. 234, Page 497.)

ANOTHER OPINION.

The next move was made by the United States in the form of a bill filed against the Economy Light and Power Company, December 14, 1909. The bill alleged that said Company had without the consent of Congress and without authority of the Legislature of Illinois, commenced the construction of a dam in the DesPlaines River at a point in Grundy County, Illinois, and that the portion of the DesPlaines River at that point was navigable water of the United States. The United States District Court was in and by said bill asked to decree said DesPlaines River to be a navigable river and one of the navigable waters of the United States, and that said dam be removed, etc.

The Company answered admitting the commencement of construction of a dam, but denied the navigability of the portion of the DesPlaines River aforesaid. Another voluminous record was made. The abstract of the testimony contains 3186 printed pages. A decree was entered perpetually enjoining the Company as prayed. The Company appealed and the opinion of the United States Circuit Court of Appeals, Seventh Circuit (Chicago) is printed in Vol. 256, Federal Reporter, pages 792-804. The decree was affirmed.

The Court of Appeals reviewed the same historical and legal data which was examined by the Supreme Court of Illinois.

The opinion concludes with the following language, (Page 804):

"Under these authorities it seems clear that the DesPlaines river, having been used as an interstate highway of commerce from 1673 to 1825 in the only kind of commerce then existing, is to be deemed of navigable capacity and a navigable stream within the Ordinance of 1787 and the acts of Congress of May 18, 1796 and March 26, 1804, by which Congress specifically took jurisdiction over navigable streams and declared that they should forever remain public highways. The river is a continuous stretch of water from Riverside to its mouth, and although there is a rapid, and in places shallow water, with boulders and obstructions, yet these things do not affect its navigable capacity. The same may be said of the upper part of the Illinois river above the head of steamboat navigation. We have no hesitation in deciding that both streams are navigable and are within the act of 1899.

Des Plaines River is Navigable

"The only hesitation we have had in this case is on account of the decision of the Supreme Court of Illinois in People vs. Economy Light & Power Co., 241 Ill. 290, 89 N. E. 760. The difference in the two cases would not, perhaps, warrant a different conclusion, although the evidence here is somewhat stronger in favor of navigability than in that case. Taking, as we do, a different view as to the force and effect of the historical accounts of the early use of the river, and being clear that it is in fact a navigable stream, we feel that we should follow our own views."

WATERWAY BILL

The General Assembly in 1919 pased "An Act in Relation to the Construction, Operation and Maintenance of a Deep Waterway from the Water Power Plant of The Sanitary District of Chicago at or near Lockport to a Point in the Illinois River at or near Utica, and for the Development and Utilization of the Water Power thereof," to be known as "The Illinois Waterway." It is to commence at the District's Power Plant, Lockport, through the tail race of the District to its junction with the DesPlaines River, the DesPlaines River and Illinois and Michigan Canal through Joliet, the DesPlaines River to the Illinois River, and the Illinois River to a point therein at or near Utica; and if in the judgment of the Department of Public Works and Buildings the utilization of sections of the Illinois and DesPlaines Rivers is not practicable or feasible, then the general route described may be deviated from in such sections, and in lieu thereof the Illinois and Michigan Canal may be used and improved or channels outside of such rivers may be constructed. The Waterway Act of June 18, 1915, was repealed.

ACT APPROVED JUNE 17, 1919.

Another act was passed and approved June 17, 1919, which authorizes the Department of Public Works and Buildings to ascertain the surveys of the Illinois and Michigan Canal and lands adjacent

thereto, to take possession of all such lands owned by the State, to protect the Canal against encroachments, to preserve the navigability of the Canal, to provide terminal and harbor facilities and to remove obstructions in the Canal. The Sag Channel of The Sanitary District of Chicago is not to be considered as an obstruction but the Department of Public Works and Buildings may require modifications in its use.

The plans for this waterway when prepared must necessarily be approved by the United States Government before the work can proceed.

LAKE LEVEL PROBLEM

SANITARY DISTRICT CHANNEL AND NAVIGATION

STATE REQUIREMENTS AND FEDERAL SUPERVISION

The problem as to Lake Levels, or as to the amount of diversion by the Sanitary District from Lake Michigan, is of great importance to the people of Chicago and its environs because the Sanitary District and its works have been constructed in contemplation of a certain amount of diversion from Lake Michigan, at least to the extent of ten thousand cubic feet of water per second. When the Sanitary District was organized and the works were laid out to divert water from Lake Michigan, it was generally assumed that no objection would be raised by the United States, or other interests that might be affected because of the importance of the use of the water—to preserve life and to protect the health of the people of a great metropolitan city. In fact, it can be fairly said that the United States authorities and others acquiesced in the proposal of the Sanitary District to divert the amount of water required to dilute the sewage and drainage of Chicago and its environments. However, about the year 1907, there was evinced by United States authorities a desire to limit the Chicago diversion to 4,167 cubic feet per second—a limitation placed by the Secretary of War upon the amount of diversion in 1901 due to the then restricted flowage capacity of the Chicago river. Consequently litigation arose and the United States instituted suits to enjoin the Sanitary District from taking more than the amount of said limitation. The trustees of the Sanitary District were, so to speak, between the devil and the deep sea. The State Law directed and commanded them to withdraw from Lake Michigan not less than 20,000 cubic feet of water per minute for each one hundred thousand of population which, according to the present population of the District, requires a withdrawal of approximately 520,000 cubic feet per minute, or more than twice the restricted government amount. These suits have been tried and are pending for decision in the United States District Court. Lately there has been a move made to compromise the litigation by the Sanitary District defraying the expense of constructing works to compensate for the claimed lowering of lake levels, due to the diversion at Chicago and, in that way, the uncertainty as to the amount of flow will be forever settled.

Section 23 of the Sanitary District Act has been hereinbefore set out (see page 14), and it is advisable to read it again in connection with the information hereinafter given. Every quotation marked (S. D. Brief) is taken from the brief prepared by the Law and Engineering Departments of the Sanitary District which will be presented to the Secretary of War and Chief of Engineers of the U. S. Government in a short time.

CHANNEL TO BE NAVIGABLE STREAM

Section 24 of the Sanitary District Act is as follows:

"When such channel shall be completed, and the water turned therein, to the amount of three hundred thousand cubic feet of water per minute, the same is hereby declared a navigable stream, and whenever the general government shall improve the DesPlaines and Illinois rivers for navigation, to connect with this channel, said general government shall have full control over the same for navigation purposes, but not to interfere with its control for sanitary or drainage purposes."

CHICAGO'S WATER SUPPLY, SEWAGE AND WATERWAY PROBLEMS PRIOR TO THE ESTABLISHMENT OF THE CHICAGO DRAINAGE CANAL

"Very early in the history of the Northwest territory, the waterway route from Lake Michigan across the Continental Divide, which was comparatively of no consequence, along the DesPlaines River, the Illinois River and the Mississippi River to the Gulf of Mexico was recognized and used by the early French explorers and by fur traders.

When Illinois was admitted into the Union the question of improving or enlarging this waterway so as to make it more practicable and feasible, and better able to make the growing demands of navigation, was under consideration. In 1822, the Congress of the United States recognized the value of building a canal

In 1822

"connecting the Illinois River with the southern bend of Lake Michigan,"

and on March 30, 1822, Congress passed an act providing for such a canal and donating to the State of Illinois a certain amount of land to aid it in constructing the canal. The State did not perform the conditions required by said Act within the period required and it became functus officio. Notwithstanding this, however, on March 2, 1827, Congress again passed an act providing for the construction of a canal

"to unite the waters of the Illinois River with those of Lake Michigan,"

and donating to the State a certain amount of land to assist in the construction of the canal. The Act of Congress last mentioned was acted upon and the Government did actually donate a certain amount of land to the State to aid in the construction of this canal, known as the Illinois and Michigan Canal, extending from the West fork of the South Branch of the Chicago River at Chicago to Utica, Illinois, on the Illinois River. The State of Illinois provided for the construction of the canal by Act of the General Assembly passed January 9, 1836. Section 16 of that act provided that the canal should "be supplied with water from Lake Michigan and such other sources as the Canal Commissioners may think proper." (S. D. Brief.)

"The Supreme Court of the United States, in Missouri vs. Illinois, 200 U. S., 495-526, in speaking of the effect of the action of Congress and of Illinois in providing for the construction and operation of this canal, said:

"Some stress is laid on the proposition that Chicago is not on the natural watershed of the Mississippi, because of a rise of a few feet between the DesPlaines and the Chicago rivers. We perceive no reason for distinction on this ground. The natural features relied upon are of the smallest. And if, under any circumstances, they could affect the case, it is enough to say that Illinois brought Chicago into the Mississippi watershed in pursuance not only of its own statutes but also of the acts of Congress of March 30, 1822, * * * and March 2, 1827, * * * the validity of which is not disputed." (S. D. Brief.)

Mississippi Watershed

"It is obvious that Congress intended, by the acts mentioned, and Illinois understood, that water might be withdrawn from Lake Michigan for navigation purposes and for the purpose of creating a stream and waterway from Lake Michigan to the DesPlaines and Illinois Rivers. The waterway and stream having been thus created by the sovereign authorities of the United States and the State of Illinois, it must be presumed that it has intended it should be utilized in every way that such a waterway or stream might serve the people of the country and the State. There was no limitation as to the amount of the withdrawal for the purposes mentioned. The acts of Illinois taken in the building and improvement of this waterway or stream and in the use of it, all acquiesced in by the United States, shows that both the Federal and State governments so construed the legislation mentioned." (S. D. Brief.)

Waterway

"The necessity of providing a free passage to the sea from the Great Lakes by way of the DesPlaines, Illinois and Mississippi Rivers to the Gulf of Mexico arising by virtue of the position taken by Great Britain with reference to the St. Lawrence River, supports the contention that it was the purpose of Congress, under the Act of 1827, that there should be established an outlet, or the old outlet should be re-established, from the Great Lakes at the lower end of Lake Michigan, of sufficient size and capacity to satisfy the demands of navigation and the requirements of the people for such outlet to best promote public welfare." (S. D. Brief.)

In 1848 the Illinois and Michigan Canal was completed. In 1871 it was enlarged at a cost of $3,000,000 upon the Deep Cut Plan by Chicago under legislative authority to remedy conditions in the Chicago River and Lake Michigan. In 1884, conditions being worse, pumps were constructed which withdrew 60,000 cubic feet per minute from the Chicago River. In 1875, under the Rivers and Harbors Act, Colonel McComb of Corps of Engineers, reported to Congress as follows:

I. & M. Canal Completed

"The improvement of the eastern portion of the Illinois and

Michigan Canal involves the further cutting down of the summit level and enlarging the waterway so as to afford an unfailing supply of water from Lake Michigan for the improved Illinois River." (S. D. Brief.)

Similar reports were subsequently made. Conditions became worse each year and after the many investigations and reports hereinbefore mentioned, the Sanitary District Act was passed. Its provisions have been set forth and it may be well to emphasize by summarizing as follows:

Sanitary District Act

"The Sanitary District Act provides that the canal to be constructed across the Continental Divide should have a capacity (in that portion) of not less than 600,000 cubic feet per minute or 10,000 per second. This portion of the canal which is determinative of its capacity, the rock section, was actnally constructed of the capacity of 14,000 second feet. The requirement that the canal should be of a capacity of not less than 600,000 cubic feet per minute was made so that there would always be sufficient capacity for the diversion of the maximum run-off of the Chicago River drainage area, which was 10,000 second feet. Thus the Chicago River would at all times flow away from Lake Michigan. The Sanitary District Act also provides for navigation of the canal. Bridges should be built and have been built so that they might be moved for the passage of vessels, and the bridge clearances above water surface should be and have been arranged at least equal to the bridge clearances over the Illinois and Michigan Canal. The Act provided that the canal should be built of great depth and width to carry out the deep waterway policies and features, so that it might be utilized as the most important link in the deep waterway from Chicago to the Gulf of Mexico. It was designed to entirely replace the old Illinois and Michigan Canal between Joliet and Chicago, with a much larger, more useful and more valuable waterway. It was actually constructed 24 feet deep and 202 feet wide in the rock section. It is capable of permitting the passage along it, of the largest boats now navigating the Great Lakes." (S. D. Brief.)

Resolution of 1889

The intention of the members of the General Assembly of Illinois is shown by its resolution of May 28, 1889, before passing the Sanitary District Act. The resolution included the following:

"Whereas, it is contemplated to increase the volume from Lake Michigan to 300,000 cubic feet per minute within a few years and ultimately to add 600,000 cubic feet or more thus enabling a large depth for navigation to be obtained by an improved channel and that said channel will be self-sustaining and self-improving and will discharge flood waters more readily, thus benefiting the bordering lands and increasing the healthfulness of the valleys.

"Whereas, works now projected by the City of Chicago will form part of a waterway of large proportions from Lake Michigan via the DesPlaines and Illinois Rivers to the Mississippi River * *

"Therefore, be it resolved by the Senate and House of Represen-

tatives concurring herein (1) that it is a policy of the State of Illinois to procure the construction of a waterway of the greatest practicable depth and usefulness, for navigation from Lake Michigan via the DesPlaines and Illinois Rivers to the Mississippi River and to encourage the construction of feeders thereto, of like proportions and usefulness." (S. D. Brief.)

Resolution of 1861

In 1861 the General Assembly construed the Act of 1827 as authorizing the withdrawal of water from Lake Michigan by the following resolution:

"Resolved by the Senate, the House of Representatives concurring herein, that the Board of Trustees of the Illinois and Michigan Canal be, and are hereby authorized and instructed, to cause prompt and thorough surveys, examination and estimates to be made of the Illinois River, and of the Illinois and Michigan Canal, and also of portions of the DesPlaines and Chicago Rivers, and of the portage between said rivers, for the purpose of accurately ascertaining the comparative value, cost, efficiency, benefits and advantages, direct, prospective and incidental, of the different methods proposed or desirable for improving the navigation of the Illinois River, by dredging or excavation of the channel and wing dams, or by supplying water from Lake Michigan, through the enlargement and deepening of the Illinois and Michigan Canal, or otherwise, or by opening a channel from Lake Michigan by way of the south branch of the Chicago River and Mud Lake to the DesPlaines River, and down said canal to a point that will secure a free flowing, ample and never-failing supply of water, sufficient for the navigation of the Illinois River at all seasons and times, when not obstructed by ice." (S. D. Brief.)

In 1893 excavation for the Sanitary District channel was begun. In 1890, 1891 and 1893, the Chief of Engineers reported to Congress upon the plans and surveys, the Sanitary District Act and the general plan and works. (S. D. Brief.)

Resolution of Trustees

On April 21, 1891, the Sanitary District Trustees passed the following resolution (Proceedings, 1891, Page 173):

"Resolved that this Board hereby ordains that The Sanitary District of Chicago do, forthwith, enter upon, use, widen, deepen and improve the Chicago River from its mouth at Lake Michigan to the south branch thereof, and also the south branch thereof together with the south and west forks thereof, so as to make the same a proper and sufficient supply channel for the main channel heretofore surveyed from the Chicago River to Joliet and further, that the acting Chief Engineer be and he is hereby directed immediately to investigate and report upon the capacity of said river and its said south branch and forks for that purpose, and also as to any changes that should be made therein and that a copy of this resolution, certified by the clerk be, forthwith, transmitted to the mayor and common council of the City of Chicago and the Secretary of War of the United States." (S. D. Brief.)

The Secretary of War was promptly given a copy of said resolution.

Attitude of Engineer Corps

"The attitute of the Engineer Corps with reference to the construction of these works was indicated by the letter dated May 23, 1893, from Major Marshall, United States Engineer at Chicago, to the President of the Sanitary District. This letter related to the encroachments in the Chicago River.

"I have to say for the information of your honorable body that however I may differ from the local authorities as to the methods adopted by them for the amelioration or care of their defective sewerage and water supply, that I recognize their right and the authority and capacity of the commonwealth of Illinois and the municipality of Chicago, to deal with their local matters in their own way, and that having declared their choice, United States officers shall place full faith and credence in their acts. This office, then, as far as not called by law to express opinions, et cetera, shall work in accord with local laws to further, rather than obstruct, their ends and objects as expressed clearly by the laws of the locality.'" (S. D. Brief.)

