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location, a proper part of a completed plant, but the court of errors and appeals, because it was not expressly required by the terms of the contract, held otherwise. Here the court is asked to go farther. It is sought to compel the company to furnish, not what might be thought to be a proper part of a completed plant, but a sum of money to defray the costs of a part of its operation, in the absence of any contract on its part to pay such costs.

Mr. James J. Murphy and Mr. James B. Vredenburg, for the appellant.

Messrs. Collins & Corbin, for the respondent.

PER CURIAM.

That portion of the decree which is involved in the present appeal will be affirmed for the reasons stated in the memorandum opinion delivered by the vice-chancellor in the court below.

For affirmance—THE CHIEF-JUSTICE, GARRISON, SWAYZE, TRENCHARD, PARKER, BERGEN, MINTURN, BOGERT, VREDEBURGH, CONGDON—10.

For reversal—None.

THE MAYOR AND ALDERMEN OF JERSEY CITY, respondents,

v.

JERSEY CITY WATER SUPPLY COMPANY, appellant.

[Argued March 22d, 1911. Decided July 11th, 1911.]

On appeal of Jersey City Water Supply Company from a decree of the court of chancery advised by Vice-Chancellor Stevens confirming a master's report, and an order supplemental thereto,

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advised by Vice-Chancellor Stevens, who delivered the following opinion:

I have carefully considered the petition presented by the water company asking leave to introduce evidence relative to the release of the Morris Canal Company to Jersey City, dated May 12th, 1909. The question is of much importance, and the construction of the supplemental contract of July 8th, 1901, as far as it bears upon that release, not without difficulty. It seems to me that this new controversy, involving the large sum of \$500,000, should be determined on bill or supplemental bill, and that the signing of the final order or decree in this suit should not be postponed until the final determination of that controversy. The bill was filed August 1st, 1905. The final decree was made on June 4th, 1908, and except as to an unimportant detail, affirmed on March 18th, 1910; and so it appears that the question of the sufficiency of the release which it is now sought to interject into the present suit, is one which did not arise until nearly a year after the issues made by the pleadings had been passed upon in this court. To introduce at this stage of the cause an entirely new issue, whose final determination will necessarily consume much time, would be not only irregular but unjust to complainant, whose rights have been established by the court of last resort.

Messrs. Collins & Corbin, for the appellant.

Mr. James J. Murphy and *Mr. James B. Vredenburg*, for the respondents.

PER CURIAM.

So much of the decree as is involved in the present appeal will be affirmed upon the opinion delivered by the vice-chancellor in the court below.

We think that the petition of the appellant, praying that the making of the final decree in this cause be withheld until the determination of the question whether the \$500,000, authorized by the third item of the contract between the parties to be retained by the city until the performance by the contractor of one or the

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other of the conditions therein recited, is now due and payable to the contractor, was properly refused; and we rest this conclusion upon the grounds set forth in the memorandum opinion of the learned vice-chancellor delivered in disposing of the application.

The order denying the application will also be affirmed.

For affirmance—THE CHIEF-JUSTICE, GARRISON, SWAYZE, TRENCHARD, BERGEN, MINTURN, BOGERT, VREDENBURGH, CONGDON, SULLIVAN—10.

For reversal—PARKER—1.

MARY K. HAMMELL, respondent,

v.

HENRY R. BARRETT, appellant.

[Submitted March 27th, 1911. Decided November 20th, 1911.]

On appeal from a decree of the court of chancery advised by Vice-Chancellor Leaming, whose opinion is reported *ante p. 96*.

Messrs. Carrow & Kraft, for the appellant.

Mr. William Harris, for the respondent.

PER CURIAM.

So much of the decree as is involved in this appeal will be affirmed for the reasons stated in the opinion filed in the court below by Vice-Chancellor Leaming.