

# WATER AND GAS REVIEW.

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## WATER AND GAS REVIEW.

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Communications are invited, and all requests for special information on the subjects treated by this journal will receive careful attention.

REPORTS of continued disagreements, of charges and countercharges of neglect and incapacity, of discordant meetings and investigations, continue to be made public regarding the management of the Brooklyn branch of the Department of Water Supply, Gas and Electricity. Just now an investigation is under way in which one of the officials of the Department is charged with neglect of duty in failing to have certain ponds which contribute to the water supply properly cleaned. That water from these ponds—some of which had not been drawn upon for several years—had been turned into the mains in a condition dangerous to public health. The necessity for calling upon this hitherto abandoned water supply was caused by the long drought during the months of May and June and the excessive consumption and waste of water in the borough. We read also of expensive filtering plants about to be erected for use at some of these water sources and that when completed an additional daily supply of 10,000,000 or 15,000,000 gallons will be secured.

Of what permanent benefit this will be it is impossible to imagine, in view of the fact that these additional millions of gallons will quickly go the way of the rest of the supply and the old cry of water famine will once more be heard.

HOW much better it would be if the money expended for these filtering plants—experimental and otherwise—could be invested in meters to be placed where it is known more millions of gallons

in the aggregate are wasted than the filtered pond supplies could furnish if their capacity was doubled. Then there would be no necessity for using waters that are, so it is charged, impregnated with all kinds of deleterious matter and that no system of filtration can make thoroughly wholesome. It is wonderful to observe with what equanimity the press and public receive the proposition to spend large tentative, when, if there was any indication that even half the amount was to be invested in meters to be applied on the services of wasteful consumers, there would be talk of indignation meetings to resent the indignity on the personal rights of the citizen, and all the rest of the claptrap that an ignorant public and uninformed newspapers are so prone to make conspicuous on such occasions.

MAYOR M. J. CHARLEY, of LaSalle, Ill., in a message to the Council of that city under date of May 1, 1902, refers in very forcible language to the large per capita consumption and waste of water in that city, and says that "the best and surest way to check water waste is by placing meters." The views of the Mayor on this important question are sound ones, and they are, in part, as follows: "I desire to call your attention to the large per capita consumption of water in our city.

During the past eleven months there was 526,230,950 gallons of water pumped, which is equal to an average monthly pumpage of 47,839,177, or a daily pumpage of 1,594,639 gallons. Estimating the number of consumers of city water at 8,000, this gives us a daily per capita consumption of 199 gallons.

This shows a great and unnecessary waste of water, and steps should be taken to reduce it. There is not only the additional cost of pumping this wasted water to be considered, but in a city situated as we are, with a limited supply of water, it is of prime importance that all unnecessary waste of water be cut off. The free and legitimate use of water should be encouraged as a sanitary necessity, but the willful waste of water should be stopped.

To show the financial loss to the city by reason of this waste, let us consider the records of the water department according to the pumpage quoted above. The average amount of water pumped per month is 47,839,177 gallons; taking 10 cents per 1,000 gallons as an average charge, if the water

were all paid for by meter measurement, we would have a revenue of \$4,533 per month, or a yearly revenue of \$54,396. The records of the water department show the yearly revenue to be about \$22,000. In other words, the city has supplied to the consumers \$33,000 worth of water for which it has received no compensation. These figures cannot be taken as accurate, but they serve to show the great loss to which the city is put by water wasted.

It has been the experience of every municipality that has had to deal with the water question that the average water consumer will allow his faucet to run open, and will otherwise waste water, unless some restraint is placed on him, or he is made to feel that he will be put to a financial loss by reason of such waste. So long as the city bears the expense he will cheerfully waste water, but make him bear the expense of the water personally, and he will at once see to it that the waste is stopped. Now, the best and surest way to check water waste is by placing meters on all consumers. Every intelligent person will agree that the only way to sell a commodity is by actual measure of the article sold, and water is no exception to this rule.

From statistics at hand, based on the experiences of other cities, we have no reason to doubt that by the universal adoption of meters the per capita consumption of water could be reduced from 199 gallons, as it is now, to 50 gallons, or possibly 30 gallons per capita per day.