Federal Commission

A Federal Commission was appointed May 22, 1895, to consider and report upon the effect of the Sanitary District Channel on lake and harbor levels. This Commission reported October 3, 1895:

Lake Levels

" * * to the effect that the levels of the lakes would be lowered by the abstraction of 10,000 cubic feet of water per second from Lake Michigan, to the extent of approximately 6 inches. It is not claimed now, even after the very extensive investigations made by the United States lake survey, that the lowering of the surface elevations of the Great Lakes (except Superior) exceeds that amount for a withdrawal of 10,000 second feet at Chicago. The Secretary of War, the Chief of Engineers and Congress, were then advised of the possible effect of the withdrawal upon the elevation of the lakes and of the possible damage to navigation for which the Sanitary District now offers to bear the expense of the construction of works to compensate for or offset such lowering effect." (S. D. Brief.)

"Section 17 of the Sanitary District Act gave the District the power to

'enter upon, use, widen, deepen and improve any navigable or other waterway, canal or lake'

when it should be necessary-

"in making any improvements which any district is authorized by this act to make."

Obviously, the artificial channel (the main channel) of the Sanitary District under construction could not have been operated as provided by the Sanitary District Law unless the west fork of the south branch of the Chicago River and the South Branch of the Chi-

cago River were improved so that the channel of such rivers would be enlarged sufficiently to permit the passage of water from Lake Michigan to the main channel of the District without creating a current unreasonably obstructive to navigation in those rivers. Accordingly the District's plans from the beginning, as indicated by the Rosolution of April 21, 1891, above mentioned, contemplated the enlargement of the channel of these rivers. As the construction of the main channel proceeded and neared the point of completion, the Sanitary District set about to improve and enlarge the flowage channel of the west fork and south branch of the Chicago River." (S. D. Brief.)

River Improvement

Said Federal Commission wrote the Trustees on May 22, 1895, as follows:

"Fourth—If the Chicago River be utilized, what changes you propose to make in the navigable channels of the river in dimensions, slopes and structures to adapt them to your purposes; and what additional channels of supply other than the main branch of the Chicago River, which is now the only evident connection between Lake Michigan and the proposed canal your board proposes to make?

"In making these inquiries the Board of Engineers consider that your Honorable Body is much interested in the solution of the questions submitted to us and therefore desirous of aid, as far as practicable, in arriving at correct conclusions." (S. D. Brief.)

"'It is apparent that the Sanitary District's plans were fully known to all officers of the United States Government having to do with this matter. The Congress was also advised. This knowledge was in the possession of all such officers from the very beginning. The report of the Chief of Engineers for the year 1890 contained a complete statement of the plans and intentions of the District. The resolution of April 21, 1891, of the Board of Trustees of the Sanitary District fully disclosed the purpose and the method by which the result would be accomplished. Subsequent to the report of the Board of Engineers, of which General Poe was chairman, the matter was repeatedly brought to the attention of the Chief of Engineers and Secretary of War and permits were granted to allow the District to carry out its plans." (S. D. Brief.)

District Plans Known

On June 16, 1896, the Sanitary District in writing requested the Secretary of War to grant permission to do necessary work in the Chicago River, giving full information and map. The Engineer reported on this as follows:

"As far as the work itself is concerned there can be no objection to it, as in every case the navigation channel of the Chicago River will be improved and at this stage I am unable to do otherwise than to recommend the granting of the authority sought.

"The question that must come up later for the action of the War Department, to-wit: whether the improved channel of the Chicago River will be sufficient to carry 300,000 cubic feet of water per minute without lessening or destroying the navigability of the Chicago River or whether the City of Chicago will be allowed by the United States

Engineer's Report

and Great Britain to take any water at all from the Great Lakes with the inevitable result of lowering their levels is not now under investigation and is one that will not probably be settled or decided by executive officers. It is, or may rather be considered an international question * * * That this authority shall not be interpreted as approval of the plans of The Sanitary District of Chicago to introduce a current into Chicago River. This latter proposition must hereafter be submitted for consideration." (S. D. Brief.)

On July 31, 1896, the Acting Secretary of War granted the permit upon condition that plans for each new bridge, by-pass, dock or wharf be furnished; and

"2. That the authority shall not be interpreted as approval of the plans of The Sanitary District of Chicago to introduce a current into Chi- River. This latter proposition must be hereafter submitted for consideration.

Permit Issued

"3. That it will not cover obstructions to navigation by reason of this work while in progress or when completed.

"4. That the United States shall not be put to expense by reason of this work.

"5. That this authority will expire by limitation in two years from date unless extended." (S. D. Brief.)

On October 28, 1897, a permit was asked for the widening of the Chicago River between Quincy and Harrison Streets, and on October 29, 1897, General Marshal recommended that the authority be granted "as these works make possible a material improvement in the capacity of the Chicago River for navigation in the vicinity of Adams and Van Buren streets." On November 16, 1897, the Secretary of War granted the permit subject to the conditions of the permit of July 3, 1896. (S. D. Brief.)

Other Permits

Permits were granted to construct a cofferdam at Adams Street Bridge and to remove bridges at Taylor street, as such work would not interfere with navigation.

"May 8, 1899, the Secretary of War issued a permit to open the main channel of the Sanitary District and reverse the flow of the Chicago River. There were various recitals in the permit, among others, that the Sanitary District had been granted permission to make certain improvements in the Chicago River for the purpose of correcting and regulating the cross-section of the river so as to secure a flowage capacity of 300,000 cubic feet per minute with a velocity of 1¼ miles per hour, 'it being intended to connect said artificial channel with the west fork of the south branch of the Chicago River at Robey street in the said City of Chicago.'

Permit to Open Channel

"Then followed the clause granting the permit and those setting forth conditions which are as follows:

"'Now therefore, the Chief of Engineers having consented thereto, this is to certify that the Secretary of War hereby gives permission to the said Sanitary District of Chicago to open the channel constructed and cause the water of Chicago River to flow into the same, subject to the following conditions:

"1. That it be distinctly understood that it is the intention of the Secretary of War to submit the questions connected with the work of the Sanitary District of Chicago to Congress for consideration and final action and that this permit shall be subject to such action as may be taken by Congress.

Conditions

"2. That if at any time it becomes apparent that the current created by said drainage work in the south and main branches of Chicago River be unreasonably obstructive to navigation or injurious to property, the Secretary of War reserves the right to close said discharge through said channel or to modify it to such extent as may be demanded by navigation and property interests along said Chicago River and its south branch.

"3. That the Sanitary District of Chicago must assume all responsibility for damages to property and navigation interests by reason of the introduction of a current in Chicago River.'" (S. D. Brief.)

"There is no condition that there may be a limitation of the amount of flow because of the effect upon the surface elevation of the lakes or damage to navigation by reason of diminishing lake levels. The permit is unlimited as to the amount of withdrawal except that it must be assumed that the limitation is the capacity of the main channel in those sections which are determinative of its maximum capacity.

"Recalling section 23 of the Act, it will be remembered that the channel was to be of a capacity of not less than 600,000 cubic feet per minute, or 10,000 feet per second in the rock sections. It was actually built in those sections with a capacity of 14,000 feet per second. It was intended that the earth sections of the channel should be enlarged as conditions required, and as the population of the Sanitary District increased, demanding a greater diversion." (S. D. Brief.)

Channel Capacity

The Circuit Court of Appeals in C. T. Co. vs. Sanitary District (137 Fed. 851) answered the argument that because the preamble of the permit recited that permission had theretofore been granted for the improvement of the Chicago River for the withdrawal of 300,000 cubic feet of water per minute that the permit was limited to that amount, by holding that:

"The grant of permission was not conditioned upon defendant's keeping within a stated maximum * * * but a preamble cannot be resorted to except to help solve an ambiguity in the body of the grant or enactment. The grant here is unambiguous."

On June 20, 1900, by request of the Chief of Engineers, the Division Engineer at Chicago reported as follows:

"General—Complying with your wishes indicated in your despatch of this date, I have the honor to submit a preliminary report upon the current in Chicago River due to the flow of the drainage canal * * * If I have not overestimated pilot skill and considering the immense benefit of the drainage canal to the City of Chicago since its opening only a few months ago, I recommend that no restrictions be placed upon the legal requirements of flow into the Sanitary Canal unless it should be found absolutely necessary to do so. The Engineer Department, the City of Chicago and the Sanitary District are of one mind as to the need of improving

Recommendation as to Flow

Chicago River and are co-operating heartily to that end and large sums are appropriated and being expended judiciously by each for the objects in view. The interests of navigation are not only being protected but are being advanced practically sooner than could be hoped for in the usual course." (S. D. Brief.)

On July 11, 1900, the Secretary of War granted a permit to the Sanitary District to make changes in the Chicago River from Lake street to Ashland avenue. A survey was made and maps thereof filed with the War Department.

Permit

"The only purpose which the District had in deepening and widening the Chicago River, replacing obsolete and obstructive bridges with new bridges of modern type having no center pier nuisances and having long spans was to make possible the operation of its main drainage channel as required by State law for withdrawing from Lake Michigan 20,000 cubic feet of water for each 1,000,000 of population until the maximum flowage capacity of the artificial channel was reached. Pursuant to the permits above mentioned, to improve the channel of the Chicago River, the south branch and west fork to the northern terminus of the main channel of the Sanitary District, the District did acquire an immense amount of property for river widening. It replaced many bridges with modern types of bridges and finally has widened the river at practically all points to 200 feet. It has straightened the river in many places, the river being at certain points as narrow as 90 feet and also very tortuous. The river was deepened from 17 to 25 feet so that, as it is now improved, the largest boats navigating the Great Lakes can pass from the mouth of the Chicago River to and into the Chicago Drainage Canal. The Sanitary District has expended upwardly of $12,000,000 in this work alone." (S. D. Brief.)

Cost of River Improvement

"It can hardly be denied that when the Sanitary District proceeded with the Chicago River improvement it anticipated in any way that objection would be made to the withdrawal of water because of the possible effect upon lake levels. Under the circumstances, it seems but reasonable for the District to have assumed that if the river channel were improved so that the necessary amount of water could be withdrawn from Lake Michigan through it to the main channel of the Sanitary District without creating a current unreasonably obstructive to navigation, that no objection would arise from the United States to the withdrawal of the water as required by the State law. The permit of May 8, 1899, which authorized the District to open its channel and operate it as it was designed to be operated by State law contained no condition that the flow might be limited because of any injury to navigation by reason of diminishing lake levels. Possible injury to navigaton had been thoroughly studied; had been reported upon by various officers of the Engineer Corps of the United States Army and by a special board appointed to investigate that very question. It must be assumed that this question was waived when the permits were granted for the improvement of the Chicago River, which improvement would of necessity cause the expenditure of

vast sums of money. No warning or statement was made to the District that the expenditure of this money might be useless by reason of an objection to the withdrawal because of claimed effect upon the surface elevation of the lakes. This argument is of great force, when it is noted that the Secretary of War in granting the initial permit of May 8, 1899, imposed conditions and it must therefore be assumed that those were the only conditions which he desired to make. The omission to mention a possible condition (effect upon lake levels) about which so much discussion and investigation had been had and made, necessarily is conclusive that that possible objection was waived—there was one condition which related to injury to navigation in the Chicago River, but no reference was made to the same general subject matter, navigation upon the Great Lakes.

Effect of Conditions in Permit

"The limitations upon the flow or withdrawal of water made by the Secretary of War after the main channel was placed in operation came about solely because of the claim that the current in the Chicago River with its then comparatively restricted flow capacity, was unreasonably dangerous to navigation in that river." (S. D. Brief.)

"The work of enlarging the flowage capacity of the Chicago River, its south branch and the west fork of the south branch extended over a number of years after the Government authorized the making of the improvements.

While the Chicago River was being improved for the purpose of accommodating the flow of water required by the State law, other works were being constructed by the Sanitary District and the City of Chicago necessary to divert the sewage and drainage arising within the territorial limits of the Sanitary District. A great many of these works were unnecessary unless there should be diverted with the sewage and drainage the amount of water from Lake Michigan that the State law required.

The District has expended upon all of its works upwards of $100,000,000.00. The operation of these works ultimately required the diversion from Lake Michigan of 6,250 cubic feet of water per second by way of the Chicago River proper; 1,750 cubic feet per second through the north branch of the Chicago River from the Wilmette and Lawrence Avenue Pumping Stations to the south branch of the Chicago River; then the south branch of the Chicago River will carry 8,000 cubic feet per second to the west fork where it will be increased by 2,000 cubic feet per second diverted or withdrawn by way of the 39th Street Pumping Station; 2,000 cubic feet per second will be added at Sag, Illinois, the intersection of the Calumet-Sag Channel with the main channel of the Sanitary District. This additional 2,000 second feet is required to oxidize the sewage of that portion of the Sanitary District lying south of 87th street in the City of Chicago, which is known as the Calumet District and to furnish additional water for oxidizing purposes for the sewage and drainage diverted to the main channel north of Sag, Illinois.

Cost of Sanitary District Works

In 1906 the Sanitary District made application to the Secretary of War for permission to construct the Calumet-Sag Channel. This is an adjunct to the main channel and extends from the main channel at Sag, Illinois, easterly to the Little Calumet River at or near Blue Island. The maximum capacity is 2,000 cubic feet per second. It is designed to reverse the flow of the Little Calumet River at most times during the year and divert from Lake Michigan the sewage and drainage arising in that portion of the Sanitary District lying south of 87th street in the City of Chicago, which sewage and drainage substantially passes into Lake Michigan by way of the Calumet River.

Calumet Sag Channel

The Secretary of War in 1907 refused to grant the permit on the ground that he did not believe authority was vested in him to authorize the creation of an obstruction to navigation. After a conference between officials of the Sanitary District and the President of the United States and the Secretary of War, it was arranged that this question should be settled in the courts. Accordingly, on March 23, 1908, suit was instituted by the United States as complainant in the Circuit Court of the United States for the Northern District of Illinois against the Sanitary District to enjoin and restrain it from proceeding with the construction of the Calumet-Sag Channel, which it threatened to do. Some testimony was taken.

First Suit Brought by U. S.

"Later upon the refusal of the Secretary of War, Stimson, (January 6, 1913) to grant the District authority to divert not in excess of 10,000 cubic feet of water per second from Lake Michigan by way of all its works and on October 6, 1913, the United States instituted a suit in equity in the District Court of the United States for the Northern District of Illinois to restrain the Sanitary District from withdrawing more than 250,000 cubic feet per minute. The two suits were tried together by stipulation of the parties. A great deal of testimony was taken—the record has been printed and copies of the record are available. Printed briefs and arguments were submitted to the court on February 15, 1915. Practically all questions involved in this controversy over the amount of withdrawal of water from Lake Michigan were presented in the record in the cases above mentioned." (S. D. Brief.)

Second Suit

WHY SANITARY DISTRICT BRIEF WILL BE PRESENTED

"On January 5, 1918, the Board of Trustees of The Sanitary District of Chicago passed an ordinance in which it was proposed that the Sanitary District should offer to the United States to bear and defray the expense of the construction of submerged weirs and dams in the St. Clair and Niagara Rivers to be constructed by and under the direction of the United States for the purpose of compensating for any diminished or diminishing levels of Lakes Huron, Michigan and Erie due to the Chicago diversion. These dams or weirs were to be so constructed that they would offset for any lowering of the levels of Lakes Huron, Michigan and Erie due to a diversion or withdrawal of water from Lake Michigan at

Chicago to the amount of twelve thousand (12,000) cubic feet per second. It was proposed that in consideration of the Sanitary District's defraying the expenses of the construction of the weirs and dams above mentioned, that the United States should fix the ultimate diversion at Chicago at twelve thousand (12,000) second feet, and, thereupon, that all controversies between the United States and the Sanitary District relative to the amount of withdrawal,—a controversy which has been in existence for a number of years—should be thus compromised and settled. This action of the Sanitary District was taken by virtue of the desire to compromise and settle litigation and controversies, and it was also taken in the belief that so far as possible causes of controversy and argument between the Federal Government and State authorities should be removed." (S. D. Brief.) (Proc. 7—15.)

Engineer Wisner's Letter

"By letter dated July 15, 1918, addressed to Major General W. M. Black, Chief of Engineers of United States Army, signed by George M. Wisner, Chief Engineer of the Sanitary District, there was presented, in a preliminary way, certain facts and suggestions on behalf of the Sanitary District relative to the above entitled matter. It was understood that this letter should be supported by a printed brief going more into details, to be presented after the works of the Sanitary District were inspected by representatives of the Corps of Engineers. Colonel Mahaffey and Professor Phelps, in the latter part of October, 1918, visited Chicago and spent approximately three days in making an inspection of the various works of the District in operation and under construction." (S. D. Brief.)

