In the Supreme Court of the United States

No. 5, ORIGINAL.

STATE OF WISCONSIN, STATE OF MINNESOTA, STATE OF OHIO, AND STATE OF PENNSYLVANIA, COMPLAINANTS,

vs.

STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO, DEFENDANTS.

STATE OF MISSOURI, STATE OF KENTUCKY, STATE OF TENNESSEE, STATE OF LOUISIANA, STATE OF MISSISSIPPI, AND STATE OF ARKANSAS, INTERVENING DEFENDANTS.

No. 11, ORIGINAL.

STATE OF MICHIGAN, COMPLAINANT,

vs.

STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO, ET AL., DEFENDANTS.

No. 12, ORIGINAL.

STATE OF NEW YORK, COMPLAINANT,

vs.

STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO, ET AL., DEFENDANTS.

APPLICATION OF WISCONSIN, MINNESOTA, OHIO AND MICHIGAN FOR THE APPOINTMENT OF AN OFFICER, OR OFFICERS, OF THE COURT TO CARRY OUT THE DECREE MADE AND ENTERED IN THE ABOVE-ENTITLED CAUSES ON APRIL 21, 1930, WITH SUPPORTING BRIEF.

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Authorities Cited.

In the Supreme Court of the United States

No. 7, ORIGINAL.

STATE OF WISCONSIN, STATE OF MINNESOTA, STATE OF OHIO, AND STATE OF PENNSYLVANIA, COMPLAINANTS,

vs.

STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO, DEFENDANTS.

STATE OF MISSOURI, STATE OF KENTUCKY, STATE OF TENNESSEE, STATE OF LOUISIANA, STATE OF MISSISSIPPI, AND STATE OF ARKANSAS, INTERVENING DEFENDANTS.

No. 11, ORIGINAL.

STATE OF MICHIGAN, COMPLAINANT,

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STATE OF NEW YORK, COMPLAINANT,

vs.

STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO, ET AL., DEFENDANTS.

APPLICATION OF WISCONSIN, MINNESOTA, OHIO AND MICHIGAN FOR THE APPOINTMENT OF AN OFFICER, OR OFFICERS, OF THE COURT TO CARRY OUT THE DECREE MADE AND ENTERED IN THE ABOVE-ENTITLED CAUSES ON APRIL 21, 1930.

To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The application of the State of Wisconsin by John W. Reynolds, her Attorney General, the State of Minnesota by

Henry N. Benson, her Attorney General, the State of Ohio by Gilbert Bettman, her Attorney General and the State of Michigan by Paul W. Voorhies, her Attorney General, respectfully shows to the Court that:

I.

This application is filed under and pursuant to the provisions of paragraphs 6 and 7 of the decree entered in these causes, which paragraphs read as follows:

> "6. That on the coming in of each of said reports, and on due notice to the other parties, any of the parties to the above-entitled suits, complainants or defendants, may apply to the Court for such action or relief, either with respect to the time to be allowed for the construction, or *the progress of construction,* or the methods of operation, of any of said sewage treatment plants, or with respect to the diversion of water from Lake Michigan, as may be deemed to be appropriate.
>
> "7. That any of the parties hereto, complainants or defendants, may, irrespective of the filing of the above-described reports, apply at the foot of this decree for any other or further action or relief, and this Court retains jurisdiction of the above-entitled suits for the purpose of any order or direction, or modification of this decree, or any supplemental decree, which it may deem at any time to be proper in relation to the subject matter in controversy." (Italics ours.)

Under the foregoing provisions of the decree, as your applicants are severally informed and believe, it is their duty, obligation and responsibility to bring to the attention of this Court any failure, neglect or refusal to carry out such decree and to apply for such further action or relief as may be necessary to make the decree effective, and restore to your applicants their just rights as declared by this Court; and in the performance of that duty and the discharge of that responsibility your applicants file this application for further relief.

II.

The State of Wisconsin filed the first of these bills on July 14, 1922. The Wisconsin bill was amended on October 5, 1925, and the States of Minnesota, Ohio and Pennsylvania became co-plaintiffs. The amended bill sought an injunction restraining the State of Illinois and The Sanitary District of Chicago from causing any water to be taken from the Great Lakes-St. Lawrence watershed in such manner as permanently to divert the same from that watershed. On April 8, 1926, the State of Michigan filed a separate bill for the same relief. On October 18, 1926, the State of New York filed a separate bill for the same relief. Subsequently the three suits were consolidated for the purpose of hearing. *Wisconsin v. Illinois,* 278 U. S. 367, 369-70.

III.

After three hearings before this Court and two references to a Special Master, this Court, on April 21, 1930, entered its decree and judgment in said suits as follows:

> "No. 7, original, *Wisconsin, et al. v. Illinois, et al.*;
> No. 11, original, *Michigan v. Same*; and
> No. 12, original, *New York v. Same.* April 21, 1930.
>
> These causes came on to be heard upon the pleadings, evidence, and the exceptions filed by the parties to the Report of the Special Master, as well as on the exceptions filed to the Report of the Special Master on Re-reference, and were argued by counsel. The Court now being fully advised in the premises, and for the purpose of carrying into effect the conclusions set forth in the opinions of this Court announced January 14, 1929, 278 U. S. 367, and April 14, 1930 (*ante,* p. 179),
>
> It is now here ordered, adjudged, and decreed as follows:
>
> 1. On and after July 1, 1930, the defendants, the State of Illinois and the Sanitary District of Chicago,

their employees and agents, and all persons assuming to act under the authority of either of them, be and they hereby are enjoined from diverting any of the waters of the Great Lakes-St. Lawrence system or watershed through the Chicago Drainage Canal and its auxiliary channels or otherwise in excess of an annual average of 6,500 cubic feet per second in addition to domestic pumpage.

2. That on and after December 31, 1935, unless good cause be shown to the contrary, the defendants, the State of Illinois and the Sanitary District of Chicago, their employees and agents, and all persons assuming to act under the authority of either of them, be and they hereby are enjoined from diverting any of the waters of the Great Lakes-St. Lawrence system or watershed through the Chicago Drainage Canal and its auxiliary channels or otherwise in excess of an annual average of 5,000 cubic feet per second in addition to domestic pumpage.

3. That on and after December 31, 1938, unless good cause be shown to the contrary, the defendants, the State of Illinois and the Sanitary District of Chicago, their employees and agents, and all persons assuming to act under the authority of either of them, be and they hereby are enjoined from diverting any of the waters of the Great Lakes-St. Lawrence system or watershed through the Chicago Drainage Canal and its auxiliary channels or otherwise in excess of the annual average of 1,500 cubic feet per second in addition to domestic pumpage.

4. That the provisions of this decree as to the diverting of the waters of the Great Lakes-St. Lawrence system or watershed relate to the flow diverted by the defendants exclusive of the water drawn by the City of Chicago for domestic water supply purposes and entering the Chicago River and its branches or the Calumet River or the Chicago Draingage Canal as sewage. The amount so diverted is to be determined by deducting from the total flow at Lockport the amount of water pumped by the City of Chicago into its water

mains and as so computed will include the run-off of the Chicago and Calumet drainage area.

5. That the defendant, the Sanitary District of Chicago, shall file with the clerk of this Court semi-annually on July first and January first of each year, beginning July first, 1930, a report to this Court adequately setting forth the progress made in the construction of the sewage treatment plants and appurtenances outlined in the program as proposed by the Sanitary District of Chicago, and also setting forth the extent and effects of the operation of the sewage treatment plants, respectively, that shall have been placed in operation, and also the average diversion of water from Lake Michigan during the period from the entry of this decree down to the date of such report.