While there is no doubt that the waste of water could be greatly reduced by the use of meters, still the question as to the proper course to pursue in working to this end is one which requires careful and mature consideration. We have heretofore placed meters at the expense of the consumer. Whether this is the better way to proceed in the future, or whether the city should bear the expense of placing the meters, or whether a fund should be set aside for the purchase of meters, which would be placed on the services, and the cost charged to the consumer, but distributed over a long period of time, so that the installment payments would be small, is one question which should be met and decided by your honorable body.

To this end I will suggest that your water committee, or, preferably, a committee of the whole Council, consider these questions and recommend the best course to pursue."

SUPERINTENDENT R. C. P. COGGESHALL, of the New Bedford, Mass., Waterworks, reiterates, in his annual report for 1901, the views expressed by him in several former annual reports of the benefits of the meter system. Mr. Coggeshall is no late convert in this respect, but is widely known among waterworks men as a long-time advocate of the merits of the meter. His excellent professional

able opinion of Judge Woods, delivered on the motion for a rehearing in *City of Eau Claire vs. Payson*, 48 C. C. A. 608, 109 Fed. 676; *Smith vs. Bourbon Co.*, 127 U. S. 105, 111, 8 Sup. Ct. 1043, 32 L. Ed. 73.

The allegations in the bill, so far as they seek to prevent a forfeiture of the water company's franchise, are certainly sufficient to entitle the complainant to relief in a court of equity; for, unless restrained by the courts, it is charged that the water company's franchise will be annulled and thereby its property, which is the principal security held for the benefit of complainant as the guarantor of the water company's bonds to the amount of \$2,000,000, made worthless. The numerous citations hereinbefore referred to, and which it is unnecessary here to repeat, are conclusive on this question, for they all hold that a court of equity has jurisdiction to prevent such wrongs if in violation of the constitutional provisions. The action of the city, even if void, is certainly a cloud upon the franchise of the water company.

But it is claimed that complainant is not the proper party to maintain this action; that the water company or the trustee of the mortgage are the only parties who can be heard to complain. The allegations in the bill are that complainant is the guarantor of the \$2,000,000 bonds issued by the water company to the trust company and secured by the mortgage; that it became such guarantor in reliance upon this mortgage security, to which in case it was required to pay the debt, or any part thereof, it would become subrogated by operation of law; that it has now paid, as such guarantor, \$88,000; that, by reason of the guaranty and the payment of the interest by the guarantor as it matured, there has been no default; and that the trustee of the mortgagee, relying upon complainant's guaranty to pay promptly the interest and principal as it matures, takes no steps to prevent this wrong. It is further charged that, as there has been no default so far as the bondholders are concerned, complainant, having promptly paid the interest, as the guarantor of the water company, the trustee can institute no proceeding to foreclose the mortgage. Upon such a state of facts it would be strange if a court of equity could grant no relief. The creditor who receives securities for a guaranteed debt holds such securities in trust for the guarantor, and upon payment of the debt by the guarantor he is entitled in equity to subrogation to all securities held by the creditor. *Prairie State Nat. Bank vs. United States*, 164 U. S. 227, 231, 17 Sup. Ct. 142, 41 L. Ed. 412. Nor is it always necessary that the debt should be paid before the guarantor can apply to a court of equity for protection against the loss or destruction of the security. Lord Redesdale says:

"A court of equity will also prevent injury in some cases by interposing before any actual injury has been suffered, by a bill which has sometimes been called a bill quia timet, in analogy to proceedings at the common law, where in some cases a writ may be maintained before any molestation, distress, or impleading. Thus a surety may file a bill to compel the debtor on a bond in which he has joined to pay the debt when due, whether the surety has been actually sued for it or not; and upon a covenant to save harmless, a bill may be filed to relieve the covenantee under similar circumstances." *Redes. Pl. 148*, cited and followed by the supreme court in *City of New Orleans vs.*

*Christmas*, 131 U. S. 191-212, 9 Sup. Ct. 745, 33 L. Ed. 99; *Story*, Eq. Jur. Sec. 826.

