

IN CHANCERY OF NEW JERSEY.

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Between	)
THE MAYOR AND AL-	)
DERMEN OF JERSEY	)
CITY,	)
Complainant,	)
and	)
PATRICK H. FLYNN &	)
THE JERSEY CITY	)
WATER SUPPLY COM-	)
PANY,	)
Defendants.	)
_____o	)

On Bill, &c.  
Final Decree.  
June 4, 1908.

This cause having come on for final hearing on pleadings and proofs, which having been read and counsel having been heard,—Messrs. George L. Record and James B. Vredenburg appearing as counsel for the complainant, and Messrs. Charles L. Corbin, William H. Corbin and William D. Edwards for the defendant, Jersey City Water Supply Company; and no one appearing for the defendant, Patrick H. Flynn, a decree *pro confesso* in this cause having been duly entered against him; and the Court being of the opinion and adjudging that the contract dated the twenty-eighth day of February, eighteen hundred and ninety-nine, between the

Mayor and Aldermen of Jersey City and Patrick H. Flynn for a new water supply, which was assigned by said Flynn to the Jersey City Water Supply Company, and the supplements thereto, ought to be specifically performed and carried into execution, and that the defendants should convey to the Mayor and Aldermen of Jersey City the water works and water supply therein provided for, upon the payment by the complainant of the contract price of seven million five hundred and ninety-five thousand dollars, less the deductions hereinafter set forth, because of delays and imperfect performance, or for other reasons;

And the Court being also of the opinion and adjudging that Patrick H. Flynn and the Jersey City Water Supply Company have not complied with those provisions of the said contract which stipulate that the supply of water delivered to Jersey City shall at all times be free from pollution; it appearing that the works, as a mechanism for the purification of the supply, are not at all times adequate and reliable, and the Court also adjudging that the defendants have not complied with said contract in that the bottom of the tunnel through the Watchung Mountain has not been leveled up and smoothed and made uniform throughout in accordance with the contract requirements; and in that the defendants have not acquired the rights of all the riparian owners on the Rockaway River below the said reservoir; and in that they have not fenced the said reservoir; and, also, in that they did not complete the work and furnish the water within the term of the said contract as extended by the contract of the thirty-first day of March, nineteen hundred and two, in the pleadings mentioned, but delayed such completion for one hundred and forty-five days beyond such term; and, also, in that the factory known as the Rag Mill at Powerville <sup>not</sup> has been removed by them, as to which Mill the Court adjudges that the

complainant is entitled to no deduction from the purchase price because of changed conditions at that place:

And the Court being also of the opinion and adjudging that the complainant must pay for the water received by it from the defendants, at the rate per million gallons specified in the said contract between the Mayor and Aldermen of Jersey City and Patrick H. Flynn, dated the twenty-eighth day of February, eighteen hundred and ninety-nine, and at the time, place, and in the manner required by said contract; and it also being of opinion that the defendant has complied with the terms of said contract in the construction of the dam at the said reservoir mentioned in the pleadings as Dam No. 1; and also, in the size of the steel pipes, tunnels and masonry conduits furnished; and also that complainant is not entitled to relief on its contention that the contract of the eighth day of July, nineteen hundred and one was not warranted by the act of March twenty-second, nineteen hundred and one; nor on the other contentions in the bill specifically set forth, except as in this decree allowed.

IT IS, on this fourth day of June, nineteen hundred and eight, on motion of Warren Dixon, of counsel with the complainant, by the Honorable Mahlon Pitney, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED, and the Chancellor doth, by virtue of the power and authority of the Court of Chancery of New Jersey, ORDER, ADJUDGE AND DECREE, that the defendants do convey and transfer to the complainant, on or before the date hereinafter fixed, the water works and the appurtenances thereof, with the water supply, water rights, lands, reservoir sites, rights of way and all easements as the same have been constructed and provided under the said contract of February twenty-eighth, eighteen hundred and

ninety-nine, and under the supplements and additions thereto, and also the rights of the defendants in the water of the Rockaway River water shed or in the water flowing, or that may flow therein, to the extent of seventy millions of gallons per day as therein provided, upon the payment by complainant to the Jersey City Water Supply Company of the contract price of seven million five hundred and ninety-five thousand dollars and upon payment of the contract price for water, delivered pursuant to the contract, less the following reductions from and abatements of the said purchase price, which it is hereby ordered, adjudged and decreed shall be made as follows:

FIRST. There shall be retained by the complainant, from the contract price, the sum of five hundred thousand dollars (\$500,000) as authorized by the contract between the City and the Company, dated July twenty-eighth, nineteen hundred and one, until the same shall become due under the terms and conditions of the said contract, after the conveyance of the water works by the said defendants to the complainant.

SECOND. There shall be retained by the complainant from the contract price, the sum of twenty-five thousand dollars, until it is adjudged by this Court whether the 72-inch pipe under the Hackensack River, part of said plant, is in accordance with the terms of said contract; and if not, then what sum shall be deducted from the contract price by reason thereof; and upon such adjudication, if the amount so retained is in excess of the amount so adjudicated, the City shall pay such excess to the Company, and if it be adjudged that said pipe is in accordance with the terms of the contract, then said retained sum shall be paid to the Company.