6. That on the coming in of each of said reports, and on due notice to the other parties, any of the parties to the above entitled suits, complainants or defendants, may apply to the Court for such action or relief, either with respect to the time to be allowed for the construction, or the progress of construction, or the methods of operation, of any of said sewage treatment plants, or with respect to the diversion of water from Lake Michigan, as may be deemed to be appropriate.

7. That any of the parties hereto, complainants or defendants, may, irrespective of the filing of the above-described reports, apply at the foot of this decree for any other or further action or relief, and this Court retains jurisdiction of the above-entitled suits for the purpose of any order or direction, or modification of this decree, or any supplemental decree, which it may deem at any time to be proper in relation to the subject matter in controversy.

And it is further ordered that the costs in these cases shall be taxable against the defendants." (*Wis. v. Ill.*, 281 U. S. 696-98.)

IV.

The decree, as your applicants are severally informed and believe, provided for a gradual reduction in the unlawful diversion of water and a gradual, rather than immediate, restoration of your applicants' rights in order to permit the defendants to construct works claimed to be necessary to safeguard the health of the residents of the Sanitary District of Chicago; and the dates and amounts of the progressive reductions in the unlawful diversion provided by the decree of this Court were fixed and determined by the findings of fact as to the time within which the various works, claimed by the defendants to be essential to purify the sewage of Chicago and protect the health of its people, could be constructed and placed in operation. (*Wisconsin v. Illinois,* 281 U. S. 179.) The basis and reasons for the progressive rather than instantaneous termination of the unlawful diversion were set forth in the opinion of this Court, rendered by Mr. Chief Justice Taft, in *Wisconsin v. Illinois,* 278 U. S. 367, where the Court said:

> "* * * If the view urged by the complainants is right, the necessity for the use of the 8,500 cubic feet a second to save the health of the inhabitants of the Sanitary District will then present the problem of the power and discretion of a court of equity to moderate the strict and immediate rights of the parties complainant to a gradual one which will effect justice as rapidly as the situation permits. The framing of the decree will then require the careful consideration of the Court." (pp. 410-411.)

And further:

> "* * * In these circumstances we think they are entitled to a decree which will be effective in bringing that violation and the unwarranted part of the diversion to an end. But in keeping with the principles on which courts of equity condition their relief, and by way of avoiding any unnecessary hazard to the health of the people of that section, our decree should be so

framed as to accord to the Sanitary District a reasonably practicable time within which to provide some other means of disposing of the sewage, reducing the diversion as the artificial disposition of the sewage increases from time to time, until it is entirely disposed of thereby, when there shall be a final, permanent operative and effective injunction." (pp. 418-19.)

"* * * The situation requires the District to devise proper methods for providing sufficient money and to construct and put in operation with all reasonable expedition adequate plants for the disposition of the sewage through other means than the Lake diversion.

Though the restoration of just rights to the complainants will be gradual instead of immediate it must be continuous and as speedy as practicable, and must include everything that is essential to an effective project." (pp. 420-421.)

V.

On July 1, 1930, the Sanitary District of Chicago filed its first semi-annual report setting forth the work which remained to be accomplished after April 21, 1930 (the date of the decree) in order to make effective the decree of this Court and restore applicants' rights as defined by this Court, to be as follows:

"TABLE 4

FUTURE WORK AFTER APRIL 21, 1930.

Des Plaines River Project	$4,215,287.71	
Calumet Project	20,283,511.16	
North Side Project	6,028,688.58	
West Side Project	64,661,726.80	
Southwest Side Project	70,626,695.47	
Miscellaneous Plants and Sewers	9,981,942.68	
Chicago River Controlling Works	3,946,586.18	$179,744,438.58"

The decree of this Court allowed until December 31, 1938, or a period of 8.7 years from its date, for the construction and placing in operation of the works and structures claimed by the defendants to be essential to protect the health of the people of the Sanitary District of Chicago upon the restoration of the just rights of these applicants. Measured by construction expenditures and accepting the estimates of costs reported by the Sanitary District, the decree required the accomplishment of an average annual construction program of sewage treatment and auxiliary works involving an expenditure of $20,660,280.29. (Semi-annual report of the Sanitary District of Chicago of July 1, 1930, filed June 30, 1930.)

The semi-annual reports of the Sanitary District of Chicago, filed in this Court on July 1, 1930, January 1, 1931, July 1, 1931, January 1, 1932, and July 1, 1932, disclose the following slender record of performance, measured by construction expenditures, under the decree of this Court up to June 1, 1932:

Construction expenditures Apr. 21, 1930 to Jun. 1, 1930	$ 503,214.54 (1)
Construction expenditures Jun. 1, 1930 to Dec. 1, 1930	4,836,163.05 (2)
Construction expenditures Dec. 1, 1930 to Jun. 1, 1931	1,079,369.50 (3)
Construction expenditures Jun. 1, 1931 to Dec. 1, 1931	3,607,347.21 (4)
Construction expenditures Dec. 1, 1931 to Jun. 1, 1932	280,738.34 (5)
Total construction expenditures April 21, 1930 to June 1, 1932	$10,306,832.64

(1) Semi-annual report of the Sanitary District of Chicago of July 1, 1930, page 10.

(2) Semi-annual report of the Sanitary District of Chicago of January 1, 1931, page 8.

On June 1, 1932, 2.11 years of the period allowed by the decree for the accomplishment of the program claimed to be necessary by defendants had elapsed. The average annual performance had been $4,884,758. Such average annual performance would, if maintained, require over thirty-six years within which to build the works claimed by defendants to be necessary, if no new demands should arise during that period. At the rate of progress maintained during the last six months covered by the semi-annual report of the Sanitary District of Chicago, filed on July 1, 1932, the defendants would take over three hundred and twenty years within which to perform the decree, should no other demands intervene or interfere.

The reports of the Sanitary District of Chicago disclose that its performance under the decree has been at all times meagre and inadequate, and much of the time negligible. The last reports of the Sanitary District filed with this Court show that all performance under this decree has substantially ceased. The semi-annual reports of the Sanitary District of Chicago on file with this Court further disclose, as hereinafter more particularly set forth, that there has been either no effort or progress in the performance on controlling factors in the program required by the judgment, or that such efforts and progress have been wholly inadequate, and that the action of the defendants in those respects has been, whether so intended or not, wholly consistent with an effort to obstruct, avoid and circumvent the performance of the decree.

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(3) Semi-annual report of the Sanitary District of Chicago of July 1, 1931, page 7.

(4) Semi-annual report of the Sanitary District of Chicago of January 1, 1932, page 9.

(5) Semi-annual report of the Sanitary District of Chicago of July 1, 1932, page 7.

VI.

The reduction in diversion provided by the decree for December 31, 1935, was predicated upon the completion of the Calumet, North Side and West Side projects and the installation of controlling works in the Chicago River. *Wisconsin, et al. v. Illinois, et al.,* 281 U. S. 179, 198. The Calumet project has not been completed, and work has in fact been discontinued since December, 1931. (Semi-annual Report of the Sanitary District of Chicago, filed July 1, 1932, pp. 2-3.) The West Side project has not been completed and no contracts have been let for substantial parts of this project. (Semi-annual Report of the Sanitary District of Chicago, filed July 1, 1932, p. 3.) The North Side project, which was substantially completed at the date of the decree, has been finished. In fact, as your applicants are informed and believe, the construction expenditures reported under the North Side project are largely, if not wholly, on construction work completed or under way at the date of the decree. So far as the reports filed by the Sanitary District of Chicago with this Court disclose, no steps whatsoever have been taken to design or construct the controlling works in the Chicago River or to seek or obtain the approval of the War Department for plans and location. The reports disclose that no effort is now being made to accomplish these projects as contemplated by the decree.

