

and that condition was attributed to the mains being improperly laid. The evidence on that point was weak, and the objection loses its force when made only after seven years service.

Tests were made as to pressure, without previous notice to plaintiffs—but to know the value of the result of such tests, all conditions as to mains—hose hydrants must be accurately known. On one occasion a valve at one hydrant was only partly open. On another occasion the valve in the coupling on the hose was partly closed. A condition at one minute—then changed—of course would not necessarily establish a general condition.

It is somewhat surprising that although there was the denial of liability on the part of the defendants, by their notice served on 9th May, 1905, the plaintiffs took no action to enforce their claim until the 8th December, 1908, when the writ in this action, No. 1, was issued, and the defendants took no action by applying for mandamus or by action for specific performance or otherwise. The defendants continued to use the water supplied by plaintiffs for municipal purposes and for fires—defective as they claimed the service to be—and defendants levied for amount of plaintiffs' claim for at least three years.

The fire committee was authorized by resolution of the council to take action in addition to serving notice—but the committee, apparently, did not deem further action than stopping payment necessary.

I find that the clauses in the contract as to maintaining the water system, create conditions subsequent to the acceptance by the defendants of the construction and installation work, and the covenant of the plaintiffs is a continuing one, protecting the town from payment of hydrant rents, if the plaintiffs make default under clause 25, according to the proper construction of that clause.

I find that the plaintiffs were not, on the 9th day of May, 1905, in default in maintaining the system so as to give reasonably the best results for fire purposes. I find that there was, on the part of the plaintiffs, a substantial compliance with the contract.

The plaintiffs are entitled to recover. There seems no reason why the plaintiffs refrained so long from taking action, and in any view of the case, the matter should have been