The trustee may refuse to take any steps to prevent the destruction of the security, by reason of the fact that its debt is perfectly secure, owing to complainant's guaranty. In such case the guarantor cannot compel the creditor to exhaust the security of the principal debtor before calling on it for the debt. *Gary vs. Connon*, 38 N. C. 64; *Miller vs. White*, 25 S. C. 235; *Armstrong vs. Poole*, 30 W. Va. 266, 5 S. E. 257; *Hardy vs. Overman*, 36 Ind. 549; *Roberts vs. Jeffries*, 80 Mo. 115; *Allen vs. Woodard*, 125 Mass. 400, 28 Am. Rep. 250; *Bank vs. Wood*, 71 N. Y. 405, 27 Am. Rep. 66. The *Arkansaw Water Company*, the principal debtor, being alleged in the bill to be insolvent, may decline to incur any expense of litigation, for the reason that its entire property is mortgaged for its full value, and it has, therefore, nothing to lose. Upon what principle of equity, then, should the guarantor, the only party who, by the action of the city, is liable to be the loser, be denied relief by a court of equity? How are its rights to be protected if the doors of the courts of equity are closed to it? It must not be overlooked that the object of this bill is not to take the mortgaged property from the trustee or the mortgagor and have it turned over to complainant as an indemnity for its future liability as a guarantor. This could only be done after it has paid the debt. *McConnell vs. Beatty*, 34 Ark. 113. All it asks now is to preserve the mortgaged property from threatened destruction, or, in the language of Lord Redesdale, supra, "to prevent injury to it by interposing, before any actual injury has been suffered, by a bill which has sometimes been called a bill quia timet, in analogy to proceedings at the common law." In my opinion, the guarantor is entitled to protection of the property to which, upon payment of the debt, it would be entitled to subrogation, whenever it has shown that, unless prevented by the courts, that property is liable to be destroyed and the guarantor left without any security for his liability. *McCormack's Adm'r vs. Irvin*, 35 Pa. 111. The rule would be different if complainant sought to deprive the creditor of the security. In such a case it must first make payment of the entire guaranty, and until that is done it has no right to claim the possession of the security. The wrongdoer in this case, according to the allegations of the bill, the city, cannot claim the same privileges which the mortgagor or mortgage creditor could. But it is urged on behalf of the city, and numerous authorities are cited to sustain the contention, that the assignee or subrogee of a part of an entire security can maintain no action to recover the part due him. This is true, but the object of this bill is not to have the security split up, and thus subject the city to numerous actions instituted by different assignees or subrogees. The relief sought by the bill is to prevent the cancellation and repeal of the franchise of the water company, which is the most valuable part of the security conveyed for a debt guaranteed by the complainant. Besides, the trustee, as well as the water companies, are parties to this action, and upon final hearing the rights of all the parties can be fully adjudicated and settled so as to prevent any further litigation.

The argument took a wide range and many other questions were ably presented by counsel, but the views taken by the court as herein expressed make it unnecessary to

pass upon them at this stage of the proceeding.

The demurrer to the bill will be overruled, with leave to defendant to answer the bill within such time as counsel may agree upon; otherwise within 60 days.

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#### EDITORIAL.

(Continued from page 6.)

gotten. Blue water gas is worked in gas engines; but with this gas the number of heat units only runs to about 300, which is exactly double that of Dowson gas. But, on the other hand, blue water gas is much more expensive than Dowson gas; and the same economy cannot be got with it as when using weaker gas. With coal gas at 1s., he is certain the field will be considerably extended for motive power; and even if coal gas engineers cannot get down to what the steam engine is doing, the convenience, uniformity, and certainty are great points in their favor. The whole thing, however, turns on the question of cost. He informed Mr. West that he is right in his calculation as to 1 cubic foot of Manchester gas being about equal to 5 cubic feet of Dowson gas. Mr. Clerk does not think America is ahead of us in this matter of gas engines. The Continent is a little; but he is of opinion that they will not occupy the position long."

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#### WATER SUPPLY OF THE CITY OF KINGSTON.

The City of Kingston, N. Y., with a population of 25,000 persons, is now the possessor of a perfected gravity system of water-works which furnishes to its people a supply of water, copious, un-failing, of high pressure and unsurpassed in purity, and it has been deemed desirable to publish this brief history of the events culminating in the completion of the works, together with an illustrated description of the same.