VII.

The Southwest Side project or sewage disposal plant has been at all times admitted to be the controlling factor in the construction program from the standpoint of determining the time within which artificial sewage treatment could be provided for all of the sewage and trade wastes of the Sanitary District under the program proposed by the defendants. The Sanitary District of Chicago had selected the site for this project as early as 1926.

Although this project was known to be the controlling factor in the determination of the time within which complete sewage treatment could be provided, no steps were thereafter taken by the Sanitary District throughout this long litigation to acquire the site so selected. The Sanitary District of Chicago on the contrary complacently permitted the site so selected to be sub-divided. It then set forward such subdivision as an additional reason for delay. No condemnation suits were instituted. The semi-annual reports filed July 1, 1931, and January 1, 1932, simply state that negotiations are continuing toward the acquisition of a site for the Southwest Side works. The semi-annual report for July 1, 1931, states that "negotiations for the acquisition of the site of the Southwest Side sewage treatment works are temporarily at a standstill". The semi-annual report of January 1, 1932, states that "negotiations for the acquisition of a site originally contemplated for the Southwest Side treatment works are yet at a standstill". The last report filed July 1, 1932, states that "there have been no further developments toward the acquisition of the site originally contemplated for the Southwest Side treatment works". So far as the reports filed with this Court show, the defendants have made no attempt to perform the decree in this important and controlling particular.

VIII.

The Sanitary District of Chicago made an exhaustive study of the stockyards or Packingtown wastes from 1912-1918 inclusive. In 1928 the Sanitary District of Chicago announced that the program of treating the stockyards wastes had been fully solved. On November 1, 1923, the United States District Engineer at Chicago reported officially that "the officials of the Sanitary District have no grounds for delay on account of lack of complete information as to the processes best suited to the different kinds

of sewage produced". The waste resulting from the slaughter of hogs, sheep and cattle has not changed. The amount of the kill is reported daily in the public press. Nevertheless, the semi-annual report filed July 1, 1930, assigns as a reason for delay on the Southwest Side project the necessity of a determination of the character and volume of the stockyard or packingtown wastes. (Semi-annual Report of the Sanitary District of Chicago, July 1, 1930, pp. 7-8.) The semi-annual report of January 1, 1931, reports a continuation of such tests and alleges impediments thereto by the packing companies. (Semi-annual Report of the Sanitary District of Chicago, January 1, 1931, pp. 6-7.) The semi-annual report of July 1, 1931, gravely reports that the wastes from the slaughter of domestic animals have been found to have substantially the same characteristics as in 1917. (Semi-annual Report of the Sanitary District of Chicago, July 1, 1931, p. 6.) The semi-annual report of the Sanitary District of Chicago January 1, 1932, finally reports that tests on some of the stockyards wastes have been completed "and the results are being studied".

The applicants, on information and belief, charge and aver that this claim of a necessity to study the nature and extent of the stockyards wastes as a reason for postponing the commencement of the Southwest Side project can not be made in good faith and must be advanced solely in an effort to delay, avoid and circumvent the performance of the decree of this Court.

IX.

The suit, filed by the Sanitary District of Chicago in the Federal Court against certain of the packing companies, and apparently assigned in the various reports filed by the Sanitary District in this Court as a reason for delay in the performance of this Court's decree, was commenced in 1924. The report of the Sanitary District

of Chicago of July 1, 1932, discloses that a motion to dismiss in this suit was finally argued on March 18, 1932.

Petitioners on information and belief charge and aver that this suit seeks no relief which is essential to the performance of this Court's decree, that the suit of the Sanitary District in the Federal Court has not been prosecuted diligently or in good faith, and that the Sanitary District of Chicago, aided and abetted by the State of Illinois, is putting forward such suit merely with the purpose and intent of thereby attempting to delay, avoid and circumvent the performance of this Court's decree.

X.

The Sanitary District of Chicago for many years maintained a large Engineering organization suitable for the accomplishment of the work claimed by that District to be necessary under the Supreme Court decree. After the first decision of this Court rendered on January 14, 1929, and reported in 278 U. S. 367, the Sanitary District materially reduced the personnel of its Engineering organization. The Sanitary District of Chicago now reports that it has made a further reduction in the personnel of its Engineering organization of approximately sixty-four per cent (64%). (Semi-annual Report of the Sanitary District of Chicago, July 1, 1932, p. 5.) The Sanitary District of Chicago now maintains no Engineering organization adequate to proceed with the performance of the decree of this Court.

XI.

The State of Illinois and the Sanitary District of Chicago, through negligence, incompetence or bad faith, have failed, neglected and refused adequately and reasonably to provide for financing the performance of this Court's decree. In 1929 the Illinois General Assembly had authorized the Sanitary District of Chicago to issue $27,000,000

of bonds without referendum; and on June 1, 1930, $16,850,000 remained unissued. On July 1, 1932, $7,614,000 out of the $27,000,000 of bonds so authorized by the Illinois General Assembly in 1929 still remained unissued. (Semi-annual Report of the Sanitary District of Chicago July 1, 1932, p. 4.) These facts thus establish that the total amount of bonds issued by the Sanitary District of Chicago since and in the performance of this decree has not exceeded $10,236,000. This wholly inadequate provision for financing in compliance with the decree of this Court is coupled with a failure, through neglect, incompetence or bad faith, to levy and collect normal taxes at any time since the decree of this Court became effective.

The report of the Sanitary District of Chicago filed July 1, 1930 (pp. 8-9) discloses that the Governor and General Assembly of the State of Illinois had failed to provide for the issuance of bonds necessary to carry out the decree of the Supreme Court except upon the approval of the voters at a referendum on each issue, and that the Governor of Illinois had refused to call a special session of the State Legislature to authorize bonds for the accomplishment of this decree. The report of January 1, 1931, discloses that although the Legislature of Illinois had been called into special session, the Legislature and/or the Governor had refused to permit the consideration of any proposal for the issuance of the bonds necessary to carry out the Supreme Court decree.

The semi-annual Report of the Sanitary District of Chicago of July 1, 1932, discloses that the voters had approved an additional bond issue of $36,000,000, but that issuance thereof was being prevented by litigation in the State Courts. (Semi-annual Report of the Sanitary District of Chicago, July 1, 1931, pp. 6-9.) The semi-annual report of the Sanitary District of Chicago of January 1, 1932, states that the Sanitary District of Chicago had com-

menced to experience difficulty in selling its bonds at 4½ per cent interest. This difficulty arose from a self-created obstacle, to-wit, from the fact that, through negligence, incompetence, or bad faith, normal and usual taxes had not been levied and collected. (Semi-annual Report of the Sanitary District of Chicago, January 1, 1932, pp. 7-8.)