U. S. Engineers Inspect Works

"The entire suggestion as to the method of bringing about the results or settlement was made by the Board of Engineers for Rivers and Harbors in House Document No. 762, 63d Congress, 2d Session, entitled 'Final Report, Waterway from Lockport, Ill., to the Mouth of the Illinois River,' transmitted by the Secretary of War to the Speaker of the House of Representatives on February 18, 1914. This report was authorized by the Rivers and Harbors Act of June 25, 1910, wherein it was provided, among other things, that

" 'the Secretary of War shall appoint a Board of five members, to be composed of four engineer officers of the Army and one civil engineer taken from civil life. * * * Said Board shall report * * * also upon such measures as may be required to properly preserve the levels of the Great Lakes and to compensate, so far as practicable, for the diminished level in said lakes and the connecting water thereof by reason of any diversion of water from Lake Michigan for the maintenance of the proposed waterway herein described, or diversion for any other purpose." * * * (S. D. Brief.)

The preambles and ordinance above mentioned were adopted by the Board of Trustees after an opinion was given by Mr. Edmund D. Adcock, then Attorney for the Sanitary District, which is as follows:

OPINION

By Attorney Adcock

"At a meeting of the Board of Trustees you requested me to draw an ordinance relative to the Sanitary District offering and agreeing to pay to the United States the cost of constructing certain compensating works in the St. Clair and Niagara Rivers; and also that I render an opinion regarding the right and authority of the Board of Trustees of the Sanitary District to pass and adopt such an ordinance and act thereunder. It was designed that the payment of the moneys mentioned under the ordinance proposed to be passed should effect a compromise and settlement of the entire controversy between the United States and the Sanitary District relative to the withdrawal of water from Lake Michigan as required by the Act under which the Sanitary District was organized and now exists.

"The primary purpose of the construction of the works of the Sanitary District is to protect the water supply of the inhabitants of the District from sewage pollution. The works are designed to divert from Lake Michigan all the sewage that arises within the territorial limits of the Sanitary District. Section 20 of the Act of May 29, 1889, providing for the organization of the Sanitary District, provides that the District shall cause to flow through its Main Channel from Lake Michigan, 20,000 cubic feet of water per minute for every 100,000 of the inhabitants of the District. The purpose of this provision is to provide that a sufficient amount of water shall flow through the Main Channel, together with the sewage of the inhabitants of the Sanitary District, so that the sewage will be diluted, oxidized and rendered innocuous and not be injurious or offensive to the people along the DesPlaines and Illinois Rivers. In other words, the withdrawal of the amount of water required by the State Law is absolutely essential to the operation of the works of the Sanitary District, designed and operated to protect health and preserve life.

"The Government of the United States has instituted two suits in equity in the United States Court for the Northern District of Illinois, Eastern Division, which seek to limit the amount of withdrawal to 4,167 second feet or 250,000 cubic feet per minute. The success of the Government in the litigation mentioned would absolutely deprive the Sanitary District of a very large proportion of the amount of water required to operate its works constructed and in the course of construction. The present population of the District is approximately 2,600,000, requiring a flow of water through the Main Channel of approximately 520,000 cubic feet of water per minute, an excess of 8,000 second feet, or pretty nearly twice what the Government's claimed limitation is. An intolerable condition would result, very probably making it impossible to keep Lake Michigan free from sewage pollution, and in any event requiring an expenditure of a vast amount of money in the construction of supplementary purification works, which might not accomplish the proposed purpose.

"The limitation sought to be placed upon the amount of with-

drawal of water from Lake Michigan by the District is the result of action taken by the Secretary of War on December 5, 1901. At that time the Secretary of War, acting under a permit granted to the Sanitary District on May 8, 1899, which was unlimited as to the amount of flow, with the condition that the Secretary of War might modify the flow of water in the event a current was created in the Chicago River which was unreasonably injurious to navigation in the Chicago River, and also acting upon objections then made to the Secretary of War by navigation interests in the Chicago River, sought to limit the flow, as before stated, to 4,167 second feet. While the Chicago River has been deepened and widened, creating a cross section sufficient to allow the flow of water required by State Law, without causing a current injurious to navigation in the Chicago River, nevertheless the Secretary of War has refused to remove the limitation mentioned, because objections arising from navigation and other interests upon the Great Lakes have been presented claiming that the withdrawal of water has lowered and will lower the surface elevation of the Great Lakes, thereby causing damage to navigation, in that the large ore carrying vessels have been and will be unable to carry on each trip as many tons of ore as they would have been able to carry if the diversion at Chicago had not existed and did not exist.

"It is unnecessary to recount the various claims and arguments presented by the Sanitary District in justification and support of its position that it has the right to withdraw the water from Lake Michigan as required by State Law, and to enumerate the various claims and arguments of the Government in support of its position that an injunction should be granted, enjoining the District from withdrawing more than 4167 cubic feet of water per second from Lake Michigan.

"The sum and substance of the Government's argument is that the withdrawal of the water continuously creates an unreasonable obstruction to navigation and modifies the navigable capacity of the navigable waters of the United States, the creation and continuance of which obstruction has not received the approval and consent of the Chief of Engineers, U. S. A., and the Secretary of War. It is also contended that by the Act of Congress of March 3, 1899, full right and authority to regulate not only the construction but the use of works which may create an obstruction to navigation is in the Secretary of War. The Sanitary District denies every contention of the Government, and not only claims that it has a permit (the limitation of flow attempted to be fixed on December 5, 1901, by the Secretary of War being functus officio because of the removal by the Sanitary District of conditions which caused the Secretary of War to make the limitation), but also that there is no material injury to navigation by reason of the withdrawal, and that the Government cannot enjoin the operation of works reasonably necessary to protect the health of the people of the State. It also claims, among other things, that Congress has affirmatively authorized the construction of the works and has recognized the various acts and the validity of the Sanitary District's position.

"The draft of ordinance submitted proposes that the Sanitary District, in compromising and settling the entire controversy, shall pay to the United States the sum of $475,000.00 and such further sum as may be reasonably required to build compensation works in the St. Clair and Niagara Rivers, upon the Congress or some other proper officer accepting the money and authorizing the Sanitary District to withdraw the water required by the State Law for sanitary purposes. The compensating works described will, according to Government Engineers, in a few years cause the lakes to assume the same surface elevation as the Government Engineers claim they would have had if the Chicago diversion did not exist. The money paid to build the compensating works has, therefore, a direct connection with the reasons presented by the United States for seeking an injunction against the withdrawal of more than the amount of water mentioned. Of course, there is no provision of the Statute under which the Sanitary District was organized and exists which expressly grants the power to the District to do the very thing mentioned.

The Ordinance

"Section 3 of the Sanitary District Act provides expressly that the District may sue and be sued.

"Now the situation here is: The Sanitary District finds itself with injunction suits instituted by the United States Government against it to enjoin the District from doing certain things which are essentially necessary to its carrying out the purpose for which it was organized, and from doing those things which it is expressly authorized and directed to do by law. It would be absurd to say that the District could build and construct a channel expressly authorized to be constructed by State Law, and on the other hand could not compromise a controversy or lawsuit instituted to prevent the use of the channels as authorized and directed by State Law. The right of municipalities to compromise matters in dispute or in litigation is unquestioned."

The Situation

In 8 Enc. of Law and Procedure, 502, it is said:

"A valid compromise may be made by any parties between whom a controversy as to their respective rights exists, and who are not under any disability to contract."

In Stapleton vs. Stapleton, 1 Atkyns, 12, Lord Hardwick said:

"An agreement entered into upon a supposition of a right or of a doubtful right, though it after comes out that the right was on the other side, shall be binding and the right shall not prevail against the agreement of the parties, for the right shall be on the one side or the other, and therefore a compromise of a doubtful right is sufficient foundation of an agreement."

See also:

Town of Petersburg vs. Mappin, 14 Ill., 193.
Agnew, etc al. vs. Brall, 124 Ill., 312.
Chicago vs. P. C. C. & St. L. Ry., 244 Ill., 220.
City of Shawneetown vs. Baker, 85 Ill., 563.

In Walker vs. Shepard, 210 Ill., 100, 112, the Supreme Court of Illinois said:

"A compromise of a doubtful right where there is neither actual or constructive fraud, and the parties act in good faith, is sufficient consideration to support a promise."

"Upon the general proposition of the right of the Sanitary District to expend money to comply with Government regulations or conditions see Lussem vs. Sanitary District, 192 Ill., 404.

"Notwithstanding the fact that the Sanitary District considers that it lawfully has the right and power to withdraw from Lake Michigan the amount of water required to be withdrawn by the Act under which it was organized and now exists, and that under the law the United States should not prevail in the suits instituted to enjoin it from withdrawing more than 250,000 cubic feet of water per minute from Lake Michigan, nevertheless it cannot gainsay that the position of the Government in seeking the injunction does not have some reasonable foundation. In other words, it may be said that there is a disputable matter arising between the Government and the Sanitary District relative to the withdrawal of water from Lake Michigan.

"The only remaining question, therefore, is whether under all the circumstances the amount which the Sanitary District proposes to pay to settle and compromise this controversy is reasonable. The amount proposed to be paid is directly connected with the principal ground presented by the Government for injunction. The construction of the compensating works, to build which the money is to be paid under the draft ordinance presented, will according to the Government Engineers, compensate for any claimed lowering of the surface elevation of the lakes by the withdrawal at Chicago. It is estimated that should the Government succeed in this litigation a burden would be cast upon the taxpayers of this community of over $200,000,000.00 to build and operate works supplementary to the works already constructed, withdrawing only 4,167 cubic feet of water per minute from Lake Michigan.

"In view of all the facts and circumstances, it would seem that the payment of the comparatively small sum of $500,000.00 to settle this whole controversy and relieve the District from the possibility of its being curtailed in the amount of water withdrawn, is reasonable, and is the only proper and wise course to pursue if the United States will agree." (Proceedings for 1918, Pages 15-19.)

SCOPE OF THE BRIEF

In the joint Law and Engineering Brief aforesaid, in addition to the facts above given, there will be set forth in logical and chronological order acts of Congress, laws of Canada, reports of Engineers of both Countries, resolutions, reports of Commissions, etc., bearing upon lake levels, navigation of lakes, rivers, canals and the Sanitary Districts channels and Chicago River in connection therewith. This data is entirely too voluminous to be included in this report or digest.

Enough is here given, however, to enable one to appreciate the problem to be solved.

The Legislature of Illinois in response to public needs and demands created the Sanitary District of Chicago; clothed its Trustees with certain powers and imposed certain duties upon them. The work has been, and will be done, and those duties performed at the expense of the taxpayers of the Sanitary District.

The State directed the Trustees to build certain channels and works, to deepen, widen and improve the Chicago River and its branches, making all of them navigable and thereafter available as a part of a deep waterway whenever the latter should be constructed, in addition to the primary purpose of taking care of the sewage of the Chicago District and purifying the water of Lake Michigan at and near Chicago. The State specified with care and particularity the amount of water to be diverted from the Lake for the purposes of the Act. The Trustees are bound by oath of office to comply with that law. Their failure or inability so to do may lead to serious results to the people of the District; the people along the DesPlaines and Illinois Rivers also.

Directions to Trustees

The Federal Authorities have been insisting that the provision of the State Law as to the amount of water which may be diverted from Lake Michigan through the Chicago River into the Sanitary District channel is subject to the limitations placed thereon by the War Department, in the interest of navigation which must be held to supersede the needs and requirements of a great metropolitan community for sanitary purposes. If the Sanitary District, representing the State, and the Federal Authorities were each to take a determined stand in these matters, the situation would be analagous to an irresistible force coming in contact with an immovable object. Fortunately the authorities on both sides are rational, fair-minded, public spirited, and moved by a desire to solve the problems presented so as to provide proper sanitation for the District, safety for the people in the Illinois Valley and not to interfere with navigation.

FROM LETTER OF CHIEF ENGINEER GEORGE M. WISNER TO CHIEF OF ENGINEERS, U. S., JULY 15, 1918

"11—CURRENT—What appeared to be a real obstruction to navigation existed in the current created in the Chicago River. This was largely obviated by deepening and widening the river prism; and the Calumet-Sag branch canal, now practically complete, is designed to relieve by 2,000 cubic seconds feet, the Chicago River flow. This current in the Chicago River was the real reason for the first restrictions in diversion by the Secretary of War, not the menace to lake levels. The first permit, for intermediate volume, was eventually cut down in 1901 to the present permit of 4,167 cubic feet per second by reason of this current. Since that time the betterment in the canalized river section has permitted a diversion of from 7,000

to 8,000 cubic seconds feet without substantial injury to the facility of navigation. The cost of the prism betterment in the past seventeen years has been upward of thirteen million dollars. This navigation betterment has all been done at the expense of the Sanitary District, under the authority of the Chief of Engineers and the Secretary of War; and with the principal object of making practicable greater diversion."

"12—THE DILEMMA—By the year 1908 the diversion in the Drainage Canal was 6,596 cubic seconds feet, or 2,429 cubic seconds feet in excess of the diversion authorized by the Secretary of War. The District was in the perplexing position of requiring a dilution of 3⅓ cubic seconds feet for each 1,000 of population of the District, while the Secretary of War was convinced that he had reached the limit of his discretionary power in permitting diversion, and that any further diversion should have the sanction of Congress.

"13—DIVISION OF WATERS—Meanwhile a very significant event had taken place. This was the Joint Report of the International Waterways Commission of May 3, 1906, on the partition of waters tributary to the Niagara River, for the Preservation of the Scenic Grandeur of Niagara Falls.

"This report recommended limitations as follows:

Canada—in Niagara River		36,000 c. s. f.
United States—in Niagara River.....	18,500	
At Chicago	10,000	28,500 c. s. f."

"14—REPORT ON DRAINAGE CANAL—A second significant event was the Joint Report of the International Waterways Commission of January 4, 1907. After careful examination of the physical phases, and the equities involved, the International Commission recommended in substance that Chicago be allowed to divert 10,000 cubic seconds feet.

"15—TREATY—The third significant event was the Treaty of 1909 with Great Britain, which partitions the waters of Niagara Falls as follows:

Canada	36,000 c. f. s.
United States	20,000 c. f. s.

"What appears a manifest unfairness to the United States in the Canadian excess of 16,000 seconds feet, vanishes in part when the Treaty is understood to apportion to Chicago a potentially existing diversion of 10,000 cubic seconds feet, as recommended by the Joint Report of the International Waterways Commission above mentioned."

"16—INTERPRETATION—The Sanitary District is prepared to present additional conclusive evidence that the Treaty with Great Britain contemplated for Chicago a diversion of 10,000 cubic seconds feet; and that Canada in this partition at Niagara is reimbursed for a diversion of that amount at Chicago. Canada, for a diversion up to 10,000 cubic seconds feet, can have no shadow of a claim for any damages to navigation or water power. The Treaty followed the

quantity recommendations for Niagara Falls of the International Waterways Commission, except that it made the allowance for power on the American side 20,000 cubic seconds feet instead of 18,500; and this additional 1,500 feet for the American side was not intended to disturb Chicago's apportionment of 10,000 cubic seconds feet.

"19—DELAY—The case of the United States vs. the Sanitary District involved the most elaborate hydraulic and sanitary testimony. The disaster to Chicago would be so serious should the decision be adverse, that it is not extraordinary that it was the year 1915 before all evidence was finally in, and the case submitted to Judge Landis. A decision in the case has not yet been handed down. The District will welcome a decision when it is practicable to reach it. But after that decision it is probable that the case must be reviewed by the Supreme Court of the United States, and this means additional uncertainty and delay.

"21—FUNDS APPROPRIATED—A bill has been introduced in Congress asking for a diversion of fixed amount. In this bill it is conditioned that the Sanitary District appropriate the funds necessary for navigable restorations or betterments. An appropriation of $600,000 was made on January 10, 1918, by the Board of Trustees to be placed in the hands of the Secretary of War towards the accomplishment of the compensation desirable. It is suggested that these funds be used to construct the regulating works in the St. Lawrence River (with the acquiescence of the United States and Canada) to redistribute the outflow of Lake Ontario so as to benefit both navigation and water power in that river, and navigation on the Lake; and to construct regulating works at the head of the Niagara River to raise the levels of Lakes Erie, St. Clair, Michigan and Huron.