During the first dozen years of its existence, the City of Kingston had no water system. The inhabitants depended upon wells for their drinking water, while cisterns furnished them with a precarious supply for washing purposes. The Tannery brook—now so small that even the frogs have forsaken it, was the source of the water used for sprinkling streets. The necessity of improving this unsanitary and generally unsatisfactory condition of affairs was constantly agitated, but when the question was brought up at a special election, the voters decided not to build a water system at municipal expense. A charter was, however, granted to a private corporation.

##### THE KINGSTON WATER COMPANY.

The Kingston Water Company was organized on March 12, 1883, with a capital stock of \$300,000. They selected the Sawkill as the most desirable source of water, for the same reasons which make it the best to-day—the fact that it drains a region which is likely to remain wild land through most of its extent, insuring the water from contamination, and the height of pressure which is provided, being ample for fire purposes and for the running of motors.

This original system was far from being perfect. Its storage capacity was inadequate, so that in periods of drought the water was not only scarce, but offensive to taste and smell. The filters were not prop-

erly constructed and eventually became worse than nothing. An accident to the single pipe which conveyed the water to Kingston meant the shutting off of the entire service for an indefinite period. The service was altogether very unsatisfactory. In the summer of 1893, Cooper's Lake was tapped to increase the supply, and in the following year it was leased for a term of years.

As time passed, it became evident that municipal ownership was the only solution to the problem of securing for the city such a water supply as it ought to have. In response to public sentiment, the State legislature, on May 27, 1895, passed a law, which was signed by the Governor, entitled, "An act to provide for supplying the City of Kingston with pure and wholesome water." This statute provided for the appointment by the mayor of five water commissioners, who were given large powers. Mayor David Kennedy made the following appointments: John W. Searing, to serve five years; John McEntee, to serve four years; Urban Hamburger, to serve three years; Charles W. Devo, to serve two years; Samuel D. Coykendall, to serve one year.

The board of commissioners organized with Mr. Coykendall as president and Mr. Searing as secretary. The various changes in membership and officers which followed are summarized elsewhere in this pamphlet.

The commissioners had to choose between two plans. One of these involved the construction of an entirely new system, taking water from the Esopus creek at Bishop's Falls. The other was to purchase the system of the Kingston Water Company, already referred to. After careful investigation, the latter course was selected, and on March 1, 1896, the city entered into possession, having effected the purchase for \$468,750.

Bonds were issued by the city for \$600,000, and in July, of 1897, an additional issue of bonds to the amount of \$150,000 was decided on. The amount thus obtained in excess of the cost of the system was devoted to making improvements which have brought it up to its present high degree of perfection. The work was completed in September, 1900.

The Sawkill, the principal source of the city's water, has its beginning as an outlet of Echo Lake, sometimes called Shue's Lake—a pretty basin of water located in the Catskills in a valley between the towering peaks known as the Overlook and Indian Head. Its elevation is about 3,000 feet above the sea level, and its privacy is so well protected by thick forests, steep mountains and bad roads that comparatively few persons have ever seen it. From this lake, which is a twenty mile drive from Kingston, the Sawkill rushes down, constantly growing from the influx of numerous rills, too small to have names, until, after traversing about eight miles, its waters are arrested by a dam and thrown together into the artificial lake called Reservoir No. 2. This reservoir did not exist in the days of the Kingston Water Company, but was constructed by the commissioners to increase the storage facilities. It was finished in the fall of 1897, but was not used as a regular supply until the spring of 1898. It feeds a 20-inch main which is about nine miles long. The storage capacity of this reservoir is 45,000,000 gallons.

The property purchased for Dam and

Reservoir No. 2, contains 147.38 acres. About 12½ acres of this is covered by the water of the reservoir, the balance is in farm and woodland, needed to control the banks and approaches to the water. Each reservoir of this system requires the constant care and attention of one man, a resident, superintendent or keeper. His services may be called for at any hour of the day or night. He has gates and screens to manage, keeps watch for leaks or trespass, and has a general supervision and oversight of the property.