Practically since 1928 there has been a failure to assess and collect the normal and proper taxes in Cook County and the Sanitary District of Chicago, by reason of negligence, incompetence or bad faith. The semi-annual report of the Sanitary District of Chicago of July 1, 1932, discloses that the Sanitary District has failed to sell duly authorized bonds in the amount of $43,000,000; that through the failure to assess and collect the proper taxes in Cook County, Illinois, which is substantially co-terminus with the Sanitary District of Chicago, approximately two years' taxes are in arrears; that the Sanitary District has defaulted on current bills and on bond interests and maturities. This negligence, incompetence or bad faith is apparently assigned as an excuse for failing to perform the decree of this Court, and doubtless eventually will be made the basis for an application for relief at the expense of the rights of these petitioners and their peoples, unless there is timely intervention by this Court.

XII.

The difficulty, if it exists, in selling the bonds of the Sanitary District of Chicago for a reasonable price and a reasonable interest rate, rests upon the neglect, failure, and/or refusal of the various authorities of the State of Illinois to levy and collect the proper taxes. This ground of alleged inability presently to proceed with the decree is a self-created disability which, whether the result of neglect, incompetence, or bad faith, can not defeat the performance of the decree. The credit of the Sanitary District of

Chicago is ample to finance these expenditures and the financial stringency of Chicago, which has existed since prior to 1929, is not due to a general depression but to the negligence, incompetence or dereliction of duty of the officers and officials of the State of Illinois and her political subdivisions.

XIII.

The primary obligation and duty to perform the decree rests upon the State of Illinois, of which the Sanitary District of Chicago is a mere political agency. The credit and financial resources of the State of Illinois are more than ample to finance the performance of the decree. If the credit and financial resources of the Sanitary District of Chicago were inadequate for that purpose, as they are not, that would not excuse the State of Illinois for her failure to perform the decree.

XIV.

By a course of conduct characterized by neglect, incompetence, defiance, or bad faith, as the case may be, the Sanitary District of Chicago has wholly failed to make any real, substantial and good faith effort to perform the decree of this Court, and has wholly failed to make reasonable, substantial and bona fide progress in carrying out that decree. The State of Illinois has made no effort on her part to comply with the decree; but on the contrary, for nearly three years has viewed with complacency, if not approval, the neglect, defiance, and/or bad faith of her political subdivision and agency, the Sanitary District of Chicago.

XV.

For many years the Sanitary District of Chicago wilfully disregarded and defied the Federal Government and presumed upon the solicitude of the Federal Government

for the health and welfare of the people of Chicago to prevent the Federal Government from enforcing its order and terminating the wrongful action of the District.

Thereafter the Sanitary District of Chicago for many years interposed the claim of necessity of protecting the health of the people of the District to prevent, hinder or impede a restoration to the petitioners and their peoples of their just rights. In *Wisconsin v. Illinois,* 287 U. S. 367, at 419-20, Mr. Chief Justice Taft, rendering the unanimous opinion of this Court, said:

> "* * * The Secretary of War and the Chief of Engineers in 1907 refused a permit by which there would be more than 4,167 feet a second diverted. Advised that the District authorities proposed to ignore that limitation, the United States brought suit against the authorities of the District to enjoin any diversion in excess of that quantity, as fixed in an earlier permit. Another application for enlargement was made to Secretary of War Stimson in 1913 and was rejected. For several years, including the inexcusable delays made possible by the failure of the Federal Court in Chicago to render a decision in the suit brought by the United States, the District authorities have been maintaining the diversion of 8,500 cubic feet per second or more on the plea of preserving the health of the District. Putting this plea forward has tended materially to hamper and obstruct the remedy to which the complainants are entitled in vindication of their rights, riparian and other."

And further:

> "* * * The Sanitary District authorities, relying on the argument with reference to the health of its people, have much too long delayed the needed substitution of suitable sewage plants as a means of avoiding the diversion in the future. Therefore they can not now complain if an immediately heavy burden is placed upon the District because of their attitude and course."

Your applicants further allege that the facts herein set forth establish that it is the plan, intention and purpose of the Sanitary District of Chicago and the State of Illinois by similar means and similar methods to delay, avoid and circumvent the performance of the decree of this Court and the restoration of the just rights of your petitioners as declared by this Court.

XVI.

It was and is the absolute ministerial duty of the members of the Legislature of the State of Illinois and every officer of the State of Illinois, and of every officer of the Sanitary District of Chicago, and of every officer of every other political subdivision, agency, or instrumentality, of the State of Illinois to take the necessary steps, to enact the necessary laws, and to do all things necessary, convenient and proper to carry out fully, adequately, completely and in good faith the decree of this Court. The State of Illinois, its Legislature, officers, and agents, have failed, neglected and/or refused to carry out the decree of this Court. Your petitioners further aver that the facts herein set forth and further facts in reports on file and the records of this Court establish that it is not the intention of the authorities of the State of Illinois, or of the Sanitary District of Chicago, to carry out and perform this decree as ordered and adjudged by this Court; that it is the intention of the authorities of the Sanitary District of Chicago, aided and abetted by the authorities of the State of Illinois so to obstruct, delay, avoid and circumvent the performance of this decree that when the date fixed by this Court for the full restoration of the rights of these States and their peoples arrives the defendants may again seek to avoid the performance of the decree and the restoration of your petitioners' rights, as they avoided the performance of the orders of the Federal Government for many years, by pleading that the restoration of the just rights of your petitioners will imperil

the health of the people of the Sanitary District of Chicago. Your petitioners further aver that the facts set forth show that the Sanitary District of Chicago, aided and abetted by the State of Illinois, hopes thereby to dissuade, prevent and deter this Court from enforcing its decree and restoring your petitioners' rights. Your petitioners further aver that they are without remedy unless this Court, in the exercise of the power conferred upon it under the Constitution in controversies among the States of the Union, shall appoint a Master, Commissioner, Receiver, and/or United States Marshal to perform this decree on behalf and at the expense of the State of Illinois and the Sanitary District of Chicago, with full power to exercise and bind the credit of the State of Illinois and the Sanitary District of Chicago, and to make the expenditures necessary to effectuate the decree a lien upon all of the property in the State of Illinois and upon all the revenues of that State and of the Sanitary District of Chicago, to issue bonds secured by the full faith and credit, the complete taxing power and all of the revenues of the Sanitary District of Chicago and the State of Illinois, to make such bonds a lien upon all of the property in the State of Illinois and upon all of the revenues of the State of Illinois and of the Sanitary District of Chicago, to levy and collect such taxes as may be necessary to provide for payment of the interest upon such bonds as it accrues and to provide a sinking fund to pay the principal of such bonds as said bonds fall due, to refinance outstanding bonds and obligations of the Sanitary District of Chicago as they may severally fall due, and to do everything which may be necessary, convenient or proper to bring about the speedy enforcement of the decree of this Court and the speedy restoration of your applicants' rights, such officer or officers to continue to exercise such powers until the decree has been fully performed and all obligations created on behalf of the State of Illinois and the Sanitary District of Chicago shall have been fully discharged, or until the

State of Illinois and the Sanitary District of Chicago shall have made adequate provision for the performance of the decree and the satisfaction of any obligations created on their behalf by such officers of this Court.

