File No. 530 Centinued.

OPINION.

the City Surveyor is called upon to perform are not all acts requiring the services of a surveyor in the City Engineer's Department, but only such acts as may be reasonably required of the Surveyor by the City Engineer. I am unable to give any effect to the words underlined, except on the theory that the City Engineer is clothed with the discretion as to whether he will or will not require the City Surveyor to do the work in question.

I think that force is given to this view by the fact that the City Surveyor is not paid a salary, but is paid by fees. If he was paid a salary, then there would be no object in requiring him to do only such work as might be reasonably required of him by the City Engineer. His salary would be a fixed sum, no matter how much or how little work he did, and he should in that case be called upon for all surveying work; but, since he is paid by fees, the reason for requiring him to do not all work, but only such work as might be required of him, is apparent in a case like the present, where the City Engineer is perfectly capable of doing the work himself without extra cost to the City.

Again, if this view is not correct, I am unable to give any effect to the word "reasonably". The City Surveyor is not to do all work required of him by the City Engineer, but only such work as may be reasonably required of him. I do not know what this can mean, unless it means that the City Engineer cannot unload an unreasonable amount of work upon the City Surveyor, and, if he does so, that the City Surveyor can refuse to do it. What is a reasonable amount of work may be a difficult question, but we are not troubled with that difficulty here. The only point we are concerned with is that the City Surveyor is only to do such work as is reasonably required of him, whatever that may be; and this must mean that what is unreasonable the City Surveyor may refuse to do, and the City Engineer would have to arrange for elsewhere. Here, then, is a recognition of the fact that all work is not necessarily to be done by the City Surveyor.

The fact that Section 5 provides for the compensation of the City Surveyor for establishing the grades of streets does not affect the question. Section 5 fixes the fees for the duties performed by the City Surveyor "under this Article". Of course, the City Surveyor may be required to do the work, and, therefore, it is eminently proper that the fees for the work should be fixed; but if he is not required to do the work, then the fact that the fees are provided for in cases where he is required to do it sheds no light on the matter.

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