Each of these keepers is provided, for mutual convenience, and in part payment for services with a house and garden located on the premises. At Reservoir No. 2, this house was included in the purchase of the Hiram Bovee farm and occupies part of the 147.38 acres above mentioned. The house and outbuildings have been thoroughly repaired and made comfortable.

Two and one-half miles farther down the Sawkill is Reservoir No. 1, with a storage capacity of 65,000,000 gallons. It feeds an 18-inch main which extends 6.87 miles and supplies that portion of the city below the three points mentioned in the preceding paragraph. It will be perceived that there are two independent mains to the city, and in case of accident to one they can be connected at any one of four places, viz.: (1). Just below Reservoir No. 1; (2). At a point on the north bank of the Esopus Creek. 2½ miles from Kingston; (3). At a point on the south bank of the Esopus Creek just opposite the one last mentioned; (4). At the corner of Albany and Manor avenues, within the city limits.

These two reservoirs, if the people of Kingston never wasted water, would be amply sufficient to supply the city's needs, but waste cannot be prevented altogether, and there is always danger of a repetition of the great drought of 1900. In order to provide a water supply which cannot be exhausted by any conceivable extravagance, the Commissioners obtained by purchase and construction the Cooper's Lake Reservoir, known as Storage Reservoir No. 3.

In the year 1893 the Kingston Water Company was forced to purchase the water of Cooper's Lake, and in the following year it made a contract with the principal owner, William F. Cooper, covering similar purchases for a period of seven years. This privilege, of course, went to the Water Commissioners with the transfer of the system, and the Commissioners, in June, 1897, purchased the property rights of Mr. Cooper and three other owners of land adjoining the lake. This accomplished, the Commissioners proceeded to build a new dam five feet higher than the old one, increasing the area of the lake's surface from 65 to 80 acres, and enlarging its storage capacity from 50,000,000 to 200,000,000 gallons. This alone is sufficient to supply the city for over two months. The enlargement of the lake necessitated the rebuilding of the public highway along the southern side of the lake for about 1,200 feet. The lake is situated a few miles back of the village of Bearsville. Its waters, when allowed to pass through the gates, follow a natural channel to the Sawkill. Its banks have been stripped of all trees, brush and vegetation other than grass, so as to preserve its waters from decaying substances.

To make assurance doubly sure, the springs which feed Cooper's Lake have been reinforced by the Mink Hollow Creek. This

pretty brook flows through the valley from which it derives its name. It is the sort of stream which artists and trout fishermen see in their dreams. A small affair in dry weather, it makes a great showing in wet weather. At this point a 12-inch main begins, through which the water can be diverted, when required, to Cooper's Lake, not only increasing the quantity of water stored, but improving and freshening it. During the summer of 1901 it was found unnecessary to draw water from the Mink Hollow stream, or Cooper's Lake, as Reservoirs No. 1 and 2 furnished an ample supply.

#### THE FILTERING PLANT.

Just below Reservoir No. 1 stands the Filter House, which, to most people, is the most interesting feature of the system. It is a two-story structure 55 feet by 62 feet, 7 inches, built of blue stone, ashlar work, with a concrete floor. The building contains eight pressure filters, each 8 feet in diameter and 20 feet in length, the shells being made of tank steel 9-16 of an inch in thickness, with sheet steel heads 11-16 of an inch thick, being capable of withstanding an internal pressure of 200 pounds to the square inch. They are of the kind manufactured by the New York Continental Jewell Filtration Co., of New York City, and are guaranteed collectively to deliver 4,000,000 gallons of clear, pure water every twenty-four hours. Four of the filters supply each of the two mains leading to the city. On the upper floor of the Filter House are 72 valves, by means of which all operations are controlled. Two large Venturi meters are connected with the mains, and, by means of clockwork, register, at intervals of ten minutes, the quantity of filtered water which passes down to the city. These meters are mechanical marvels. They work upon the principle that an increase or decrease in the flow of water will cause corresponding variations in pressure.