"22—ENGINEERS—The District has retained as Consulting Engineer, Mr. Francis C. Shenehon, of Minneapolis, well known to the Engineering Department to investigate and report on the best methods of accomplishing this regulation; and to work in conjunction with Mr. Gardner S. Williams, long our Consulting Hydraulic Engineer, under my direction."

"23—MONTREAL—Conferences have been held with officials of the Harbor Board of Montreal, and it is through their suggestion that the redistribution of the St. Lawrence River flow is under investigation. A special report on this proposed regulation will in the near future be completed.

"24—PURIFICATION—Any unwholesomeness of the Illinois River can be bettered in two ways; first, by a higher rate of dilution; second, by some purification of the sewage and wastes before entering the canal. The district has spent upwards of $350,000 in the past few years in the investigation of methods of purification. Some sewage betterment already exists. The District purposes to put into operation the activated sludge treatment of the stock yards wastes. The estimated cost of this purification plant is $4,000,000, and the annual operating expense $750,000.

"25—ART OF SEWAGE DISPOSAL IN TRANSITION STAGE—One of the great difficulties in dealing with sewage purification and disposal is the lack of finality in the methods available. The art appears to be in a state of flux, with little demonstrated as practical and economical. The old dilution method, relying on the demonstrated ability of a running stream to digest a certain percentage of organic matter, is still in predominant use as an accepted method; but some predigestion is desirable, and will be used by the Sanitary District in increasing measure."

"26—SUPPLEMENTAL SEWAGE TREATMENT—Sound policy on the part of the District indicates the desirability of keeping the Illinois River inoffensive. The degree of dilution fixed by the State law was designed to satisfy the river valley population. Ultimately, when the needs of the population of the District exceeds the limit fixed for diversion, excess sewage will be treated in some supplemental way."

"29—EXTENUATION FOR NON-OBSERVANCE OF LIMITATIONS—The parallel ceases, however, after permits were issued at Niagara Falls, and at Chicago. The power companies observed the limitations of the permits, while Chicago for many years has exceeded her permitted diversion. In partial extenuation of this it may be said that the permits at Niagara gave the two power companies substantially all the water needed (15,100 cubic feet) to operate their existing plants, and to fulfill their existing contractual obligations. At Chicago, on the other hand, the permit is for but 63 per cent of the actual existing sanitary needs of 1908, and but 52 per cent of the actual present existing sanitary needs. This permit allows only 41.67 per cent of the designed capacity of the canal, and but 34.7 per cent of the actual constructed capacity. The diversion at Chicago has never exceeded the obligation created by sanitary necessity and by the Illinois State law, and up to 1909—the date of the Treaty—was but 70 per cent of the designed capacity of the canal. It is easier to be a good citizen when you have substantially all you urgently need; and the Sanitary District and the State of Illinois are confident of the same indulgent magnanimity ultimately on the part of the Federal Government as these great power enterprises at Niagara have received.

"Moreover, the District has acted always on the theory that the refusal of the Secretary of War to extend the permit was not a prohibition, but a statement of lack of jurisdiction; that the authority must come from the Courts or from Congress—and this meant only delay in making the diversion federally legitimate."

"30—ACQUIESCENCE—Further extenuation of the excess diversion at Chicago enters in the fact that the canalization was entered into and effected with the full knowledge, acquiescence and authority of the Federal Government."

"31—DAMAGES AND REMEDIES—In the final analysis the diversion at Chicago has but three hurtful effects.

"First—Lowering the levels of the Great Lakes and outflow rivers.

Second—Diminishing by less than 5 per cent the average volume of flow in the Niagara and St. Lawrence Rivers, and hence lessening by this percentage the total water power content.

Third—A diminution of the flow on the cataract at Niagara.

"The Sanitary District has appropriated a part of the funds to substantially undo all losses in lake levels, and in part to better natural conditions. The lakes constitute a slack-water system of navigation and do not depend entirely on volume of flow any more than the Illinois River navigation does. Navigation in the Detroit River and the lower St. Clair River will be bettered by the regulation to be proposed. The navigable capacity of the St. Lawrence River will be improved by a better distribution of the outflow of Lake Ontario. Water powers on the Niagara and St. Lawrence Rivers will be benefited by fuller utilization of Lakes Erie and Ontario as storage reservoirs. The flow over the cataract at Niagara will be augmented over certain hours of the day to the extent of the diversion at Chicago by a better distribution of the outflow of Lake Erie."

"36—EQUITY—It is submitted whether good faith and magnanimity on the part of the Federal Government do not assure to the State of Illinois the authority to divert 10,000 cubic seconds feet of water at Chicago? The present requirement under the Illinois State Law is about 8,700 cubic seconds feet. By 1922 to 1925 the legal dilution will require a flow of 10,000 cubic seconds feet. It is not purposed to increase the use of water any faster than the legal rate of dilution requires.

"37—DIVERSION OF 12,000 C. S. F.—The Bill introduced in Congress limits the diversion at Chicago to 12,000 cubic seconds feet. This diversion, larger than the amount considered in the negotiations leading up to the Treaty, is wanted by the District because its works have that capacity. In the use of this additional 2,000 cubic seconds feet, and with a view of working out a solution and compromise recognizing the needs of all concerned, the District approaches the Federal Government in the attitute of requesting something for which it is willing to pay—an economic benefit to the two and one-half million people it represents, for which it is ready to render a corresponding economic benefit to the Great Lakes and their outflow rivers—benefits to both Canada and the United States."

The foregoing matters, for a long period of time, have been given constant attention and consideration by the Trustees and officers of The Sanitary District of Chicago and they have in every possible way manifested a desire to co-operate with the Federal Authorities in preventing interference with navigation and providing for the needs and welfare of the people in the District.

Note

On August 7th, 1919 (Page 954 of the Proceedings), as a further evidence of good faith, an ordinance, including the preambles thereto, was adopted by the Board of Trustees, laying out and adopting a program for the construction and operation of works for the purification of or the removal of solids and organic and inorganic matter from sewage, trade wastes, offal and other organic and inorganic matter, so that within the period of the next twenty-five years not more than fifty per cent of the amount of said sewage and waste that is now passing into the DesPlaines River will at the end of such period find its way into said river. Such works are to supplement those constructed or in process of construction for the diversion of sewage and drainage arising within the limits of The Sanitary District of Chicago.

Ordinance of August 7, 1919

The preambles recite in substance the Act, its purpose, plan, works constructed, amount of water to be diverted from Lake Michigan, their effect in reducing the death rate from typhoid fever from 75 per 100,000 before the channel was opened to less than one-half of one per 100,000; that trade wastes, etc., passing into the channels and the inability to obtain at all points the necessary amount of water to dilute the sewage tends to cause local nuisances; that supplemental works should be constructed and operated to treat sewage and trade wastes; that the Sanitary District has been investigating and experimenting to ascertain the best method therefor; that it has constructed an Imhoff Tank at Morton Grove and is constructing an activated sludge plant with necessary intercepting sewers for collection and purification of sewage of Riverside, Maywood, River Forest, and others; that the Trustees have authorized the condemnation of 100 acres of land near 126th Street and Michigan Avenue upon which it will construct an artificial sewage disposal plant. (Since the passage of the ordinance the offer to sell said land to the District has been accepted, and a deed will soon be delivered so that active work may proceed for this plant. The United States Government Officials were promptly notified of this ordinance and said purchase); that a site has been acquired in the Stockyards District for purification works to be constructed to remove trade wastes and human sewage now finding its way from that locality to the main Sanitary District channel; that the South Park Improvement Project (Lake Front) provides for sufficient land for underground purification works at 39th Street and south, where sewers converge which serve 500,000 people; that the Chief Engineer (S. D.) has found and the Trustees believe that the amount of trade and other wastes requiring pure water to oxidize same, now being discharged into the channel, is approximately equal to, if it does not exceed, the amount of human sewage passing into the channel, and that there is required to oxidize said wastes and render same innocuous and nonputrescible as much or more water from Lake Michigan than is required to oxidize, etc., the human sewage of the present population in the District, and by reason of such wastes passing into the channel

and the DesPlaines River the Sanitary District works do not fully accomplish the purpose designed, and nuisances are created at various places, which nuisances should be abated; that the Chief Engineer recommends that such supplemental works should be constructed to diminish the amount of sewage and trade wastes from year to year so that at the end of 25 years, it would be reduced to one-half of present amounts, and the Trustees believe that within four years supplemental works can be constructed which will materially diminish the amount of sewage and waste going into the channel.

Ordered, that to supplement the works now constructed and being constructed, program is laid out for construction and operation of purification works, etc., at such a rate as to continuously after four years diminish the sewage, including all wastes, passing into the DesPlaines River by way of the Main Channel so that within 25 years the reduction will equal one-half of the amount passing now. The Chief Engineer and the Attorney are to take all necessary steps and keep Federal and State Officials informed of the progress made from time to time.

LETTER FROM TRUSTEES TO U. S. ENGINEERS

The Special Committee of Trustees to deal with the foregoing matters presented a Report to the Board on June 5, 1919 (Proceedings, Page 722, et seq), in which was incorporated part of a communication from Col. Judson, District Engineer at Chicago (U. S. Army), which is as follows:

"3. Chicago now disposes of its sewage by conveying it into the Illinois River, using about 8,000 cubic feet per second of Lake Michigan water. Unless steps are now taken to begin purification of Chicago District sewage in accordance with a reasonable and progressive plan it will be necessary for the health of Chicago continually to increase the draft of water from Lake Michigan on the one hand and continually to dump the sewage of Chicago on the people of the Illinois and Mississippi valleys. The United States will doubtless meet this locality in a fair and frank way, but at this time it is necessary to have assurance that the purifications of sewage will be begun in the very near future and continued at a reasonable rate so that twenty years from now it may not seem necessary for the protection of the health of Chicago to withdraw from the lake, to the great detriment of other interests, quantities of water which every one concerned would be compelled to call excessive. There will always be a tendency to increase the flow from Lake Michigan by reason of the advantages that would thus result to water powers already existing or to be developed between Lockport and Starved Rock. In any event, if the Drainage District be permitted, in accordance with any new policy that may be adopted, to withdraw either temporarily or for all time, more than 4,166 cubic feet per second as now authorized by the War Department, in my opinion the Drainage District should be required to advance to the United States sufficient funds to build,

maintain and operate works for the regulation of the levels of Lakes Michigan, Huron, Erie and Ontario."

Draft of a reply letter was presented and ordered to be delivered. This letter set forth the substance of the claims which have been stated herein, also the various facts pertinent to the issues and recounted the activities of the Trustees of the Sanitary District which have been described. The concluding paragraphs of said letter are as follows (Proceedings, 1919, Page 726):

"While the Sanitary District constructed in 1907 a hydro-electric plant at Lockport, Illinois, to develop the water power incidentally created by the operation of the Main Channel of the Sanitary District, and has operated such plant for the past twelve years, not one single drop of water has been taken by the Sanitary District from Lake Michigan for this water power. The mean twenty-four hour withdrawal has never at any time exceeded the state law requirement for dilution purposes.

"(3) The Sanitary District is ready at any time to give you any data that it has with reference to the subject matter of this letter, to proceed at any time with conferences, concerning the solution of the questions above mentioned and to co-operate with the United States, with a view to fixing the permanent maximum amount of diversion from Lake Michigan and also specifying the progress of installation of artificial purification works to supplement the diversion works, so that when the sewage of the District cannot any longer be taken care of by the maximum permanent flow fixed, artificial sewage purification works will be provided for the sewage of the increased population.

"Of course, any statements made in connection with these negotiations are understood to be without prejudice to litigation pending between the Sanitary District and the United States."

To this letter was attached the statement of Chief Engineer Wisner of July 15, 1918, to General Black, Chief of Engineers, parts of which have hereinbefore been quoted, and copies of official documents bearing upon the questions under consideration (Proceedings 1919, Pages 703 to 743).

After this exchange of letters and data, and several subsequent conferences, the Preambles and Ordinance aforesaid were adopted and passed by the Board of Trustees of the Sanitary District.

THE SANITARY DISTRICT OF CHICAGO

PART II.

THE WORK, ORGANIZATION, BOUNDARIES, DEVELOPMENT AND PROBLEMS OF THE DISTRICT AS SHOWN BY THE RECORDS AND WORK OF ITS LAW DEPARTMENT, WHICH, WITH CHANGING PERSONNEL, HAS BEEN CONDUCTED AS A UNIT IN PREPARING VOLUMINOUS BUT NECESSARY SPECIFICATIONS, MANY LARGE, COMPLICATED AND IMPORTANT CONTRACTS, THOUSANDS OF BOARD ORDERS AND COMMITTEE REPORTS, OPINIONS AND BRIEFS AS TO THE LAW APPLICABLE TO BILLS OR VOUCHERS BEFORE PAYMENTS HAVE BEEN MADE OR REFUSED, AND THE MULTITUDE OF DETAILS INCIDENT TO THE ABOVE MATTERS, IN ADDITION TO BRIEFING, INVESTIGATING AND TRYING HUNDREDS OF CASES.

SPECIFICATIONS

The printed Proceedings of the Board of Trustees for each year show the various contracts, including specifications, for construction work. Each set of specifications covers many pages. One who is not familiar with such matters might have the impression that they are all alike or very similar, except as to names, dates and amounts, and that after working out a form, it could be thereafter used in all cases. On the contrary, the specifications in each case have been and must be worked out with great care. This involves laborious work and many conferences between representatives of the Law and Engineering Departments. The rights and interests of the Sanitary District (the taxpayers in the District) must be safeguarded in and by the language and provisions in the specifications and forms of contract and bond in each case before such forms are submitted to bidders who are each supplied in advance with a copy of specifications, form of contract and form of bond. From time to time since the organization of the Sanitary District, differences have arisen between Contractors and the District over the construction of language used in contracts and specifications, and in a number of these cases (a small percentage of the total contracts made) litigation has resulted and the courts have in some instances interpreted the language used in favor of the District and sometimes against it. In preparing specifications and contracts, the language has been changed from time to time to conform to the decisions of the courts of review and nisi prius courts where no appeal was prosecuted, including decisions in cases to which the Sanitary District was not a party.

In some of the early contracts and specifications, for instance, the Chief Engineer was clothed with authority in many matters to

bind the Contractor, but the Sanitary District was not therein likewise bound by the decisions of the Chief Engineer, and the Illinois Courts held that in that respect such contracts were unilateral and not binding upon the Contractor.

The Illinois Courts have applied to District contracts the rule that where there is doubt as to the meaning of the language used, or apparent ambiguity, the language will be construed against the party preparing the contract and specifications. Inasmuch as all of such contracts and specifications have been and are prepared by the Law Department of the Sanitary District, assisted by its Engineer, one can well understand the care that must be taken in such work, and the time, patience and labor necessarily involved. With this and other explanations given, the table or summary or Law Department office work will be better understood. It occupies very little space in this report, but the work it represents covers many thousands of pages of the Proceedings of the Board of Trustees.

OTHER CONTRACTS—ORDERS

From time to time contracts have been and are authorized which do not include specifications. These include contracts with the city of Chicago and other municipalities, with railroads, large manufacturing concerns and other corporations, many of them involving large sums of money, as well as matters vital to the Sanitary District. Many agreements are prepared in reference to the sale of electrical current, also leases for lands of the District constituting its right of way. The Proceedings of the Board of Trustees contain thousands of committee reports with orders attached adopted and passed by the Board. These are prepared by the Law Department. Some of them are short, but the subject matter is usually important and greater care must be exercised in preparing a short report and order than in drafting one without regard to economy in the use of words.

ORDINANCES

After thorough consideration by a Committtee and recommendation from the Engineering Department, and the plan is developed for construction work, an ordinance is authorized. It is prepared by the Law Department. Quite often legal problems are presented which require time and great care in examination of authorities, so that the desires and plans of the Trustees may be provided for in the ordinance in such form as to conform to the law. An ordinance usually paves the way for acquiring land or right of way, by purchase if possible, and by condemnation if necessary. Under the direction of the Committee on Finance, negotiations are carried on by the Law Department, agreements to purchase are prepared and questions of survey and title are passed upon. As to lands described in an ordinance which the District cannot purchase, it is necessary for the Law Department to prepare a petition to condemn, file the same and conduct and try the case. More will be stated about such suits later

on. A history of the conferences and detail work in connection with ordinances would fill a very large volume.