WHEREFORE your applicants, the States of Wisconsin, Minnesota, Ohio and Michigan, pray that a rule be made and issued from this Court directed to the Governor and Attorney General of the State of Illinois, and to the Sanitary District of Chicago, directing the State of Illinois and the Sanitary District of Chicago to show cause, if any either has, why this Court should not appoint a Master, Commissioner, Receiver and/or United States Marshal to perform this decree on behalf and at the expense of the State of Illinois and the Sanitary District of Chicago, with full power to exercise and bind the credit of the State of Illinois and the Sanitary District of Chicago, and to make the expenditures necessary to effectuate the decree a lien upon all of the property in the State of Illinois and upon all the revenues of that State and of the Sanitary District of Chicago, to issue bonds secured by the full faith and credit, the complete taxing power and all of the revenues of the Sanitary District of Chicago and the State of Illinois, to make such bonds a lien upon all of the property in the State of Illinois and upon all of the revenues of the State of Illinois and of the Sanitary District of Chicago, to levy and collect such taxes as may be necessary to provide for payment of the interest upon such bonds as it accrues and to provide a sinking fund to pay the principal of such bonds as said bonds fall due, to refinance outstanding bonds and obligations of the Sanitary District of Chicago as they may severally fall due, and to do everything which may be necessary, convenient or proper to bring about the speedy enforcement of the decree of this Court and the speedy restoration of your applicants' rights, such officer or officers to con-

tinue to exercise such powers until the decree has been fully performed and all obligations created on behalf of the State of Illinois and the Sanitary District of Chicago shall have been fully discharged, or until the State of Illinois and the Sanitary District of Chicago shall have made adequate provision for the performance of the decree and the satisfaction of any obligations created on their behalf by such officer of this Court, and for such other and further relief in the premises as shall seem just and meet.

JOHN W. REYNOLDS,
Attorney General of the State of Wisconsin,

HERBERT H. NAUJOKS,
Ass't Attorney General of Wisconsin,

HENRY N. BENSON,
Attorney General of the State of Minnesota,

GILBERT BETTMAN,
Attorney General of the State of Ohio,

PAUL W. VOORHIES,
Attorney General of the State of Michigan,

RAYMOND T. JACKSON,
Special Assistant to the Attorneys General.
Solicitors for the Applicants.

Filed October 3, 1932.

UNITED STATES OF AMERICA,
DISTRICT OF COLUMBIA, SS.

GILBERT BETTMAN, being first duly sworn, on oath says that he is the duly elected, qualified and acting Attorney General of the State of Ohio; that he has read the foregoing application and knows the contents thereof, and that the same is true as he verily believes.

GILBERT BETTMAN.

Subscribed and Sworn to before me this 3rd day of October 1932.

.....,

Notary Public in and for the District of Columbia.

In the Supreme Court of the United States

No. 7, ORIGINAL.

STATE OF WISCONSIN, STATE OF MINNESOTA, STATE OF OHIO, AND STATE OF PENNSYLVANIA, COMPLAINANTS,

vs.

STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO, DEFENDANTS.

STATE OF MISSOURI, STATE OF KENTUCKY, STATE OF TENNESSEE, STATE OF LOUISIANA, STATE OF MISSISSIPPI, AND STATE OF ARKANSAS, INTERVENING DEFENDANTS.

No. 11, ORIGINAL.

STATE OF MICHIGAN, COMPLAINANT,

vs.

STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO, ET AL., DEFENDANTS.

No. 12, ORIGINAL.

STATE OF NEW YORK, COMPLAINANT,

vs.

STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO, ET AL., DEFENDANTS.

BRIEF OF WISCONSIN, MINNESOTA, OHIO AND MICHIGAN IN SUPPORT OF APPLICATION FOR THE APPOINTMENT OF AN OFFICER OR OFFICERS OF THE COURT TO CARRY OUT THE DECREE MADE AND ENTERED IN THE ABOVE ENTITLED CAUSES ON APRIL 21, 1930.

STATEMENT OF FACTS.

The instant application is filed pursuant to paragraphs 6 and 7 of the decree, which read:

"6. That on the coming in of each of said reports, and on due notice to the other parties, any of the parties to the above-entitled suits, complainants or defendants, may apply to the Court for such action or relief, either with respect to the time to be allowed for the construction, or *the progress of construction,* or the method of operation, of any of said sewage treatment plants, or with respect to the diversion of water from Lake Michigan, as may be deemed to be appropriate.

"7. That any of the parties hereto, complainants or defendants, may, irrespective of the filing of the above-described reports, apply at the foot of this decree for any other or further action or relief, and this Court retains jurisdiction of the above-entitled suits for the purpose of any order or direction, or modification of this decree, or any supplemental decree, which it may deem at any time to be proper in relation to the subject matter in controversy." (Italics ours.)

The facts set forth in the instant application and hereinafter discussed in this brief, seem not only to justify but to require the applicants to invoke the aid of this Court, under the foregoing provisions of the decree, to remove the obstacles which have already modified as to time the relief to which they are entitled, as declared by this Court, or to obtain a judicial determination that the relief adjudged to them in the decree will not be further delayed by any failure of the defendants to remove such obstacles; for otherwise applicants will be in exactly the same situation in 1938 that they were when the decree was rendered in 1930.

History of the Litigation.

The State of Wisconsin filed the first of these bills on July 14, 1922. The Wisconsin bill was amended on October 5, 1925, and the States of Minnesota, Ohio and Pennsylvania became co-plaintiffs. The Amended bill sought an injunction restraining the State of Illinois and the Sani-

tary District of Chicago from causing any water to be taken from the Great Lakes-St. Lawrence watershed in such manner as permanently to divert the same from that watershed. On April 8, 1926, the State of Michigan filed a separate bill for the same relief. On October 18, 1926, the State of New York filed a separate bill for the same relief. Subsequently, the three suits were consolidated for the purpose of hearing. *Wisconsin v. Illinois,* 278 U. S. 367, 369-70.

Pursuant to a hearing upon the First Report of the Special Master, to whom the causes had been referred, this Court in a decision rendered on January 14, 1929, established the facts and declared the law governing the rights of the parties. *Wisconsin v. Illinois,* 278 U. S. 367. This Court held that the diversion of water beyond any negligible amount which might be necessary to maintain navigation in the Port of Chicago was illegal, but the restoration of the just rights of the complainants was made gradual rather than immediate "in order to avoid so far as might be the possible pestilence and ruin with which the defendants have done much to confront themselves." *Wisconsin v. Illinois,* 281 U. S. 179, 196. Thereafter these causes were again referred to the Special Master to determine (1) the practical measures for the disposition of the sewage of the Sanitary District of Chicago through other means than Lake diversion; (2) the time required to complete such practical measures and place them in operation; (3) the reductions in diversion immediately practicable, and from time to time, pending the completion and placing in operation of such practical measures; and (4) the amount of the negligible diversions, if any, which might be eventually required to maintain navigation in the Port of Chicago. After the filing of the report of the Special Master on re-reference and on March 14, 1930, this Court rendered its decision. *Wisconsin v. Illinois,* 281 U. S. 179.

The Decree.

The formal decree was announced on April 21, 1930, and is reported in 281 U. S. 696-8. This decree provided three steps in the reduction of the unlawful diversion necessary to restore petitioners' just rights as declared by this Court. The progressive reductions in the unlawful diversion, thus required by the decree were, (1) to 6,500 cubic feet per second by July 1, 1930; (2) to 5,000 cubic feet per second by December 31, 1935; and (3) to 1,500 cubic feet per second by December 31, 1938. The amounts of the diversion so fixed by the decree were in each instance in addition to the domestic pumpage.

Whether the relief provided by the decree was conditioned upon the construction and placing in operation of the program of practical measures for the disposition of the sewage of Chicago without diversion.

