

"MUCH MIXED, MY MASTERS."

THE WATER-WORKS QUESTION COMPLICATED BY NEW ISSUES.

The New Metropolitan Company Was No Organized Without an Object and Its Claims and Contracts May Play an Important Part in the Coming Fight—Intricate and Interesting Legal Questions Which Must Be Decided—Confident Assertion That the Water Will Be Shut Off

Officials of the National Water-works company are not only preparing to carry out their threat of shutting off the city's water, but they are confident that the courts can not or will not interfere.

The company's real position is now made public for the first time. It may not be tenable, but it is certainly very different from anything that the city's advisers have expected to combat, and at first sight it looks more troublesome. "We can not, if we would, continue to furnish you with water," the company will say. "We are powerless to obey a mandamus or injunction should one be issued. We have no pumping house of our own and no plant. We buy our water, as any other customer might, from the Metropolitan Water company and sell it at a profit. The Metropolitan now refuses to let us have any more water until we pay what we already owe them, and we can't pay them until the city pays us. We have no money. There is no power which can compel us to buy goods from an owner who is unwilling to sell, or to pay for them when we are without the necessary funds. We are absolutely helpless in the matter. We have no water to give you and we can not get any."

The company professes to be able to establish clearly that its relations with the Metropolitan company are actually as stated. The Metropolitan, it will be remembered, is the new concern that bought only a few days ago, the property and franchises of the old Kansas company. In the property so bought were included not only the pumping stations and other plant, but all debts due the old concern, and of these debts the biggest and most important is that of the National company. It is alleged that ever since the two companies came into existence the relation of vendor and purchaser has been maintained between them. The Kansas company, it is said, kept upon its books an accurate record of every gallon of water supplied to the National and made regular charges therefor, while the National company, in its turn, can show upon its books details of all water received and payments made. The companies were no doubt owned to a great extent by the same people, but the individuality of each organization was rigidly maintained.

It is not denied that the Metropolitan is the legal successor and assignee of the Kansas company and may exercise all rights which belonged to the latter. Whether it can do any more—whether it occupies a more favorable position—is an open question. The city's counsel will insist that it does not; that it was organized solely to assist certain parties in evading their obligation and embarrassing their creditors; in short, that its organization was not brought about in good faith, and that the courts should look behind the company at the parties composing it. It is clear that this must be shown before the city can succeed.

city can succeed.

An injunction to restrain the shutting off of water must, if the company's claims can be made good, be directed against the Metropolitan company—with which the city has never had, and has not now, relations of any kind. This is the company's strong point. It is very unusual for one man to go into court and ask that a second man be restrained from doing something to still a third man, but that is what will be necessary here. The city must ask that the Metropolitan be enjoined to continue to supply—not the city—but the National Water-works company. The company's people profess to be confident that such a request will be refused.

"I am quite confident a restraining order can not be successfully resisted upon the grounds stated," said City Counselor Rozzelle last night after this new movement of the Water-works company had been explained to him by a TIMES reporter. "In the first place such an argument would at once raise the question as to the identity of the National and the Metropolitan Water-works companies. The stock-holders are known to be the same, though operating under two separate charters. The Metropolitan Water-works company was undoubtedly organized for the purpose of complicating the suit now pending.

"If the National Water-works company should go into court and say 'we are willing to obey such restraining order, but are powerless because we buy our water from the Metropolitan company and that company will not sell to us because we can not pay for it,' the city would have a perfect right to ask that a receiver be appointed for the company. We could take the plant and connect it with the old reservoir and get our water from the Kaw river independent of the Metropolitan Water-works company. The Kaw river water is pretty fair, and we could get along with it during the winter. The National Water-works company says this water isn't good, but it 'rings' it in on us right along anyhow. I do not believe the court would listen to the argument advanced, and I imagine that if a restraining order is issued the Water-works company will disregard it.

"I do not say that the city will ask for a restraining order or that it will push the application for the appointment of a receiver in case the company advances the line of argument suggested. Several consultations have been held, but the course of the city in the matter has not yet been determined.

"I will say that if a restraining order is asked for, it may be granted conditionally. The court, for instance, may require the city to deposit in court an amount sufficient to cover the hydrant rentals each month. This the city is prepared to do, and will do if required. The city, however, does not desire to pay hydrant rentals in advance, especially to a company such as the National—a company bonded for \$3,000,000 and owning property worth only \$1,500,000.

"I do not anticipate that the company will attempt to resist the restraining order upon the ground stated, but should it do so, I have no doubt the order would be issued anyway. It would otherwise be a great injustice to the city, which would have no recourse for damages resulting from lack of fire protection."

"Sixty-Five Fifty"