EASEMENTS

The Law Department has much work to do in securing easements from cities, towns, villages and individuals, granting to the District the right to construct and build sewers across, over and under their streets, alleys and lands. Courtesy, patience, knowledge of the law and real work have been and are necessary to properly attend to such matters.

With these brief explanations in mind, your attention is now directed to the following summary:

SUMMARY OF WORK OF LAW DEPARTMENT IN PREPARING ORDINANCES, COMMITTEE REPORTS, ORDERS, CONTRACTS AND SPECIFICATIONS, LEASES, RESOLUTIONS AND EASEMENTS

	1890-1	1892	1893	1894
Ordinances	14	6	7	6
Orders and Reports	176	24	390	312
Contracts and Specifications	0	8	27	24
Leases	0	2	1	1
Resolutions	122	21	3	4
	1895	1896	1897	1898
Ordinances	4	11	15	8
Orders and Reports	299	421	612	321
Contracts and Specifications	34	32	25	51
Leases	0	0	1	1
Resolutions	4	9	12	6
	1899	1900	1901	1902
Ordinances	8	17	0	7
Orders and Reports	657	742	263	326
Contracts and Specifications	35	18	18	16
Leases	1	14	22	16
Resolutions	7	28	10	8
	1903	1904	1905	1906
Ordinances	10	14	5	11
Orders and Reports	317	313	323	412
Contracts and Specifications	19	27	23	35
Leases	16	23	27	24
Resolutions	15	5	18	21
	1907	1908	1909	1910
Ordinances	10	5	7	11
Orders and Reports	345	581	540	616
Contracts and Specifications	41	66	83	64
Leases	26	9	7	8
Resolutions	23	11	7	8
Easements	0	0	0	4

	1911	1912	1913	1914
Ordinances	10	8	10	15
Orders and Reports	522	601	686	678
Contracts and Specifications	81	67	68	65
Leases	6	8	4	22
Resolutions	8	8	19	12
Easements	3	..	10	43
	1915	1916	1917	1918
Ordinances	15	11	19	6
Orders and Reports	704	637	532	249
Contracts and Specifications	75	60	24	11
Leases	8	6	7	3
Resolutions	14	16	18	4
Easements	4	44	21	..

	Jan. 1 to Aug. 1, 1919
Ordinances	13
Orders and Reports	260
Contracts and Specifications	22
Leases	6
Resolutions	4
Easements	13

OPINIONS PREPARED

The courts have frequently held that the Trustees of the Sanitary District can only exercise those powers expressly stated in the Sanitary District Act and such implied powers as are necessary to carry out the purpose of the Act. Therefore, from the organization of The Sanitary District of Chicago, the work of the Law Department has not been confined to instituting or defending suits, but the Trustees have required every proposed contract, lease, ordinance, order, claim and deed to be carefully examined by the Attorney, who has been, and is, required to file with the Board or the appropriate committee of Trustees his written opinion upon each matter before action thereon by the Committee and the Board. As the works of the Sanitary District developed, its contracts and undertakings rapidly grew in number and became more diversified, comprehensive and complex. The business of the District has for many years involved agreements and contracts with the City of Chicago and other municipalities, with railroads and various large corporations, in addition to agreements with construction contractors. In all of these matters, extreme care has been required in order to protect the District, secure for it the rights and consideration contemplated and at the same time so provide that the Trustees should not in any case undertake to exercise any power or authority not within the limitations in that regard in the Sanitary District Act.

The volume of work in the Law Department necessarily increased very rapidly from year to year. Assistant Attorneys were employed to enable the Attorney to promptly supply the required opinions, prepare ordinances, orders, contracts and specifications, easements, leases, deeds

and to attend to the multitude of details in connection therewith, in addition to investigating, briefing and trying a very large number of cases, many of which involved and involve large sums of money, and some the powers of the Trustees and some the life of the District itself. Additional Assistant Attorneys were added to the Law Department as the business increased. One Attorney, however, is elected by the Board under the provisions of the Act, and no matter how many assistants he may have to make preliminary investigations and to prepare briefs and opinions, the Attorney for the Board must review their work and adopt it and predicate his own drafts of documents and opinions thereon, or upon independent research, which means becoming personally familiar with each matter in the Department. The Board and Committees accept and act upon the opinions of the Attorney, who accepts the work and opinions of his asistants upon his own responsibility. This, of course, is the only way to maintain an efficient Law Department. But an increase in the number of assistants does not decrease the work and responsibility of the duly elected Attorney.

In the preparation and trial of cases, some of which require many months of preparation and several weeks to try, the assignments to Assistant Attorneys are made by the Attorney, who alone is responsible to the Board for results. He, therefore, must keep in touch with the work in each case, make any suggestions and give any directions he deems necessary and participate in trials when in his judgment that is necessary or advisable.

The Attorney is required to attend all Committee meetings and the regular Board meetings. The presence of the Assistant Attorney who drafts orders, ordinances and contracts is also required at such meetings, which occupy not less than three half days of each week.

All of the foregoing work involves attention, accuracy, speed and constant application by every member of the Law Department of the Sanitary District.

There are hundreds of opinions which were prepared by the Law Department prior to January 1, 1919, which should be properly arranged as to subject, printed and bound for future use. This would require the services of one of the Assistant Attorneys for several months. At present these opinions are kept in filing cases. Since January 1, 1919, typewritten copies of all opinions have been bound in book form and indexed. A summary of the opinions prepared from January 1, 1919, to August 1, 1919, will indicate as well the amount and character of similar work in previous years.

OPINIONS, 1919

January 1, 1919, to August 1, 1919

Subject	No.
Advertising for Bids	1
Appropriations	1
Art Commissions, powers, etc.	1
Bond issues	1

Bridge repairs, obligations, etc.	1
Claims	7
Contracts (special)	5
Duplicate agreements as to dock line	1
Electrical contracts	5
Easements	5
Leases	1
Lighting Kedzie Avenue bridge	1
Legislation	3
Military Duty	1
Mistakes by Bidders (Remedy)	1
Ordinances	2
Power to condemn land for treatment plant	1
Pending cases	7
Power to acquire land from city by deed	1
Taxes	4
Tax Warrants	1
Vouchers to Contractors	47
Warning signs on bridges	1
Wages	5
Total	104

OVERFLOW CASES PRIOR TO 1917

CASES WITHDRAWN OR DISMISSED.

32 Permanent Damages: Claim	$450,200.00
35 Recurrent Damages: Claim	265,850.00

During 1917

1 Permanent: Claim	$ 25,000.00
Total	$741,050.00

OVERFLOW CASES LITIGATED PRIOR TO 1917.

	Claims	Net Verdicts
28 Trials of 21 Cases—Permanent	$741,000.00	$83,997.92
7 Trials of 6 Cases—Recurrent	113,350.00	6,250.00

DURING 1917.

1 Trial, Permanent	$ 1,500.00	None
Permanent	742,500.00	$83,997.92
Recurrent	113,350.00	6,250.00
Total	$855,850.00	$90,247.92

OVERFLOW CASES SETTLED

PRIOR TO 1917.	Claims	Paid
Permanent: 65 Settlements Including 86 Cases	$1,595,468.31	$203,038.70
Recurrent: 1 Case	5,000.00	None
DURING 1917.		
Permanent 10 cases	$ 175,000.00	$ 39,742.00
Total prior to 1918	$1,775,468.31	$242,780.70

OVERFLOW CASES PENDING JAN. 1, 1918.

Permanent: 148 Claims	$2,649,200.00
Recurrent: 165 Claims	1,669,050.00
Total 313	$4,309,250.00

OVERFLOW CASES LITIGATED IN 1918.

1 Claim, $10,000.00—Verdict.....$ 4,213.94, paid

OVERFLOW CASES SETTLED IN 1918.

4 Claims, $204,500.00—Verdict.....$38,000.00, paid

OVERFLOW CASES PENDING JAN. 1, 1919.

Land In	No.	Claims
Grundy County	26	$ 627,250.00
LaSalle County	25	351,500.00
Bureau County	9	94,500.00
Putnam County	12	152,000.00
Marshall County	11	115,000.00
Woodford County	1	7,500.00
Peoria County	3	30,000.00
Tazewell County	11	361,000.00
Fulton County	1	50,000.00
Green County	3	364,000.00
	102	$2,152,750.00
Will County	41	276,000.00
	143	$2,428,750.00

OVERFLOW SUITS COOK COUNTY COURTS.

Land In	No.	Claims
Cass County	62	$ 616,450.00
Schuyler County	25	235,650.00
Brown County	4	49,000.00
Mason County	16	195,150.00
Fulton County	12	129,500.00
Putnam County	21	227,500.00
Bureau County	1	7,500.00
	141	$1,460,750.00
	Nos.	
In Cass County Circuit Court Same Atty.	2	17,000.00
	143	$1,447,750.00
Grand Total 1/1/19	286	$3,906,500.00

OVERFLOW CASES SETTLED.

Jan. 1/19 to Aug. 1/19.

No.	Claims	Paid
7	$83,000.00	$22,071.95

SAG VALLEY OVERFLOW CASES, PENDING JAN. 1, 1919.

17 Suits—Total Claims $61,000.00

One of these, the Zuidema case, a claim for $5,000.00, brought against the District and the Contractor, was tried in April, 1919. The trial occupied two weeks and a verdict was rendered in favor of plaintiff for $2,900.00. Judgment was entered against both defendants. A motion for an allowance for attorney's fees was denied. Appeal prayed and allowed and Bill of Exceptions prepared and filed. Will be called during October Term of Appellate Court, First District.

EASTLAND CASES, PENDING JAN., 1919.

Cases	Court	Claims
106	Circuit Court, Cook County	$1,060,000.00

These are suits for damages growing out of the Eastland disaster, when the boat fell on its side in the Chicago River. The Sanitary District and others were made defendants in these suits which were started in October 1917. None of them have yet been tried (Aug. 1919). The Federal Court has held that the Sanitary District is not directly liable for damages because of increase in the current and plaintiff will hardly be able to show that the current caused the accident. For several months the Law Department has sought to have the District dismissed out of these cases. It may be necessary to try one of them before such an agreement can be made with counsel.

LAW AND CHANCERY CASES.

(Other than condemnation and overflow suits.)

Complete data has been above given in regard to overflow cases. Condemnation suits will be discussed later on. From and after 1895 suits of various kinds were brought for and against the Sanitary District, including Bills for Injunctions, actions for breach of contracts, claims for money due under contracts, suits for damages other than by reason of overflow of lands, mandamus petitions, tax matters, etc. These cases increased in number each year as the work of the District developed. During recent years many personal injury cases were brought against the District for injuries and deaths caused by electric wires. Under the provisions of the contract with the City shown in Part I of this report, the City of Chicago is bound to indemnify the District in such cases. But it is necessary for the Law Department of the District to defend the cases and avoid verdicts and judgments, if possible.

SUMMARY OF SUITS OTHER THAN CONDEMNATION AND OVERFLOW

Year	Started	Disposed of
1890	2	2
1891	—	—
1892	1	—
1893	4	1
1894	12	7
1895	12	4
1896	25	10
1897	21	16
1898	16	25
1899	21	14
1900	30	12
1901	19	16
1902	16	24
1903	5	13
1904	11	5
1905	7	11
1906	17	22
1907	9	17
1908	14	6
1909	30	19
1910	27	12
1911	101	66
1912	116	23
1913	35	32
1914	23	36
1915	35	22
1916	47	26
1917	36	25
1918	18	27
*1919	10	19

*January 1 to August 1.

CONDEMNATION SUITS—LANDS ACQUIRED

After the Sanitary District Act was thoroughly reviewed and held to be constitutional in the Wilson and Nelson cases, reported in Volume 133 of the Illinois Supreme Court Reports as set forth in Part I of this volume, the Law Department of the Sanitary District was for several years busily engaged in securing right of way for the Main Channel, pursuant to ordinance passed by the Board of Trustees. In some instances this was accomplished by negotiations for and purchase of land. In many cases, however, it was necessary to prepare and file petitions to condemn the lands needed. Some of these suits were subsequently settled by purchase of the lands involved at a reasonable price. Other suits were tried. In some cases the trials were short; in others the trials occupied many weeks of time. In many of these cases, more time and work was involved in disposing of motions to dismiss, which required the taking of much testimony before the court and presenting arguments for the purpose of determining the rights of the District, title to lands sought to be acquired, etc., than in the trial before a jury to ascertain the value of the lands sought to be taken. To here set forth each of these cases separately would serve no useful purpose. They were all disposed of years ago. Old office dockets show 505 petitions to condemn filed in the courts of Cook County, 50 in Will County, and 17 in Dupage County.

Judge Carter, in his Annual Report for 1892 as Attorney for the Sanitary District, said: "The first petition under which land was obtained was filed April 11, 1892, in the Circuit Court of Will County. The first case was tried there in June, 1892. The first land to which title was acquired by the District was a tract of 35 acres in Will County, which was obtained by purchase June 7, 1892." (Proceedings, 1893, page 1016.)

In 1895, in the case of The Sanitary District vs. Allen, in the Circuit Court of Will County, Judge Dibell rendered a very interesting and instructive opinion, in which he decided that the Sanitary District, by condemnation proceedings, acquired the fee of the lands condemned. This opinion was printed in the Proceedings of the Board for the year 1896, at pages 3062 to 3070.

The Law Department report for 1899 (Proceedings 1899, page 5525) contains the following information which is of interest in connection with acquiring right of way for the Main Channel:

"Since the organization of this Department, over thirty-five miles of right of way have been condemned or purchased, of a width ranging from 800 feet to over three-quarters of a mile and averaging one-half a mile in width through the entire length of the channel. The amount of money expended for land acquired, from the organization of the District to December 31, 1898, is $3,156,903.12. This amount includes taxes, examination of abstracts, rents of by-passes, opinions regarding title, and everything pertaining to the acquisition of the right of way, except court costs and charges for legal services where special counsel was employed by the authority of your honorable body. The cost of administration during the same period was $381,651.68. Of this amount, over $50,000 was expended for opinions of title and preliminary costs

on the first condemnation suit filed under the ordinance locating the right of way, passed August 5, 1891, and which was afterward repealed, June 18, 1892. This condemnation suit was dismissed June 20, 1892; hence all the right of way of the District was obtained since June 20, 1892, a period covering six and one-half years. Deducting the sum of $50,000 expended prior to June 20, 1892, makes the cost of acquiring the right of way, including salaries, court costs, witness fees, stationery, furniture, and every other item that enters into the cost of organizing and managing the Department, $351,651.68, or not quite 10 per cent of the cost of the right of way.

In Cook County, 123 agreements for deeds were entered into, involving 168 parcels of land, ranging in area from 13/100 of an acre to over 300 acres in extent. This includes five tracts purchased along the Chicago River. Thirty-three condemnation suits have been prosecuted, involving fifty-six tracts, including four tracts on Chicago River.

In Will County, fifty-four different condemnation suits were tried, the number of tracts involved numbering 143. One hundred and sixty-nine tracts were purchased and agreements and deeds executed for the same. This includes the Joliet right of way, but not the agreements entered into with the Canal Commissioners and the various railroad companies. Eighteen tracts were acquired in Dupage County by condemnation, three cases being required to settle the same, one being a retrial—the Moll case, which was retried on a change of venue, after reversal in the Supreme Court, in Will County. Fourteen tracts were acquired by purchase in Dupage County. The condemnation suits were mainly entered under one general head and afterward divided by the parties in interest, thus complicating the work of the Department. There are still two condemnation suits to be tried, both commenced in Will County since the beginning of the year.

"In Cook County, the District owns nearly 4,000 acres, besides 110 lots in the City of Chicago, and one lot in Lemont. In Dupage County, the District acquired over 500 acres. In Will County, the District is the owner of over 2,400 acres, and 169 lots in the City of Joliet, besides 185 lots in Lockport. The District also acquired over 52,000 square feet of land abutting on the Chicago River, and about ten acres along the Illinois and Michigan Canal acquired by agreement with the Canal Commissioners. This practically sums up the right of w work since organization, but does not include the various damage and inor cases to which the District was a party during that period and ich number over 100."