To the average citizen who has not followed the tremendous progress made in recent years in the science of cleansing water, the operation of these filters is astonishing. In the bottom of the cylinders, filling two-thirds of their capacity, or more, are layers of crushed quartz, white sand and coke, the three substances proved by experience to be best adapted to the purpose. The water from the reservoirs runs into the top of the cylinders, is forced by gravity through the filtering substances, and emerges at the bottom, every particle of dirt being eliminated. In the bottom of each cylinder are a number of brass tubular strainers, filled with gravel, each piece of which is about as large as a pea. These prevent the sand from passing out with the filtered water. The unfiltered water, when seen by itself, looks sufficiently clear to the untrained eye, except after violent rains, but, when it is compared with a glass of filtered water, it appears cloudy in comparison.

It should not be forgotten that water may be as clear as crystal and more pleasing to the taste than nectar, and still be utterly unfit to supply the varied needs of a city. It may be charged with salt, limestone, gypsum or some other mineral substance, destroying its usefulness in the laundry or for steam boilers, or it may contain disease germs invisible to the eye, but numerous enough to decimate the inhabitants of a metropolis. A perfect filter must provide

protection against both of these possibilities, and, fortunately, researches in chemistry have discovered the necessary ways and means. So far as the Sawkill water is concerned there is no necessity of removing mineral matter, since it is as "soft" in its original condition as any one could wish. However, it is inevitable that it must contain a certain portion of silt—those fine earthy particles which cannot be caught by sand or coke, and, in spite of all precautions, it is not impossible that at some time bacteria might get into the water. To forestall any such event, about one-twelfth of one grain of sulphate of alumina is introduced into each gallon of water before it passes through the filtering substances. This sulphate is decomposed by the bicarbonate of lime present in the water, thereby forming sulphate of lime and setting free hydrate of alumina. The latter is a white, gelatinous and transparent substance which combines with such objectional matter as silt and bacteria and forms a coagulum, so that all are arrested by the sand, etc., on the bed of the filter. Thus, it is certain that no offensive substances, even if they get into the Sawkill, can ever get through the filters and into the mouths of consumers of water in the City of Kingston. The chemical used, after performing its duty, remains on the filter bed until it is washed to the sewer, and no trace of it can be discovered, even by analysis, in the filtered product.

Under ordinary conditions, each filter is cleansed once in every 24 hours, but when heavy rains have increased the turbidity of the water, the process is gone through with two or three times a day. This is accomplished by shutting the water off from the inlet, above the filtering material, and causing the stream to enter the filter at the bottom. The water is forced up through the filtering substances, stirring them up thoroughly, loosening all accumulations of dirt and traces of chemicals, and carrying them through a waste outlet connecting with a sewer. After ten minutes of this washing the filter is as clean as it was in its original condition. The filtering substances need to be renewed about once in two years.

#### ANOTHER SETBACK FOR CLANDESTINE USERS OF WATER.

RIGHT OF THE CITY TO RECOVER FOR WATER ILLEGALLY TAKEN FROM ITS MAINS AFFIRMED—SIMILAR TO THE NEW YORK CASE REPORTED ON PAGE 9.

CITY OF MILWAUKEE VS. HERMAN ZOEHLRAUT LEATHER CO.

(*Supreme Court of Wisconsin. April 22, 1902.*)

*Municipalities—Water Supply—Clandestine Taking of Water—Recovery—Capacity to Sue—Authorization of Attorney—Pleading.*

1. When a city has authority to maintain water-works and furnish water to consumers, that it is a municipal corporation does not affect its right to recover for water clandestinely taken from its mains.

2. Where water is clandestinely taken from the mains of a city, that the city has

established water rates, and is empowered to collect such rates from consumers as taxes are collected, does not prevent its suing by way of an action for conversion.

3. Milwaukee City Charter (Laws 1874, c. 184, subc. 3, sec. 5) provides that the city attorney shall conduct all the law business in which the city shall be interested, when so ordered by the common council; and by chapter 184, subc. 1, sec. 1, the city may sue and be sued. *Held* that, in an action by the city, the failure of the complaint to allege that the attorney had been ordered to bring the suit did not render the complaint demurrable, as not showing the city to have legal capacity to sue, since, if such authorization were necessary, its absence would not affect the city's capacity conferred by section 1.