THIRD. There shall be deducted from the con-

tract price, for the liquidated damages by reason of the delay of the Company in the completion of the works, the sum of seventy-two thousand five hundred dollars (\$72,500), being five hundred dollars a day for each day's delay from December twenty-sixth, nineteen hundred and three, to May eighteenth, nineteen hundred and four, both said days included.

FOURTH. There shall also be deducted from the contract price the sum of eighteen thousand five hundred dollars (\$18,500), because the invert of the Watchung Tunnel was constructed with a gravel bottom, which amount the parties have agreed is a proper amount to be deducted, if any amount is to be deducted.

FIFTH. There shall also be deducted from the said contract price the sum of fourteen hundred and forty dollars (\$1,440), being one-half the agreed cost of a lawful fence around the land of the said defendant company occupied for the Boonton Reservoir.

SIXTH. Unless, before payment by the City for the water works, the Water Company shall obtain from the riparian owners below the reservoir the rights of diversion of the water to the extent of seventy million gallons per day, so far as said rights have not been heretofore acquired by the said Water Company, there shall also be deducted from said contract price the estimated cost of obtaining such rights of diversion, such costs to be hereafter determined by the Court.

SEVENTH. There shall also be deducted from the contract price the cost of establishing intercepting sewers and drains and sewage disposal works, capable of substantially preventing the contamination of the Rockaway River above the Boonton Reservoir from the sewage of the City of Dover, the

City of Boonton, and the Village of Hibernia; which cost shall be hereafter determined by the Court.

In lieu of and as a substitute for all or any of the sewers and sewage disposal works above referred to in this paragraph, the defendant Company may, within ninety days from the date hereof, present other plans or devices for maintaining the purity of the water delivered by the Company to the City throughout the year, under present conditions, and estimates of the cost of the works now necessary therefor; and both parties may present evidence touching the efficiency of such plans or devices to produce the necessary results, and the cost thereof; and the defendant company may, pending the taking of testimony, with the leave of the court, upon notice, present amendments and modifications of such plans and devices.

AND, IT IS FURTHER ORDERED, ADJUDGED and DECREED, that the Jersey City Water Supply Company is entitled to be paid by The Mayor and Aldermen of Jersey City, at the time fixed for the conveyance aforesaid, the sum of seven million five hundred and ninety-five thousand (\$7,595,000.00) dollars, less the deductions aforesaid; and, it appearing that after the filing of the opinion in this suit, and before the signing of this decree, to wit, on June 1st, 1908, the City paid to the Company the sum of three hundred and sixty-two thousand six hundred dollars and sixty-eight cents (\$362,600.68), balance of principal and interest due at the contract rates for the water supplied by the Company to the City up to February 23d, 1908, the Court having announced, and it having been adjudged, that the City was obliged to pay the same. IT IS ORDERED, that the Company is entitled to be paid by the said City for the water already delivered since February 23d, 1908, and, if pure and wholesome, for the water that may hereafter be de-

livered to the City, at the aforesaid contract prices per million gallons up to the day hereinafter fixed for the conveyance and transfer aforesaid or up to the day of such conveyance and transfer, if made prior thereto; and, in default of such payment within the time herein limited for performance as aforesaid, the said defendant may apply to the Court for a dismissal of the complainant's bill, or for such other relief as may be equitable.

AN IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that if the complainant shall fail to make payments to the Jersey City Water Supply Company for said works, as by this decree required, within four months after the amount of all said deductions and reservations out of the contract price shall have been determined by the decree of this Court, in case there be no appeal within forty days from said decree, and, if there be an appeal, within four months after the determination of such appeal, then the privilege given to the complainant under said contract dated February twenty-eighth, eighteen hundred and ninety-nine, to purchase said water works and appurtenances, under the option exercised by it, shall thereby be terminated, and the said defendant may apply to this Court for a dismissal of the bill, or for such further and other relief as may be equitable.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that it be referred to the Honorable William J. Magie, one of the Special Masters of this Court, to ascertain and report upon the cost of sewers and of sewage disposal works, and of intercepting sewers or drains necessary to substantially prevent the contamination of the waters of the Rockaway River from the sewage of Dover, Hibernia and Boonton, and also to investigate and report upon other plans and devices as alternative remedies presented by the defendant

Company for delivering water to the City in a pure and wholesome condition throughout the year, under present conditions; and upon the cost of the works now necessary therefor; and also the cost of obtaining from the riparian owners below the Boonton Dam, rights of diversion of water to the extent of seventy million gallons per day, so far as said rights have not been heretofore acquired by said Company.

And the Master may use in his inquiry, the evidence already offered in the cause, and may receive further evidence on the matters herein referred to him, and shall report thereon to this Court with all convenient speed.

And leave is hereby reserved to either party to apply to the Court, at the foot of this decree, for such further order or decree as may be necessary to carry this decree into effect, or to prevent forfeiture arising out of the inability of the City to raise and pay the purchase price within the time fixed by the decree by reason of litigation not instituted at the instance or request of said City based upon any of the resolutions or proceedings taken by said City or any of its boards or officers to raise and pay the purchase money.

AND IT IS FURTHER ORDERED that the defendants pay to the complainant the costs of this suit, including three-quarters of the expense of procuring a copy of the stenographer's notes and three-quarters of the cost of printing.

Respectfully advised,  
FREDERIC W. STEVENS,  
V. C.

MAHLON PITNEY,  
C.