While the decree did not in terms require the State of Illinois and the Sanitary District of Chicago to construct and place in operation particular sewage disposal plants on or before the dates fixed by the decree for progressive reductions in the unlawful diversion maintained by such defendants, the reductions in the diversion provided by the decree for July 1, 1930, and for December 31, 1935, were predicated upon the findings of fact reported by the Special Master and confirmed by this Court that certain parts of the practical measures for the treatment of all of the sewage of the Sanitary District of Chicago by artificial processes could be completed and placed in operation on or before such date, and that with the completion and placing in operation of such portions of the practical program for sewage disposal, the reductions provided in the decree could be safely had without hazard to the health of the people of the Sanitary District of Chicago in defer-

ence to which the Court had temporarily postponed the restoration of complainants' just rights. Similarly, the ultimate reduction provided for December 31, 1938, was predicated upon the findings of fact that the complete program of practical measures for the treatment of the sewage of the Sanitary District of Chicago by artificial processes could be completed and placed in operation on or before that date, and that thereafter no diversion for sanitary purposes would either be necessary or legally admissible in derogation of complainants' rights.

Clearly, the decree of the Court contemplated either (1) that these various sewage disposal plants and auxiliary structures should be respectively completed and placed in operation before the intermediate and final reductions provided by the decree should be had; or (2) that such postponement in the final termination of the illegal diversion and the final restoration of petitioners' rights afforded ample time within which to construct and place in operation such sewage disposal plants and auxiliary structures, so that the responsibility for any possible detrimental effect which might flow from such intermediate and final reductions without the completion of the contemplated sewage plants and auxiliary structures would rest squarely upon the defendants. If the latter construction be not adopted, the facts set forth in the petition, as hereinafter shown, establish that the defendants are and, unless the Court grants the relief here sought, will continue to avoid, delay and circumvent the restoration of petitioners' rights.

In any event, it is certain that the mercy in the Court's decree was induced by the representations of the Sanitary District that it was progressing and would progress in providing other means than Lake diversion for sewage disposal. The whole case before the Master was to that effect. Since the Sanitary District procured the Supreme Court

to modify and postpone relief, which it adjudged to be rightful, by persuading the Court to rely upon these representations, the Sanitary District cannot deny that it is obligated to carry out such program regardless of whether a failure or neglect so to do would postpone the restoration of applicants' rights; and, hence, it seems clear that the Court in any case has the power to require the Sanitary District and the State of Illinois to proceed with the program upon which the decree is based.

The record of performance of the defendants under the decree has at all times been meager and inadequate and has now substantially ceased.

Since the structures deemed essential to the reduction of July 1, 1930, had been completed and placed in operation at the date of entering the decree, no question arises on the performance of that portion of the judgment. However, so far as the work remaining to be accomplished after the entry of the decree and deemed essential to the reduction in the diversion provided for December 31, 1935, and to the ultimate restoration of the plaintiffs' rights on December 31, 1938, the semi-annual reports of the Sanitary District of Chicago, filed as required by the decree, disclose a meager and inadequate record of accomplishment, which has constantly declined until it has reached a point where the activities of the defendants in the performance of the decree have either ceased or become negligible. Their activities at no time have been adequate. (Application, Sec. IV, p. 6.) Work has either been abandoned or else has never been commenced upon the structures claimed to be essential to permit the reduction provided by the decree for December 31, 1935. (Application, Sec. V, p. 7.) It has been at all times admitted that the Southwest Side plant, as proposed in the program submitted by the Sanitary Dis-

trict of Chicago, is the controlling factor in determining the over-all time required for the completion of the program for the treatment of all of the sewage of the Sanitary District by artificial processes. Yet the semi-annual reports of the Sanitary District disclose that no effective steps have been taken or are now being pursued even for the acquisition of a site for this plant. Obviously, if the construction and placing in operation of this plant is to be made a condition precedent of the ultimate restoration of petitioners' rights as defined by this Court, then the failure of the defendants, whether due to negligence, incompetence or bad faith, to take any steps to acquire a site and much less to construct this plant is defeating the rights of the applicants as declared by this Court.

Although the Sanitary District of Chicago made an exhaustive study and full determination of the nature and proper method of treatment of the stockyards or Packingtown wastes during the period extending from 1912 to 1918, inclusive, the defendants in their report filed in this Court have put forward and continue to put forward a specious and unfounded claim of necessity to study the nature of the stockyards or Packingtown wastes as a reason for delay in the performance of this Court's decree. (Application, Sec. VII, p. 10.) Neither can the pendency of a suit by the Sanitary District of Chicago against certain of the Packing Companies, which suit has been pending since 1924, be assigned or accepted as a reason for delay in the performance of the Court's decree. The attempt to do so is a badge of bad faith. (Application, Sec. VIII, p. 11.)

The Sanitary District of Chicago has so reduced the personnel of its Engineering organization that it is no longer adequate to proceed with the performance of the decree of this Court. (Application, Sec. X, p. 13.)

The State of Illinois and the Sanitary District have at all times neglected, failed or refused to make adequate

provision for financing compliance with this Court's decree. (Application, Sec. X, p. 13.) Through negligence, incompetence or bad faith, the State of Illinois and the Sanitary District of Chicago have failed for approximately four years to provide for the levy and collection of normal taxes, and these defendants now assign the resulting impairment of their credit, created by their own misconduct, as a reason for delay in the performance of the decree and as a basis of exoneration at the expense of the rights of these petitioners and their peoples. (Application, Sec. X, p. 13.)

The facts clearly establish that further intervention by this Court is necessary to prevent the frustration of applicants' rights as established by the decree.

The facts set forth in the petition and the inferences which necessarily flow therefrom, irresistibly compel the conclusion that the defendants, the State of Illinois and the Sanitary District of Chicago, have wholly failed to make any real, substantial and good faith effort to perform the decree of this Court, and fully support the inference and charge that it is the plan, intention and purpose of the Sanitary District of Chicago and the State of Illinois thereby to delay, avoid and circumvent the performance of the decree of this Court and the restoration of the just rights of your petitioners as declared by this Court. If further support for this conclusion were necessary, it would be found in the history appearing in the records of this Court of the litigation between the Federal Government and these defendants and between the complainants in these suits and these defendants. The whole course of conduct of these defendants, both in their relations with the Federal Government and with the other States of the Union, has been characterized by a persistent and consistent policy of neglecting, failing or refusing, upon one excuse or another,

to provide for the disposition of the sewage of Chicago without unlawful diversion of water from the Great Lakes-St. Lawrence watershed, and then interposing, as a shield against retribution for their unlawful acts, the claim of necessity to protect the health of the people of the District. In this way the defendants have for nearly thirty years prevented, hindered and impeded a restoration to the petitioners and their peoples of their just rights. Unless the decree may be properly construed as requiring the defendants to reduce the diversion as therein provided without regard to whether the defendants shall have completed and placed in operation the sewage disposal plants and auxiliary works which they could and should have completed by the date specified in the decree, then your petitioners respectfully submit that the Court has the power and should exercise the power to protect the rights of the complainants already declared by providing such other and further relief as will assure the restoration of the rights of the complainants without regard to the obstruction, negligence, defiance or bad faith of the defendants, as the case may be. Upon the facts herein set forth and the decisions of this Court in this litigation, the equitable right of the complainants to such relief as will effectively prevent the circumvention or defeat of their rights through the negligence, defiance or bad faith of the defendants is clear; and as is hereinafter shown, the power of the court effectively to provide such relief is obvious and well settled.