4. If such authorization were necessary, the objection should have been raised by answer.

Appeal from circuit court, Milwaukee county; Eugene S. Elliott, Judge.

Action by the city of Milwaukee against the Herman Zoehrlaut Leather Company. From an order overruling a demurrer to the complaint, defendant appeals. Affirmed.

This is an action to recover the value of water alleged to have been wrongfully and clandestinely taken from the water mains of the city by the defendant. The complaint alleged, in substance, the corporate character of the city as a municipal corporation, and that it was by its charter empowered to erect and maintain water-works for supplying pure water to the inhabitants of said city; that in pursuance of said power the city had erected and maintained water-works, and had for many years furnished water to the inhabitants of said city, for domestic or manufacturing purposes, through pipes or mains laid in the streets thereof; that the defendant, a domestic manufacturing corporation, for years had maintained and operated a tanning business upon certain lots adjoining certain streets of said city, upon which streets water mains existed; that in September, 1884, the plaintiff city adopted certain rules and regulations governing the supply and use of said water, and also fixed certain rates for such use, which rules, regulations, and rates are attached to the complaint as exhibits; that the defendant commenced about the 1st day of January, 1893, to wrongfully take and use water from the said water mains, and continued to take and use the same up to the 7th day of January, 1901, by means of connections wrongfully made by the defendant with the said water mains without the knowledge of the said city; that the amount so clandestinely taken and used by said defendant between January 1, 1893, and February 13, 1899, was 6,143,700 cubic feet, and the amount so taken and used between February 13, 1899, and January 7, 1901, was 1,906,150 cubic feet, and that by reason of the taking of said water the defendant became indebted to the said city in the gross sum of \$3,601.95, for which sum and interest judgment was demanded. The defendant demurred to the complaint upon the general ground of insufficiency of the facts, and upon the further ground that it appeared that the plaintiff had no authority to sue, in that the common council of said city had not authorized the commencement of the action. The demurrer was overruled, and the defendant appeals.

WINSLOW, J. (after stating the facts). This is an action to recover the value of

"stolen waters." Whether they were sweet or not, does not appear; but it is distinctly charged that they were the property of the city in its mains, and that they were clandestinely appropriated by the defendant to its own use, and have never been paid for. If the water alleged to have been taken belonged to an individual or a private corporation authorized to deal in water, we apprehend there would be no question raised as to the right of recovery. The fact that the plaintiff is a municipal corporation cannot logically affect the right to recover, so long as it is endowed by law with the power to maintain water-works and furnish water to private consumers. The water in its pipes is property, it belongs to the city, it is of some value, and it is charged to have been taken by the defendant and never paid for. This makes a complete case, on very well established legal principles. Nor can the fact that the city has established water rates, and is empowered to collect such rates from consumers as taxes are collected, affect the right to recover the value of water taken in defiance of the city's regulations. That method of payment was primarily intended for water sold by the city to consumers in accordance with its rules. Granting that this method may be used also to recover payments for water clandestinely taken and converted, it cannot logically be held that it excludes the previously existing common-law remedy by way of an action for conversion. This proposition seems too clear for argument or discussion.

Nor can the objection that the city has not legal capacity to sue prevail. This objection seems to be based upon a legal misconception. The argument in favor of the objection runs thus: The city charter provides that "the city attorney shall conduct all the law business of the corporation and of the departments thereof, and all other law business in which the city shall be interested, when so ordered by the common council." Section 5, subc. 3, c. 184, Laws 1874. It is not alleged in the complaint that the city attorney has been "ordered by the common council" to commence this action; hence the city has no legal capacity to sue. The argument is plainly a non sequitur. The city is given the power to sue and be sued, in express terms, by its charter. Section 1, subc. 1, c. 184, supra. By this provision it is fully endowed with legal capacity to sue. If its legal representative must, under the charter, be specially directed to bring an action, before he is empowered to launch the city into litigation (a point not decided), still the city's legal capacity to sue is unaffected. The objection that no such authority has been given goes simply to the attorney's authority, and the statute nowhere dignifies this objection into a ground for demurrer. If it be a good objection, it must logically be raised by answer.

Order affirmed.

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