pense, under its general municipal powers, which is really the question here presented, In view of the legislation which followed Dean *vs.* Charlton, and the fact that it was decided by a divided court, and the general tenor of subsequent decisions, and the further fact that patented methods and processes now enter so largely into various classes and kinds of public work, we are not disposed to extend the rule of that case beyond the particular point there decided. In Hobart *vs.* Detroit, 17 Mich. 246, and Motz *vs.* Detroit, 18 Mich. 515, decided at about the same time, a contrary conclusion was reached: and in Pavement Company *vs.* Painter, 35 Cal. 699, and Burgess *vs.* Jefferson, 21 La. Ann. 143, the rule of the majority of the court in Dean *vs.* Charlton was sustained. Since then, in *re* Dugro 50 N. Y. 513, the question has been decided in conformity with Hobart *vs.* Detroit, *supra*, and other like cases; and in Yarnold *vs.* City of Lawrence, 15 Kan. 129, 131, Brewer, J., notices the diversity of judicial opinion on the question, and is inclined to favor the views of the courts of Michigan and New York. Baird *vs.* Mayor, etc., 96 N. Y. 567. In the present case there was a definite, well-settled price for the patent and specifications, at which it was held and offered to the city and all contractors, which would limit the recovery of the patentee, so that in fact there was free competition for the work and materials and all else except the patent. The city had the benefit of all the competition of which the nature of the work admitted; and in such cases, where the entire work is done at the general expense of the city, the statute ought not to be so constructed as to exclude the city from availing itself of desirable patented works or improvements, as to which there is but one price, and for which there can, in the nature of the case, be no competition, and when, for performing the work and furnishing materials, the advantage of competition is secured. While the rule of Dean *vs.* Charlton may be upheld as applied to assessments charged against abutting lots where the lot owners have the right secured to them to construct in front of their property, the improvements for or in which a patented method or process is used, we cannot see that there is any good reason to hold that the statute applies to the patents, mode, or process, when in respect to all else the statutory requirement of competition is secured. Under any other theory a municipal corporation would be obliged to forego the purchase and use of all patented implements, modes or process—a result which we cannot think the Legislature contemplated. For these reasons the order of the Circuit Court must be affirmed.

The decision is accompanied by copious notes of other cases which may be consulted in the journal from which we have quoted.

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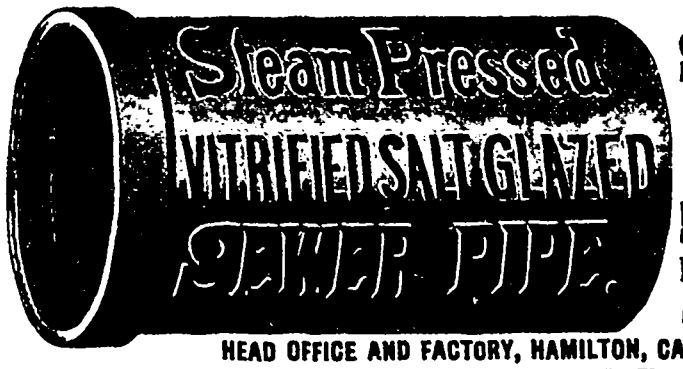

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