Certainly if the construction of sewage disposal works is to be made a condition precedent to a restoration of applicants' rights, the Court should grant the relief unless the Sanitary District and the State of Illinois, by a day certain to be fixed by the Court, shall have satisfied the Court, and given adequate assurances, that they are then proceeding and will continue to proceed with a speed which will enable the future clauses of the decree to be applied

in accordance with its terms; for unless the applicants secure the Court's aid in removing the obstacles which have already modified as to time the relief to which they are entitled, they will be in exactly the same situation in 1938 that they were when the decree was rendered in 1930.

THE LAW.

I.

THE ADMITTED JUDICIAL POWER OF THE SUPREME COURT TO ENTER THE JUDGMENT IN THE ABOVE ENTITLED SUITS NECESSARILY EMBRACES FULL, PLENARY, ADEQUATE AND COMPLETE POWER AND AUTHORITY TO ENFORCE THAT JUDGMENT AND MAKE IT EFFECTIVE; AND SUCH POWER COMPREHENDS NOT ONLY THE POWER TO COERCE ALL INSTRUMENTALITIES AND AGENCIES OF STATE POWER BUT IT INCLUDES THE POWER DIRECTLY TO ENFORCE AND MAKE EFFECTIVE ITS JUDGMENT THROUGH APPOINTING FOR THAT PURPOSE, WITH ALL NECESSARY POWERS, SUCH OFFICER OR OFFICERS OF THE COURT, WHETHER UNITED STATES MARSHALS, MASTERS, COMMISSIONERS AND/OR RECEIVERS, AS MAY BE NECESSARY, CONVENIENT OR APPROPRIATE TO ACCOMPLISH THAT PURPOSE.

A.

The jurisdiction of this Court in the exercise of the judicial power conferred upon it under the Constitution of the United States to render the judgment in these cases is established beyond debate.

Wisconsin v. Illinois, 278 U. S. 367;
Wisconsin v. Illinois, 281 U. S. 179.

B.

Jurisdiction to enter judgment embraces full, plenary, adequate and complete power and authority to enforce the judgment and make it effective.

It has been said that no principle of Constitutional Law has been more firmly established or constantly adhered to than that wherever this Court has jurisdiction to render a judgment, it has power to enforce the judgment and make it effective. *Gordon v. United States,* 117 U. S. 697, 704. This rule applies with full force and effect to the exercise of the original jurisdiction of this Court in controversies between States. In *Virginia v. West Virginia,* 246 U. S. 565, Mr. Chief Justice White, in rendering the unanimous opinion of the Court, said at page 591:

> "That judicial power essentially involves the right to enforce the results of its exertion is elementary. *Wayman v. Southard,* 10 Wheat. 1, 23; *Bank of the United States v. Halstead,* 10 Wheat. 57; *Gordon v. United States,* 117 U. S. 697, 702. And that this applies to the exertion of such power in controversies between States as the result of the exercise of original jurisdiction conferred upon this court by the Constitution is therefore certain."

When this Court acts in the exercise of its original jurisdiction under the Constitution, it exercises an authority paramount to the States and overrides provisions of State Constitutions and State laws just as effectively as do the direct provisions of the Federal Constitution and of lawful Federal statutes. In *Wisconsin v. Illinois,* 281 U. S. 179, Mr. Justice Holmes, in rendering the unanimous opinion of this Court, said at page 197:

> "It already has been decided that the defendants are doing a wrong to the complainants and that they must stop it. They must find out a way at their peril. We have only to consider what is possible if the State of Illinois devotes all its powers to dealing with an

exigency to the magnitude of which it seems not yet to have fully awaked. It can base no defences upon difficulties that it has itself created. If its constitution stands in the way of prompt action it must amend it or yield to an authority that is paramount to the State."

C.

The power of the Supreme Court of the United States to enforce and make effective a judgment rendered in the exercise of its orginal jurisdiction over controversies between States comprehends not only the power to coerce all instrumentalities and agencies of State power, but includes the power directly to enforce and make effective its judgment through appointing for that purpose, with all necessary powers, such officer or officers of the Court, whether Marshals, Masters, Commissioners and/or Receivers, as may be necessary, convenient or appropriate to carry out the decree.

It is well settled that where a duty rests upon any officer of a State, or her political sub-divisions, to perform any acts necessary to the performance of a judgment of a Federal Court, that court has and will exercise the power to compel performance of the judgment by mandamus. Thus where there is a duty to levy or collect a tax to pay a debt which has been merged in a judgment of a Federal Court, the court will mandamus the State or municipal officer to enforce the judgment. *Supervisors v. United States ex rel.*, 71 U. S. (4 Wall.) 435; *Von Hoffman v. City of Quincy*, 71 U. S. (4 Wall.) 535; *City of Galena v. Amy*, 72 U. S. (5 Wall.) 705; *Riggs v. Johnson County*, 73 U. S. (6 Wall.) 166; *Walkley v. City of Muscatine*, 73 U. S. (6 Wall.) 481; *Labette County Commissioners v. Moulton*, 112 U. S. 217.

This power extends to the coercion of officers of a State in aid of the performance of a judgment rendered by

this Court in the exercise of its original jurisdiction over controversies between States. *Virginia v. West Virginia,* 246 U. S. 565.

However, courts also have the power directly to enforce their judgments through officers appointed by the court to carry out such judgments. Thus this Court may appoint a Commissioner or Commission to establish a boundary line between States in conformity with its decree. *Arkansas v. Tennessee,* 246 U. S. 158. The judicial power to render a decree for the apportionment of the waters of a river among different appropriators includes the power, without statutory authority, to appoint a River Master or Commissioner to carry out the decree, although the decree requires a variation in the apportionment from time to time under changing conditions, and although it would have been appropriate for the legislature to have provided administrative machinery to supervise the apportionment of the waters of the stream. *Montezuma Canal Co. v. Smithville Canal Co.,* 218 U. S. 371. That this Court, acting without benefit of statute, might appropriately appoint such an officer of the court to carry out a decree apportioning the waters of a river in a suit between States was recognized in *New Jersey v. New York,* 283 U. S. 805. A court, without authority of statute, may appoint a receiver in order to make possible or more convenient the performance or enforcement of a judgment or decree. *Stockton v. New Jersey Central R. R.,* 50 N. J. Eq. 489, 25 Atl. 942; *Mabon v. Ongley Electric Co.,* 156 N. Y. 196, 50 N. E. 805. See 53 *C. J.* 47, Sec. 34.

While the procedure is generally the subject of statute, a court may appoint a Commissioner to execute a deed pursuant to a decree of specific performance. *Langdon v. Sherwood,* 124 U. S. 74, 81. Where a state statute authorizes a court to appoint "a person" to discharge a duty enjoined by a writ of mandamus, which the defendant has

refused to perform, a Federal Court may appoint a United States Marshal to levy and collect taxes for the payment of a judgment rendered against a municipal corporation of such State. *Supervisors v. Rogers,* 74 U. S. (7 Wall.) 175.

While it has been held that where there is no effective remedy under State law to collect a money judgment against a municipal corporation, the Federal Courts will empower a Marshal to levy and collect a tax to discharge the judgment, (*Welch v. Ste. Genevieve,* 29 Fed. Cas. 608, No. 17,372; *Garrett v. City of Memphis,* 5 Fed. 860; *Post et al. v. Taylor County,* Fed. Cas. No. 11,302 (19 Fed. Cas. p. 1092); *United States v. Treasurer of Muscatine County,* Fed. Cases No. 16,538 (28 Fed. Cas. p. 213); *Stansell v. Levee Board of Miss. Dist. No. 1,* (D. C. N. D. Miss. 1881) 13 Fed. 846), the Federal Courts have generally held that they could only compel the exercise of such machinery as State law had provided for the levy and collection of taxes to pay a money judgment against a municipal corporation and that if such measures fail, no relief could be had. *Rees v. City of Watertown,* 86 U. S. (19 Wall.) 107 (1873); *Meriwether v. Garrett,* 102 U. S. 472; *South Dakota v. North Carolina,* 192 U. S. 286 (1903); *O'Brien v. Wheelock,* 78 Fed. 673 (C. C. S. D. Ill. 1897, Allen *D.J.*); *Yost v. Dallas County,* 236 U. S. 50.