The Report of the Law Department for 1900 (Proceedings 1901, pages 7122-7123), after setting forth all the details as to lands acquired, gives the following summary:

LOTS ACQUIRED

Chicago and Cook County—			
By purchase	76 —	$ 64,875.00	
By condemnation	34 —	14,350.00	
Total			$ 79,225.00

In Joliet—			
By purchase	90 —	$ 123,112.04	
By condemnation	30 —	202,755.00	
Total			325,867.04
Grand total			$ 405,092.04

LANDS ACQUIRED

	Acres		
Cook County—			
By purchase	2,278.06	$1,339,259.84	
By condemnation	1,676.15	719,281.77	
Total			$2,058,541.61
Dupage County—			
By purchase	201.65	$ 14,261.85	
By condemnation	321.81	60,587.88	
Total			$ 74,849.73
Will County—			
By purchase	1,369.39	$330,119.85	
By condemnation	1,117.21	134,194.35	
Total			$ 464,314.20
Grand total			$2,597,705.54

CHICAGO RIVER AND CANAL COMMISSIONERS

By purchase	130,460.02 square feet	$ 105,576.28
By condemnation	26,577.21 square feet	35,050.42
From Canal Commissioners—		
Will County	25,199.00 square feet	39,630.00
Total		$ 180,256.70
Total paid for all lots and lands to date		$3,161,967.78

Similar proceedings were taken later on in acquiring additional land for the purpose of completing the work of deepening, widening and straightening the Chicago River and its branches, in acquiring right of way for the Evanston or North Shore Channel and the Calumet-Sag Channel. A large part of the lands required was sold to the District at prices which, after thorough investigation, the Trustees regarded as fair and reasonable. Many condemnation suits, however, were necessary because of the desire of landowners to secure prices which seemed too high to the Trustees. The Sanitary District was uniformly successful in these suits. In most cases the amount awarded by the jury was the same as or less than the sum previously offered to the owner by the Trustees. Practically all of such cases have been disposed of, and an itemized list of such proceedings would not add anything of value to the information contained herein.

The amount of lands and the cost of acquiring same as to the Evanston or North Shore Channel, the Calumet-Sag Channel and river improvement are as follows:

EVANSTON OR NORTH SHORE CHANNEL

Amount of land ..... 638 acres
Cost of same $1,188,529.19

CALUMET-SAG CHANNEL

Amount of land .....2,141 acres
Cost of same .....$ 573,555.48

RIVER IMPROVEMENT

Amount of land .....22 acres
Cost of same $6,061,448.23

MAIN CHANNEL AND ADDITIONS

Amount of land .....7,173 acres
Cost of same $3,071,529.02

Total lands .....9,974 acres
Total cost of same $10,895,061.02

RECORD OF SANITARY DISTRICT CASES IN THE ILLINOIS SUPREME AND APPELLATE COURTS AND IN THE FEDERAL COURTS

SANITARY DISTRICT VS. COOK (51 Ill. App. 424).
Condemnation. Judgment for $43,845.
Decision for District.
Affirmed by Supreme Court (169 Ill. 184).

HARLEV VS. SANITARY DISTRICT (54 Ill. App. 337).
Bill for injunction.
Injunction dissolved; reversed and remanded as to damages.

JOHNSON VS. SANITARY DISTRICT (56 Ill. App. 306).
Bill to compel the awarding of a contract.
Injunction. Decision for District.
Affirmed by Supreme Court (163 Ill. 285).

COOK VS. SANITARY DISTRICT (67 Ill. App. 286).
Ownership of fixtures. Decision against District.

BLAKE MFG. CO. VS. SANITARY DISTRICT (77 Ill. App. 287).
Contract case. Judgment against District, $1200.55.
Affirmed by Supreme Court (179 Ill. 167).

SANITARY DISTRICT VS. PHOENIX POWDER CO. (79 Ill. App. 36).
Bill for accounting.
Decree against District, $903.90.
Affirmed.

SANITARY DISTRICT VS. LEE (79 Ill. App. 159).
Temporary injunction to restrain Sanitary District from paying any money in pursuance of a certain contract.
Interlocutory order against District.
Affirmed.

REDDICK et al SANITARY DISTRICT VS. PEOPLE ex rel, (82 Ill. App. 85).
Mandamus to compel Clerk of District to pay $15,000 to petitioner.
Demurrer overruled and judgment as prayed for in petition. Judgment reversed.
Decision for District.

SANITARY DISTRICT VS. RAY (85 Ill. App. 115).
Damages to crops.
Judgment against District, $320.
Affirmed.

BURKE VS. SANITARY DISTRICT (88 Ill. App. 196).
Assumpsit for wages. Extra compensation (Rev. Stat. Chap. 48 Sec. 1).
Judgment against District reversed but not remanded.
Decision for District.

SANITARY DISTRICT VS. HERBERT (108 Ill. App. 532).
Damages to land.
Judgment against District, $650.
Affirmed.

SANITARY DISTRICT VS. JOLIET PIONEER STONE CO. (109 Ill. App. 283).
Damages to land.
Judgment against District, $3,000.
Affirmed.

SANITARY DISTRICT VS. CONROY (109 Ill. App. 367).
Damages to land.
Judgment against District, $4,500.
Affirmed.

SANITARY DISTRICT VS. ALDERMAN (113 Ill. App. 23).
Damages to land.
Judgment against District, $500.
Affirmed.

SANITARY DISTRICT VS. MARTIN, et al (129 Ill. App. 308).
Mandatory injunction to compel the specific performance of a written agreement.
Decree finding $5,600 damages for complainant.
Decision against District affirmed.

MOLL, EXECUTRIX, VS. SANITARY DISTRICT (131 Ill. App. 155).
Trespass on the case for the recovery of interest.
Demurrer sustained.
Judgment for defendant.
Decision for District. Affirmed.

SANITARY DISTRICT VS. CURRAN (132 Ill. App. 241).
Attorney's fees taxed as costs in suit for damages to land.
Judgment against District, $750, $7,500 taxed for Attorney's fees as costs.
Appeal from Attorney's fees allowance only.
Reversed and remanded.

SANITARY DISTRICT VS. KOMPARE (135 Ill. App. 312).
Damages to land.
Judgment against District, $300.
Affirmed.

SUEHR VS. SANITARY DISTRICT (149 Ill. App. 328).
Damages to land.
Judgment against District, $4,000.
Affirmed by Supreme Court (242 Ill. 496).

WEIR VS. SANITARY DISTRICT (160 Ill. App. 174).
Damages to land.
Judgment against District, $700. Affirmed.

PERKINS VS. SANITARY DISTRICT (171 Ill. App. 582).
Damages for personal injuries.
Judgment against District $18,000. Affirmed.

ZINSER VS. SANITARY DISTRICT (175 Ill. App. 9)
Damages to land.
Judgment against District, $15,000. Affirmed.

JUDGE VS. BERGMAN et al. (Trustees) (176 Ill. App. 42).
Injunction to enjoin the Sanitary District Trustees from constructing and maintaining a system of conduits, etc., and from paying any money for the same.
Bill dismissed for want of equity.
Decree affirmed.
Also affirmed by Supreme Court (258 Ill. 246).

HUNTER VS. SANITARY DISTRICT (179 Ill. App. 172).
Damages to land.
Judgment against District, $9,000.
$3,000 remittitur entered, costs charged appellee.
Judgment affirmed against District, $6,000.

CUMMINS, ADMR. VS. SANITARY DISTRICT (185 Ill. App. 639).
Damages—personal injuries.
Judgment against District $8,000. Affirmed.

BECKER VS. SANITARY DISTRICT (194 Ill. App. 639).
Damages—personal injuries.
Judgment against District, $5,000. Affirmed.

SMITH VS. SANITARY DISTRICT (209 Ill. App. 507).
Damages—personal property.
Decision for District.
Affirmed.

NEWMAN VS. SANITARY DISTRICT (210 Ill. App. 24).
Damages—personal property.
Decision for District.
Affirmed.

WILSON VS. BOARD OF TRUSTEES SANITARY DISTRICT (133 Ill. 443).
Injunction to restrain Sanitary District Trustees from issuing and selling certain bonds and levying general taxes for the same.
Demurrer sustained and bill dismissed.
Decision for District.
Affirmed.

SANITARY DISTRICT VS. CULLERTON (147 Ill. 359).
Condemnation (Amount of compensation to be paid for land not stated in the opinion of the court).
Decision for District.
Affirmed.

BURKE VS. SANITARY DISTRICT (152 Ill. 125).
Condemnation.
Judgment for $45,750.
Decision for District.
Affirmed.

SANITARY DISTRICT VS. LOUGHRAN (160 Ill. 362).
Condemnation.
Judgment for $30,337.
Decision for District.
Affirmed.

SANITARY DISTRICT ADS. JOHNSON (163 Ill. 285).
Mandatory injunction to restrain from rejecting certain bids, etc.
Injunction refused and bill dismissed.
Decision for District.
Affirming (58 Ill. App. 306).

SANITARY DISTRICT VS. COOK (169 Ill. 184).
Condemnation.
Judgment for $43,845 for the land.
Judgment for $1.575.60 for buildings, fences and other improvements.
Decision for District.
Affirming (67 Ill. App. 286).

ALLEN VS. HALEY (SANITARY DISTRICT) (169 Ill. 532).
Damages—trespass.
Decision for District.
Affirmed.

SANITARY DISTRICT VS. MARTIN (173 Ill. 243).
Taxes—Exemption of Sanitary District property.
Decision against Sanitary District.
Affirmed.

SANITARY DISTRICT VS. HAASE (175 Ill. 215).
Attorney's fees—allowance of attorneys' fees in dismissing petition in condemnation proceeding.
$100 attorney's fees allowed for each defendant.
Decision against District.

SANITARY DISTRICT ADS. SCHUSTER (177 Ill. 626).
Condemnation.
Decision for District.
Affirmed.

SANITARY DISTRICT VS. ALLEN (178 Ill. 330).
Ejectment against the Sanitary District to recover certain property.
Judgment in favor of plaintiff (Allen).
Decision against District.
Affirmed.

BLAKE MFG. CO. VS. SANITARY DISTRICT (179 Ill. 167).
Contract case.
Judgment against District, $1,200.55.
Affirming 77 Ill. App. 287).

SANITARY DISTRICT VS. ADAM (179 Ill. 406).
Condemnation.
Judgment for $70,000.
Decision for District.
Affirmed.

PEOPLE ex rel ADS. REDDICK, CLERK, SANITARY DISTRICT et al. (181 Ill. 334).
Mandamus to compel James Reddick, Clerk of the District and the Sanitary District to pay petitioner $15,000, amount alleged to be due them
Demurrer overruled.
Judgment for District.
Affirming (82 Ill. App. 85).

SANITARY DISTRICT VS. JOLIET (189 Ill. 270).
Special Assessment objected to by Sanitary District.
Objection overruled.
Judgment of confirmation entered.
Decision against District.
Affirmed.

CANAL COMMISSIONERS VS. SANITARY DISTRICT (191 Ill. 326).
Contract—Specific performance in equity.
Decree of Circuit Court reversed.
Cause remanded with direction to dismiss bill.
Decision for District.

LUSSEM VS. SANITARY DISTRICT (192 Ill. 404).
Injunction to restrain the District from issuing bonds to the amount of $2,500,000.
Bill dismissed for want of equity.
Decision for District.
Affirmed.

LAW VS. SANITARY DISTRICT (197 Ill. 523).
Condemnation.
Judgment for $20,875.23.
Decision for District.
Affirmed.

RAY ADS. SANITARY DISTRICT (199 Ill. 63).
Damages to crops.
Judgment against District for $180.
Attorney's fees allowed, $200.
Affirmed.

GAYLORD VS. SANITARY DISTRICT (204 Ill. 576).
Condemnation—The Mills and Millers Act of 1872 (Revised Statutes 1874 p. 701).
Petition dismissed on motion of Sanitary District.
Decision for Sanitary District.
Affirmed.

PEOPLE VS. SANITARY DISTRICT (210 Ill. 171).
Condemnation—State filed a cross-petition in this proceeding.
Cross-petition for State dismissed.
Decision for District.

SANITARY DISTRICT VS. PITTSBURG, FORT WAYNE & CHICAGO RAILWAY (216 Ill. 575).
Condemnation.
Judgment for $1,389,940.
Decision for District.
Consolidated with (218 Ill. 286).

PITTSBURG, FORT WAYNE & CHICAGO RAILWAY CO. et al. VS. SANITARY DISTRICT (218 Ill. 286).
Condemnation.
Judgment for $1,389,940.
Decision for District.
(N. B. See 216 Ill. 575. Consolidated cases.)

GLOS VS. SANITARY DISTRICT (224 Ill. 272).
Injunction to enjoin Glos from applying for and the County Clerk from issuing tax deed.
Decree for District.
Judgment against Glos for costs.
Writ of error dismissed.

HARLEY VS. SANITARY DISTRICT (226 Ill. 213).
Contract—Forfeiture alleged on part of appellee.
Judgment for District.
Affirmed.

SANITARY DISTRICT VS. HANBERG, COUNTY COLLECTOR (226 Ill. 480).
Statutory exemption of taxes. How judgment for taxes against lands of Sanitary District should be entered.
Judgment against District reversed and remanded with direction to enter judgment against land.
Decision for District.

SANITARY DISTRICT VS. CHAPIN (226 Ill. 499).
Petition for condemnation.
Petition dismissed on motion of plaintiff.

SANITARY DISTRICT VS. MARTIN (227 Ill. 260).
Mandatory injunction. Specific performance to enforce grantee's agreement in a deed.
Decision against District.
Decree adjudged damages against District for 8 acres of land at $700 per acre and interest on same from January 14, 1902, in lieu of specific performance of contract.

SANITARY DISTRICT VS. METROPOLITAN WEST SIDE ELEVATED RAILWAY CO. et al. (241 Ill. 622).
Mandatory injunction to compel the removal of a bridge abutment.
Bill dismissed.
Affirmed.

MILLER VS. SANITARY DISTRICT (242 Ill. 321).
Damages to land.
Judgment against District, $4,664.
Affirmed.

SUEHR VS. SANITARY DISTRICT (242 Ill. 496).
Damages to land.
Judgment against District, $4,000.
Affirming (149 Ill. App. 328).

THOMPSON ADS. FAITHHORN (242 Ill. 508).
Injunction to restrain County Treasurer from selling, for unpaid Sanitary District taxes, certain property.
Bill dismissed for want of equity.
Decision for District.
Act of 1903 held to be constitutional.

JONES VS. SANITARY DISTRICT (252 Ill. 591).
Damages to land.
Judgment against District, $6,250.
Affirmed.

PEOPLE EX REL MORTELL VS. BERGMAN (SANITARY DISTRICT) (253 Ill. 469).
Mandamus—Validity Sanitary District ordinance.
Transferred to First District Appellate Court.

SANITARY DISTRICT VS. GIFFORD (257 Ill. 424).
Mandatory injunction, to enjoin County Treasurer from obtaining a judgment against Sanitary District lands, etc.
Bill dismissed for want of equity.
Decision against District. Affirmed.

SANITARY DISTRICT VS. BOARD OF REVIEW OF WILL COUNTY (258 Ill. 316).
Objections to assessment and claim of exemption of certain Sanitary District property.
Property held not exempt.
Decision against District.

JUDGE VS. BERGMAN ET AL. (SANITARY DISTRICT TRUSTEES) (258 Ill. 246).
Injunction to enjoin Sanitary District Trustees from constructing and maintaining a certain system of conduits, etc.
Bill dismissed for want of equity.
Decision for District.

HARNEY VS. SANITARY DISTRICT (260 Ill. 54).
Damages to land.
Judgment against District $3,000.
Affirmed.

SANITARY DISTRICT VS. MURPHY, JACOB GLOS, appellant (261 Ill. 269).
Tax title interest in condemnation.
Judgment—Holder of invalid tax title not entitled to be reimbursed out of compensation awarded.
Decision for District.
Affirmed.

SANITARY DISTRICT ADS. MUNGER, JACOB GLOS, appellant (264 Ill. 256).
Tax title interest in condemnation judgment. Holder of invalid tax title not entitled to reimbursement out of compensation awarded.
Decision for District.
Affirmed.

SANITARY DISTRICT ADS. JANE JONES (265 Ill. 98).
Damages to land.
Judgment against District, $5,480.50.
Affirmed.