However, these cases in no way militate against the power of this Court to enforce the instant judgment directly through the appointment of a Master or Receiver with the full powers prayed for by the petitioners. The distinction between those cases and the one at bar is obvious. Suits to enforce bonds of municipal corporations are brought upon obligations issued under and not paramount to the authority of the State. The extent of such an obligation is determined by State statutes and law and not by the Constitution of the United States. A plaintiff by bringing suit

in the Federal Courts upon the contract obligation of a municipal corporation acquires no greater rights than are given by the State statutes which measure the extent of the obligation created. Ordinarily, the right given in the bonds issued by municipal corporations, pursuant to State statutes, to have a tax levied, collected and applied to their payment is to have such tax levied and collected in the manner provided by the State statute, and the court in the guise of enforcing the judgment cannot extend the scope of such obligations.

On the other hand, the Supreme Court of the United States is given jurisdiction and power by the Federal Constitution to determine all controversies between States. The authorities establish that the jurisdiction to render judgments necessarily comprehends the power to enforce the judgment. Where the power to enforce does not exist, there is no jurisdiction. Accordingly, whenever a judgment is rendered by the Supreme Court of the United States in the exercise of its original jurisdiction in a controversy between States, that judgment is based upon the Federal Constitution and the extent of its obligation is measured by the Federal Constitution. From this it necessarily follows that unlike the other class of cases, the Supreme Court does have power and authority to enforce such judgments by any appropriate means and this includes the appointment of a receiver, commissioner or other functionary to carry out the judgment even to the extent of issuing bonds and levying taxes, if that should be necessary.

Obviously, the exercise of this original jurisdiction could not be conditioned upon the provision by the State of some machinery to carry out the decree of this Court; for, if that were so, the original jurisdiction of this Court over controversies between States—perhaps the most important power of this Court, since it is designed to settle those controversies which would ordinarily be settled by

diplomatic representations or war among independent nations—would be nullified and set at naught. That the power of this Court in the exercise of its original jurisdiction is no such feeble, impotent and futile thing has long since been set at rest by this Court. In *Virginia v. West Virginia,* 246 U. S. 565, the syllabus reads in part:

> "The original jurisdiction conferred upon this court by the Constitution over controversies between States includes the power to enforce its judgment by appropriate remedial processes, operating where necessary upon the governmental powers and agencies of a State.
>
> The authority to enforce its judgment is of the essence of judicial power. That this elementary principle applies to the original jurisdiction in controversies between States has been universally recognized as beyond dispute, as is manifested by the numerous cases of the kind which have been decided, in not one of which hitherto, since the foundation of the Government, has a State done otherwise than voluntarily respect and accede to the judgment." (p. 565)

In that case, Mr. Chief Justice White, rendering the unanimous opinion of this Court, said:

> "That judicial power essentially involves the right to enforce the results of its exertion is elementary. *Wayman v. Southard,* 10 Wheat. 1, 23; *Bank of the United States v. Halstead,* 10 Wheat. 57; *Gordon v. United States,* 117 U. S. 697, 702. And that this applies to the exertion of such power in controversies between States as the result of the exercise of original jurisdiction conferred upon this court by the Constitution is therefore certain. The many cases in which such controversies between States have been decided in the exercise of original jurisdiction make this truth manifest. Nor is there room for contending to the contrary because, in all the cases cited, the States against which judgments were rendered conformably to their duty under the Constitution, voluntarily respected and

> gave effect to the same. This must be unless it can be said that, because a doctrine has been universally recognized as being beyond dispute and has hence hitherto, in every case from the foundation of the Government, been accepted and applied, it has by that fact alone now become a fit subject for dispute."

That the enforcement of such a decree cannot be defeated by restrictions in a State Constitution or other State obstructions was forcefully stated by Mr. Justice Holmes in *Wisconsin v. Illinois,* 281 U. S. 179, at 197, as follows:

> "It already has been decided that the defendants are doing a wrong to the complainants and that they must stop it. They must find out a way at their peril. We have only to consider what is possible if the State of Illinois devotes all its powers to dealing with an exigency to the magnitude of which it seems not yet to have fully awaked. It can base no defences upon difficulties that it has itself created. If its constitution stands in the way of prompt action it must amend it or yield to an authority that is paramount to the State."

Obviously, if a State cannot defeat the enforcement of such a decree by positive action or self-imposed restrictions, it cannot do so by inaction or refusal to act. Under the Constitution of the United States such a decree becomes part of the supreme law of the land, in effect a part of the Federal Constitution, and overrides every attribute of State sovereignty. When the States of the United States agreed to join together to form a more perfect union under the Federal Constitution, they respectively agreed that the Supreme Court should have jurisdiction to decide controversies among them, that such decisions should be final and that this Court should have full power to enforce them. The obligation of such a judgment is thus measured by the Federal Constitution; and the jurisdiction of this Court to render it carries the power to enforce it through any convenient and appropriate means without aid of statute.

This power includes the power to create such binding obligations on the States as may be necessary to effectuate such a decree and the power to levy and collect such taxes as may be required until the State voluntarily performs her duty.

The fact that the Congress might properly provide suitable administrative machinery for the enforcement of such a decree (*Virginia v. West Virginia,* 246 U. S. 565), in no wise prevents the court in the absence of such administrative machinery from creating such machinery as may be necessary and appropriate to the enforcement of the decree without aid of statute. *Montezuma Canal Co. v. Smithville Canal Co.,* 218 U. S. 371. The Congress could not take such power away from this Court; and no legislation is necessary to make it effective; for otherwise the Congress by failure to pass laws could effectively nullify the jurisdiction of this Court. It is submitted that the power of this Court to give the relief prayed for by these petitioners is too clear for debate.

CONCLUSION.

The facts set forth in the petition or application require a conclusion that without the further intervention of this Court, the defendants will continue to delay, avoid and circumvent the performance of the decree and the restoration of complainants' just rights as declared by this Court. Clearly, this Court should intervene if it has the power to do so. That this Court has the power directly to enforce the judgment is deemed too clear to debate. By just such methods as now appear from the facts set forth in the application filed herewith, the defendants for 25 years have defied the Federal Government and defeated the plaintiffs' rights. No consideration of the dignity of the parties can justify further delay. Throughout the long history of the controversy, every consideration extended to the defend-

ants on the grounds of equity or in deference to the dignity of the State as a quasi-sovereign, either by the executive officers of the Federal Government or by this Court, has been taken advantage of by these defendants to magnify the then existing obstacles or to create further obstacles to the termination of their unlawful conduct and restoration of your petitioners' just rights. Justice imperatively demands the immediate enforcement of this decree. Applicants therefore submit that unless the Sanitary District of Chicago and the State of Illinois, by a day certain to be fixed by the Court, shall have satisfied the Court and furnished adequate assurances that they are then proceeding and will continue to proceed with a speed which will enable the future clauses of the decree to be applied in accordance with its terms, this Court should grant the relief prayed for by these applicants.

Respectfully submitted,

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