SANITARY DISTRICT ADS. SHAW (*267* Ill. 216).
Damages to land.
Judgment for defendant.
Decision for District.
Affirmed.

SANITARY DISTRICT VS. CHICAGO & ALTON R. R. CO. (*267* Ill. 252).
Condemnation.
Judgment for $53,476.
Decision for District.
Affirmed.

SANITARY DISTRICT ADS. COLLINS (*270* Ill. 108).
Damages to land.
Judgment against District, $17,729.14.
Affirmed.

SANITARY DISTRICT VS. QUADE et al. (*270* Ill. 128).
Condemnation.
Judgment for $18,465.
Decision for District.
Affirmed.

CITY OF CHICAGO VS. SANITARY DISTRICT (*272* Ill. 37).
Condemnation.
Judgment for $15,000.00 for land condemned by plaintiff.
Decision against District.
Affirmed.

WENNERSTEN VS. SANITARY DISTRICT (*274* Ill. 189).
Injunction—To restrain Sanitary District from leasing certain premises for industrial or manufacturing purposes.
Cause transferred First District Appellate Court.

PEOPLE EX REL HENRY STUCKART, COUNTY COLLECTOR, (SANITARY DISTRICT VS. DAY) (*277* Ill. 543).
Tax levy—Sanitary District.
Decision for the District. For the taxes for the payment of principal and interest on maturing bonds and for the payment of accrued interest on the bonds.
Decision against the District. Tax levy for the current corporate municipal purposes of the District.
Judgment of County Court affirmed as to all taxes levied for the payment of principal and interest on bonds and was reversed as to all other taxes involved in this appeal.
Reversed in part and remanded.

PEOPLE EX REL HENRY STUCKART, COUNTY COLLECTOR, VS. HUEY (*277* Ill. 561).
Tax levy—Sanitary District.
Same decision as in Day case last above mentioned.

PEOPLE EX REL HENRY STUCKART, COUNTY COLLECTOR, VS. REINHOLD (*277* Ill. 565).
Tax levy—Sanitary District.
Same judgment entered as in Day case.

PEOPLE EX REL HENRY STUCKART, COUNTY COLLECTOR, VS. CHICAGO FIRE BRICK CO. (*277* Ill. 566).
Tax levy—Sanitary District.
Same judgment entered as in Day case.

PEOPLE EX REL HENRY STUCKART, COUNTY COLLECTOR, VS. N. J. SANDBERG CO. (*277* Ill. 567).
Tax levy—Sanitary District.
Same judgment entered as in Day case.

PEOPLE EX REL HENRY STUCKART, COUNTY COLLECTOR, VS. CRILLY (*277* Ill. 572).
Tax levy—Sanitary District.
Same judgment entered as in Day case.

PEOPLE EX REL HENRY STUCKART, COUNTY COLLECTOR, VS. ADAMS (*277* Ill. 573).
Tax levy—Sanitary District.
Same judgment entered as in Day case.

PEOPLE EX REL HENRY STUCKART, COUNTY COLLECTOR, VS. RUMSEY (*277* Ill. 586).
Tax levy—Sanitary District.
The same judgment entered as in Day case.

PEOPLE EX REL HENRY STUCKART, COUNTY COLLECTOR, VS. UNITY SAFE DEPOSIT CO. (*277* Ill. 589).
Tax levy—Sanitary District.
The same judgment entered as in Day case.

PEOPLE EX REL HENRY STUCKART, COUNTY COLLECTOR, VS. RAPHAEL (*277* Ill. 597).
The same judgment entered as in Day case.
Tax levy—Sanitary District.

PEOPLE EX REL HENRY STUCKART, COUNTY COLLECTOR, VS. HILL (*277* Ill. 607).
Tax levy—Sanitary District.
The same judgment entered as in Day case.

PEOPLE EX REL HENRY STUCKART, COUNTY COLLECTOR, VS. SCHNEIDER (*277* Ill. 618).
Tax levy—Sanitary District.
The same judgment entered as in Day case.

PEOPLE EX REL HENRY STUCKART, COUNTY COLLECTOR, VS. GUNNING (*277* Ill. 620).
Tax levy—Sanitary District.
The same judgment entered as in Day case.

PEOPLE EX REL HENRY STUCKART, COUNTY COLLECTOR, VS. PHILLIPS (277 Ill. 628).
Tax levy—Sanitary District.
The same judgment entered as in Day case.

PEOPLE EX REL HENRY STUCKART, COUNTY COLLECTOR, VS. DAEMICKE (278 Ill. 53).
Tax levy—Sanitary District.
The same judgment entered as in Day case.

PEOPLE EX REL HENRY STUCKART, COUNTY COLLECTOR, VS. CAMPBELL (278 Ill. 56).
Tax levy—Sanitary District.
The same judgment entered as in Day case.

PEOPLE EX REL HENRY STUCKART, COUNTY COLLECTOR, VS. WALLER (278 Ill. 132).
Tax levy—Sanitary District.
The same judgment entered as in Day case.

PEOPLE EX REL HENRY STUCKART, COUNTY COLLECTOR, VS. MADLENER (278 Ill. 278).
Tax levy—Sanitary District.
The same judgment entered as in Day case.

PEOPLE EX REL HENRY STUCKART, COUNTY COLLECTOR, VS. SNOW (279 Ill. 289).
Tax levy—Sanitary District.
The same judgment entered as in Day case.

INDUSTRIAL BOARD ADS. SANITARY DISTRICT (282 Ill. 182).
Action—Recovery for death of employe of the Sanitary District under Workmen's Compensation Act.
Judgment against District reversed.
Decision for District.

PEOPLE EX REL HENRY STUCKART, COUNTY COLLECTOR, VS. N. J. SANDBERG CO. (282 Ill. 245).
Sanitary District tax—Objections to same.
Sanitary tax levy held valid.
Affirmed as to Sanitary District tax.

PEOPLE EX REL HENRY STUCKART VS. KLEE (282 Ill. 440).
Sanitary District tax—Objections to same.
Sanitary District tax held valid.
Affirmed as to Sanitary District tax.

PEOPLE EX REL MACLAY HOYNE VS. METROPOLITAN ELEVATED RAILWAY, et al. (285 Ill. 246).
Bill in chancery to remove obstructions to navigation.
Decision for District.
Writ of error to U. S. Supreme Court.

SANITARY DISTRICT VS. YOUNG (285 Ill. 351).
Injunction—Bill for a perpetual injunction against County Clerk of Will County to enjoin him from extending the taxes in certain townships in the Sanitary District.
Decree of Circuit Court sustaining demurrer to the bill attacking the assessments on personal property in certain school districts was reversed but the decree was in all other respects affirmed and the cause remanded.
Reversed in part and remanded.

SANITARY DISTRICT VS. YOUNG (285 Ill. 423).
Bill to enjoin (Edwin J. Young) County Clerk, from extending taxes for 1916 against its property upon the valuation and assessments made by the Assessors of certain towns in the District.
The Decree of Circuit Court dismissing bill was affirmed except in sustaining demurrer in reference to the assessments on personal property in certain school districts and in dismissing the bill as to the assessment of the transmission lines as personal property.
Reversed in part and remanded.

SANITARY DISTRICT OF CHICAGO VS. RICKER, ET AL. (91 Fed. 833).
Bill for setting aside and rescinding contract.
Bill dismissed.
Decision for District.

PEOPLE VS. SANITARY DISTRICT OF CHICAGO (98 Fed. 150).
Bill to enjoin the District in the prosecution of the work for which it was chartered.
Removal of cause. Federal question involved.
Decision for District.

CORRIGAN TRANSPORTATION CO. VS. SANITARY DISTRICT (125 Fed. 611).
In admiralty—Suit to recover damages for obstructing navigation of the Chicago river.
Libel dismissed.
Decision for District.
Affirmed by U. S. Circuit Court of Appeals (137 Fed. 851).

STREETER & KENNEFICK VS. SANITARY DISTRICT (133 Fed. 124).
Contract for the excavation of certain sections of main drainage canal.
Judgment against District, $18,998.95.
Affirmed (143 Fed. 476).

CORRIGAN TRANSPORTATION CO. VS. SANITARY DISTRICT (137 Fed. 851).
Libel—To recover damages to shipping.
Libel dismissed.
Decision for District.
Affirming (District Court, 125 Fed. 611).

MISSOURI VS. ILLINOIS & SANITARY DISTRICT OF CHICAGO (180 U. S. 208).
Injunction—The remedy sought for was in an injunction restraining the defendants from receiving or permitting any sewage to be received or discharged in the Sanitary District canal in order to carry off and eventually discharge into the Mississippi river the sewage of Chicago.
Demurrer of State and District overruled.

MISSOURI VS. ILLINOIS & SANITARY DISTRICT OF CHICAGO (200 U. S. 496).
Injunction—Bill to enjoin the defendants from discharging sewage through the District canal into certain tributaries which empty into the Mississippi river above St. Louis.
Same as previous case.
Hearing on evidence reported by Commissioner.
Bill dismissed without prejudice.

STREETER ET AL VS. SANITARY DISTRICT (143 Fed. 476).
Contract for the excavation of certain sections of the main drainage canal.
Judgment against District $18,998.95.
Affirming (133 Fed. 124).

SANITARY DISTRICT VS. McGUIRL (86 Ill. App. 392).
Damages to property by public improvement.
Judgment against District, $17,000.
Reversed and remanded.

SANITARY DISTRICT ADS. BOURKE (92 Ill. App. 333).
Bill for Injunction. Bill to have declared null and void a certain ordinance passed June 3, 1899, by the trustees of the Sanitary District.
Dismissed for want of equity.
Decision for District.

HARLEV VS. SANITARY DISTRICT, (107 Ill. App. 546.)
Contract—Forfeiture for failure to comply with the contract, etc.
Judgment for defendant.
Decision for District.

SANITARY DISTRICT ADS. SMITH (108 Ill. App. 69).
Contract—Building contract—Provision for extra work performed, etc.
Judgment for District.
Reversed and remanded.

SANITARY DISTRICT VS. McMAHON & MONTGOMERY (110 Ill. App. 510).
Damages for breach of contract.
Judgment against District, $179,595.
Reversed and Remanded.

SANITARY DISTRICT VS. PEARCE (110 Ill. App. 5592).
Damages to land.
Judgment against District, $3,200.
Reversed and remanded.

SANITARY DISTRICT VS. BROCKMEYER (118 Ill. App. 49).
Action of covenant—who may maintain action for breach of.
Judgment for District.
Reversed and remanded.

SANITARY DISTRICT ADS. STAR & CRESCENT MILLING CO. (120 Ill.App.555).
Damages to land.
Recision for District.
Reversed and remanded.

STROEBEL STEEL CONSTRUCTION CO. VS. SANITARY DISTRICT (160 Ill. App. 554).
Assumpsit—Contract to recover balance alleged to be due for the construction of a dam.
Judgment against District, $4,665.95.
Reversed and remanded.

GRIFFITH ET AL. VS. SANITARY DISTRICT (174 Ill. App. 100).
Assumpsit—Building and construction contracts.
Judgment against District, $4,665.95.
Reversed and remanded.

DAMROW VS. SANITARY DISTRICT (174 Ill. App. 366).
Damages—personal injury.
Judgment against District, $999.
Reversed and remanded.

TEDENS VS. SANITARY DISTRICT (149 Ill. 87).
Condemnation.
Decision for District.
Reversed and remanded.

CANAL COMMISSIONERS VS. SANITARY DISTRICT (184 Ill. 597) and PEOPLE EX REL CHIPERFIELD VS. SANITARY DISTRICT (cases consolidated).
Injunction—Bill to enjoin Sanitary District from interfering, breaking, injuring or destroying certain dams.
The judgment of the Circuit Court dismissing bill was reversed with directions to overrule the demurrer and motion to dissolve the injunction and retain the bills for hearing.

PEOPLE EX REL CHIPERFIELD, STATE'S ATTORNEY, VS. SANITARY DISTRICT (184 Ill. 597).
Injunction.
(This case consolidated by agreement with Canal Commissioners vs. Sanitary District—184 Ill. 597).

CANAL COMMISSIONERS VS. SANITARY DISTRICT (191 Ill. 326).
Specific performance of contract. In equity.
Decree of Circuit Court was reversed and cause remanded to that court with directions to dismiss the bill.

SANITARY DISTRICT ADS. DUPONT (203 Ill. 170).
Condemnation.
Judgment for $18,168.23.
Decision for District.
Reversed and remanded.

SANITARY DISTRICT ADS BEIDLER (211 Ill. 628).
Damages to land.
Judgment for plaintiff.
Decision for District.

MOLL, EXECUTRIX, VS. SANITARY DISTRICT (228 Ill. 633),
Condemnation and interest on judgment.
Judgment for $20,312.80.
Reversed and remanded.

SANITARY DISTRICT VS. CORNEAU (257 Ill. 93).
Condemnation.
Judgment for $17,875.
Decision for District.
Reversed and remanded.

SANITARY DISTRICT ADS GENTLEMEN (260 Ill. 317).
Attorney's fees taxed as costs in suit for land damages.
Attorney's fees, $5,000, allowed on verdict of $5,000.
Appeal from Attorney's fees allowance only.
Reversed and remanded.

SANITARY DISTRICT ADS. LA SALLE COUNTY CARBON COAL CO. (260 Ill. 423).
Damages to land.
Judgment against District $35,000.
Reversed and remanded.

REINKE VS. SANITARY DISTRICT (260 Ill. 380).
Damages to land.
Judgment against District $3,700.
Reversed and remanded.

VETTE VS. SANITARY DISTRICT (260 Ill. 432).
Damages to land.
Judgment against District, $6,250.
Reversed and remanded.

SMITH VS. SANITARY DISTRICT.
Damages to land.
Judgment against District, $8,000.
Reversed and remanded.

BROCKSCHMIDT VS. SANITARY DISTRICT (260 Ill. 502).
Damages to land.
Finding against District on the pleadings.
Reversed and remanded with directions.

SANITARY DISTRICT VS. BOENING ET AL. (267 Ill. 118).
Condemnation.
Judgment for $1,000 an acre for land taken.
Decision for District.
Damages on cross-petition for land not taken.
Judgment against District $150 an acre.
Reversed and remanded.

WHEELER VS. SANITARY DISTRICT (270 Ill. 461).
Damages to land.
Judgment against District.
Reversed and remanded.

KUEHNE VS. SANITARY DISTRICT (285 Ill. 129).
Damages to crops and timber.
Cause transferred to First District, Appellate Court. Pending.

SANITARY DISTRICT VS. CHICAGO TITLE & TRUST CO. (278 Ill. 529).
Injunction to restrain the prosecution of actions of ejectment, trespass on the case and assumpsit.
Decree reversed with directions to dismiss cross-bill and to render a decree perpetually enjoining the prosecution of the actions at law.
Decision for District.

PEOPLE EX REL HENRY STUCKART, COUNTY COLLECTOR, VS. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.
Supreme Court of Illinois.
Objections to Sanitary District Tax Levy overruled June, 1919. Rehearing allowed.

RYLANDS VS. CLARK ET AL., TRUSTEES (278 Ill. 39).
Supreme Court of Illinois, Vol. 278, page 39.
Amendment to Section 17, providing for Cicero Avenue and other bridges held constitutional.

SUMMARY OF CASES IN THE SUPREME AND APPELLATE COURTS.

Cases won by District in Appellate Court	20
Cases lost by District in Appellate Court	15
Cases won by District in Supreme Court	72
Cases lost by District in Supreme Court	39
Cases won by District in U. S. Supreme Court	1
Cases lost by District in U. S. Supreme Court	0
Cases won by District in Federal Courts	4
Cases lost by District in Federal Courts	1

WORKMEN'S COMPENSATION.

The General Assembly of Illinois passed an Act to promote the general welfare of the people of this State by providing compensation for accidental injuries or deaths suffered in the course of employment, which was approved June 10, 1911 and in force May 1, 1912.

This law was repealed by an Act to promote the general welfare of the people of this State by providing compensation for accidental injuries or deaths suffered in the course of employment within this State, providing for the enforcement and administering thereof and a penalty for its violation, which latter Act was approved June 28, 1913, and in force July 1, 1913.

By authority of the Board of Trustees the Attorney for the Sanitary District accepted the Act of the General Assembly of May 1, 1912, and on July 29, 1913, the Attorney reported to the Committee on Judiciary that while some municipal corporations in the State of Illinois hesitated about accepting the Act, and others refused, the Sanitary District was the first municipal corporation, as far as he was informed, to promptly accept its provisions; that prior to this Act an injured employee could recover damages for injuries received if he and his fellow servants were free from negligence and he had not assumed the risk of his employment; that under the Act in question, the defenses of contributory negligence, assumption of risk and negligence of a fellow servant were destroyed as to all persons, firms and corporations who did not accept the Act; that the Act was based on compensation and not on negligence; that in its practical operation there is a recovery in nearly every case; that in the past the Sanitary District protected itself against claims for personal injuries by policies of indemnity insurance and paid large premiums based on estimated payrolls, and just prior to May 1, 1912, a sub-committee appointed by the Committee on Finance of the Board of Trustees analyzed certain bids which it had received based on an estimated payroll of $285,333.35 to indemnify the Sanitary District for a period of eight months from May 1, 1912, subject to the condition that the Sanitary District would not accept the Act; that the bids ranged from $12,544.19 to $16,354.26; that the latter bid was made by each of three strong companies and it was found that the premium to be paid for one year's indemnity on the aforesaid payroll would have amounted to approximately $22,000.00; that the District then decided to accept the Act in question and carry its own insurance; that shortly afterwards a bid was received extending the terms of the policy to cover the Act in the sum of $32,000.00; that even this sum would have been largely increased if the premium had been based on a higher payroll, which was anticipated by reason of the work under the City contract (electrical development).

The Law Department in this report to the Committee on Judiciary further submitted a detailed statement, and called attention to the fact that it was thereby shown that the District had expended under the Act during a period of thirteen months, from May 1, 1912, to June 1, 1913, the sum of $9,130.75, which was distributed approximately as follows: For compensation paid to employees the sum of $6,100.65, which included compensation paid for two death losses in the sums of $2,950.00

and $2,013.00, respectively; for doctor bills the sum of $1,951.50; for hospital bills, $700.95, and for miscellaneous services $377.65; that of the above total of $9,130.75, the sum of $3,254.90 was properly chargeable to the City of Chicago, as the accidents on which such compensation was paid occurred while the Sanitary District was doing work for the City of Chicago under the existing electric lighting contract. (Said amount and other additional similar claims were paid by the City.)

The report further stated that the position taken by the City that the relation of the Sanitary District to the City in this work was that of an independent contractor, and that the City was, therefore, not liable for accidents was in the opinion of the Law Department untenable; that under the contract the City was chargeable with the actual expense of the work, and that no difference was apparent between an expense in the form of compensation for injuries and the charges made for a portion of the salaries of attorneys, bookkeepers, draftsmen or others which were admitted by the City of Chicago to be part of the overhead expenses chargeable to the City. This report expressed the opinion that this item would be properly adjusted in the near future, and it was, as above stated.

The report further stated that deducting the said amount of $3,254.90 from the total paid of $9,130.75 left the sum of $5,875.85 as the cost to the Sanitary District of insuring its employees under the Act during the period aforesaid; that the cost to the District would be increased if the cost of investigating claims and a portion of the general expenses chargeable to the Legal Department were added.

The Law Department in this report further advised the Committee that when this Act went into force and effect nobody in this State had any experience in work of this character and that it was necessary to reorganize the Claim Department, to introduce a system of card indices, to prepare forms to meet the requirements of reporting accidents, physicians' certificates, vouchers, releases, etc.; that physicians were employed and arrangements made with hospitals to care for the injured, and that first-aid outfits were installed in all of the pumping and city sub-stations; that it was the policy of the Law Department to construe liberally the provisions of the Act and resolve all contests in favor of an injured employee; that gradually the work was systematized until it was found to be going smoothly, and payments were made twice a month as required by the Act, and that all reports required to be made to State authorities had promptly been prepared and filed; that the practical operation of the Act appeared to have given satisfaction to every employee and his family and to the beneficiaries of deceased employees; that the amount of compensation is well known and copies of the salient provisions of the Act were posted wherever employees were at work; that the economic waste of court costs and fees paid to Attorneys was largely eliminated and the old criticism that the companies which indemnified the Sanitary District exhausted claimants who had just claims by prolonged litigation had entirely disappeared; that the Sanitary District was also saving the cost of contributing to judgments which exceeded the amount of the policy; that the Sanitary District in accepting the provisions of the Act limited its

liability to specific injuries to strong, healthy men, and with this in view it had caused all employees who came under the Act to be physically examined and that the same course was pursued as to a large number of temporary employees; that the result of this was to eliminate in numerous instances men who were suffering from disease and physical disability which might have added to any injury suffered; that the Sanitary District was liable under what is known as the "Safety-Appliance Act" for any injuries suffered by an employee arising out of a failure on the part of the Sanitary District to properly safeguard dangerous machinery; that the Sanitary District caused all of its machinery to be inspected by experts and their reports placed on file; that the Act itself provides that the safe-guards must be "reasonable," and in case of a contest the reasonableness of a safeguard is one which can only be determined by a jury. The Law Department, therefore, suggested that in every pumping station and sub-station under the control of the Sanitary District and whenever work was being carried on where dangerous machinery was used that the men employed at such places be called together and asked to appoint a committee of three of their number to point out in writing where machinery could be more successfully safeguarded; that if this was done and such report acted upon it would minimize any recovery which could be had against the Sanitary District where the basis of the suit was the failure to properly safeguard machinery.

The Law Department further reported to the Committee that on July 1, 1913, a new Act relating to workmen's compensation went into force, which followed in general terms the provisions of the old Act, except that the compensation for certain injuries was made specific and the determination of all contested claims was vested in the control of a State Board, composed of three members, one member representing the employing class, another representing the employed class and the third member a disinterested citizen; that the appropriation made by the Board of Trustees for the purposes of this Act for the year beginning May 1, 1912, was $10,000.00, and the Law Department requested an additional appropriation in the aforesaid report.

On July 31, 1913 (page 961 of the Proceedings), the Board of Trustees adopted a report of the committee on Judiciary, which stated in substance that the Sanitary District was the first municipal corporation to accept the terms and provisions of the aforesaid Act; that prior to July 31, 1912, the Sanitary District protected itself against claims of this character by policies of indemnity insurance and that the lowest bid received to indemnify the Sanitary District for a period of one year from May 1, 1912, under the Act in question was $32,000.00; that the amount paid under the Act from May 1, 1912, to June 1, 1913, as compensation to employees and their beneficiaries, doctor, hospital and miscellaneous expenses was $9,130.75, and that $3,254.00 of this amount was properly chargeable to the City of Chicago; that in practice the compensation paid and services rendered had given satisfaction to such of the employees of the Sanitary District as had been injured and to the beneficiaries of two employees who were accidentally killed, and that the acceptance of this Act had resulted in a large saving to the Sanitary District. The Com-

mittee requested that an order be passed appropriating the sum of $10,000.00 to be used for the purposes of the Act as set out in detail in the report and order of the Board of Trustees adopted and passed on June 13, 1912 (page 593 of the Proceedings).

An itemized report and statement prepared by the Law Department covering the period from May 1, 1912, to April 15, 1919, as to claims paid under the Workmen's Compensation Act arising out of employees in the Electrical and Engineering Departments of the Sanitary District being injured while performing Sanitary District work shows the claim of each individual injured or killed, his occupation, date of injury, time of return to work, compensation, medical attendance, hospital bills, etc. The total sum expended during said period of approximately seven years is $58,056.40. Of the foregoing amount, the sum of $20,151.69 was paid on account of employees in the Engineering Department and the balance amounting to $37,904.71 was paid on account of employees in the Electrical Department.

The foregoing sums represent the cost to the Sanitary District, but in addition thereto other liabilities were incurred within the provisions of the Act for which the Sanitary District was compelled to lay out and expend additional sums of money which were repaid to the Sanitary District by the City of Chicago in connection with the settlement with the City under contracts between the Sanitary District and the City. Under the contract between the Sanitary District and the City of Chicago, approved by the Board of Trustees in May, 1919, which contract is set forth and analyzed in Part 1 of this volume, the City specifically agrees to reimburse the Sanitary District for any and all expenditures of the above character incurred as to employees in the Electrical Department of the Sanitary District.

The General Assembly of Illinois in 1919 amended the aforesaid Workmen's Compensation Act in several particulars, but these amendments have chiefly to do with matters of procedure under the Act. Fundamentally the Act is the same now as it has been since the Act of 1913 was approved, with at least two important exceptions. The limitation to $200.00 for Doctor's services has been removed. The Law Department has taken due precaution against excessive charges for such services.

The District is made primarily liable for injuries to employees of contractors and subcontractors as well. These liabilities may be covered by proper insurance and the Law Department has required all contractors to provide the Sanitary District with necessary certificates from insurance companies covering such risks in accordance with District contracts in each of which the contractor obligates himself or itself to protect the District.

LAW DEPARTMENT

COMPARATIVE STATEMENT OF EXPENDITURES

Year	Payroll	*Expert Witnesses, and Special Legal Services	Court Costs and Reporting	Witnesses and Expenses in Suits and General Expenses
1891	$ 9,561.29	$ 5,180.50	$ 417.35	$ 28.08
1892	18,015.51	7,610.00	4,728.92	5,179.00
1893	23,805.12	16,080.69	8,432.73	10,055.64
1894	20,643.55	11,569.82	5,300.15	7,603.68
1895	18,282.67	8,181.85	5,845.29	5,471.63
1896	19,088.63	5,916.66	7,431.67	5,103.56
1897	22,137.15	6,250.00	8,159.76	17,863.00
1898	22,650.03	18,964.96	7,644.94	20,609.13
1899	21,076.75	14,112.59	2,911.45	8,588.30
1900	23,536.75	16,752.39	2,146.61	9,072.20
1901	24,103.80	24,995.08	12,114.69	1,579.31
1902	31,408.02	40,395.87	11,472.47	12,715.51
1903	27,481.72	89,536.95	13,299.20	11,402.52
1904	35,249.78	82,847.76	16,136.83	23,067.43
1905	29,199.90	49,152.66	4,307.24	4,946.95
1906	26,139.24	27,681.88	1,691.98	8,635.24
1907	25,600.51	14,165.17	2,632.22	4,090.21
1908	29,437.46	19,111.81	4,190.67	5,680.97
1909	32.055.82	18,754.24	5,745.72	8,132.11
1910	38,785.46	32,097.55	4,599.07	7,730.80
1911	40,855.42	26,895.54	9,640.25	9,826.47
1912	53,255.03	40,450.44	9,381.69	20,125.90
1913	94,541.14	102,570.24	24,515.43	31,761.02
1914	97,878.67	66,745.51	11,545.13	10,898.26
1915	94,331.79	47,136.18	14,118.00	10,345.73
1916	90,663.80	22,717.96	2,154.10	9,345.34
1917	86,989.06	25,051.80	3,979.12	6,629.87
1918	86,989.12	34,140.06	1,305.51	8,238.27
Totals	$1,143,763.19	$ 875,093.16	$ 205,848.19	$ 286,165.13

* No special legal services in Cook County, other than in Lake Level litigation, for ten years or more. Illinois Valley attorneys included in this column.

LAW DEPARTMENT

COMPARATIVE STATEMENT OF EXPENDITURES—
Continued

Year	Printing Books Stationery	Furniture Fixtures	Yearly Totals
1891	$ 120.50	.....	$ 15,307.72
1892	463.90	$ 408.15	36,405.48
1893	340.56	127.00	58,841.74
1894	358.60	.....	45,502.80
1895	725.04	.....	40,045.48
1896	199.63	.....	37,740.15
1897	1,032.05	238.45	55,680.41
1898	2,594.11	.....	72,463.17
1899	1,796.51	.....	48,485.60
1900	747.93	.....	52,255.88
1901	641.72	.....	63,434.60
1902	2,655.92	.....	98,647.79
1903	2,640.13	165.41	144,525.93
1904	1,233.74	14.00	158,449.54
1905	3,917.38	24.00	91,548.13
1906	1,213.87	721.13	66,083.34
1907	702.07	34.80	47,224.98
1908	1,645.56	282.20	60,348.67
1909	702.55	46.30	65,436.74
1910	1,202.56	17.25	84,432.69
1911	2,815.30	301.87	90,334.85
1912	3,249.69	518.60	126,981.35
1913	10,359.76	1,335.17	265,082.76
1914	8,846.02	345.03	196,258.62
1915	11,651.31	235.35	177,818.36
1916	3,243.63	282.62	128,407.45
1917	2,024.72	469.89	125,144.46
1918	3,910.09	498.86	135,081.91
Totals	$ 71,034.85	$ 6,066.08	$2,587,970.60

LAW DEPARTMENT EXPENDITURES (Continued).

The expense in some years over normal increase was due to the large amount of expert testimony, legal assistance and stenographic work required in the Missouri, vs. Illinois and Sanitary District, the Pennsylvania and the Federal Lake Level cases. Aside from those cases the expenses of the Law Department increased as the work of the District progressed and the volume of its general business was enlarged, because action upon nearly all of the matters before the Board has been based upon the work of the Law Department.

Some bills for 1918, aggregating about $10,000.00, were approved and paid in 1919, which makes the total expense of the Law Department for 1918 about $145,081.91, whereas the appropriation for 1918 was $159,265.00. The appropriation for 1919 is $162,669.50, and the total expense for 1919 will probably be less than for 1918.

The inventory of the Law Department includes a good working library which is indispensable and time and money are thereby saved in promptly and efficiently attending to the large volume of business sent to the Law Department. Additions should be made to this library each year.

The Sanitary District since its organization has expended over one hundred millions of dollars in constructing the Main Channel, widening, deepening and straightening the Chicago River and its branches, constructing the North Shore Channel and Calumet Sag Channel, extension of Main Channel, power plant, intercepting sewers, pumping stations, docks and other collateral works so that it appears that the total expense of the Law Department has been about 2½ per cent of the total cost of the District's works during the past twenty-nine years. This would seem to be a small expense if the Law Department work had been incidental. Inasmuch as all of its legislative and construction work and contractual obligations have been predicated upon the opinions of the Law Department, upon which responsibility has rested, the total cost of that Department is decidedly moderate.

ATTORNEYS FOR THE SANITARY DISTRICT OF CHICAGO

S. S. GREGORY:
Elected February 1, 1890;
Declined June 25, 1890.

GEORGE W. SMITH:
Elected July 12, 1890;
Resigned June 13, 1891.

S. S. GREGORY and JOHN P. WILSON:
Special Counsel in 1890.

ADAMS A. GOODRICH:
Elected June 13, 1891.

JOHN P. WILSON:
Continued as Counsel.

MR. GOODRICH:
Resigned February 24, 1892.

ORRIN N. CARTER:
Elected February 24, 1892;
Resigned August 15, 1894;
Retained as Special Counsel.

JOHN P. WILSON:
Continued as Counsel, 1892.

THOMAS A. MORAN:
Special Counsel, 1893.

GEORGE E. DAWSON:
Elected August 15, 1894;
Resigned December 4, 1895.

CHARLES S. DENEEN:
Elected December 4, 1895;
Resigned April 1, 1896.

WILLARD M. McEWEN:
Elected April 1, 1896;
Resigned February 3, 1897.

FREDERICK W. C. HAYES:
Elected February 3, 1897;
Died November 1, 1898.

FRANK HAMLIN:
Elected November 16, 1898;
Declined November 30, 1898.

CHARLES C. GILBERT:
Elected November 30, 1898;
Resigned December 3, 1900.

JAMES TODD:
Elected December 5, 1900;
Resigned December 13, 1905, while Mr Todd was engaged in the case of Missouri vs. Illinois. SEYMOUR D. JONES was Acting Attorney for the District.

E. C. LINDLEY:
Elected December 13, 1905;
Resigned July 10, 1907.

JOHN C. WILLIAMS:
Elected July 10, 1907;
Resigned December 5, 1912;
Continued as Special Counsel in certain cases.

EDMUND D. ADCOCK:
Elected December 5, 1912;
Resigned January 2, 1919;
Retained as Special Counsel in Lake Level Litigation by Board order.

C. ARCH WILLIAMS:
Elected January 2, 1919.

Respectfully submitted,

C. ARCH WILLIAMS, Attorney.

September, 1919.

TO THE HONORABLE, THE PRESIDENT AND BOARD OF TRUSTEES OF THE SANITARY DISTRICT OF CHICAGO.

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