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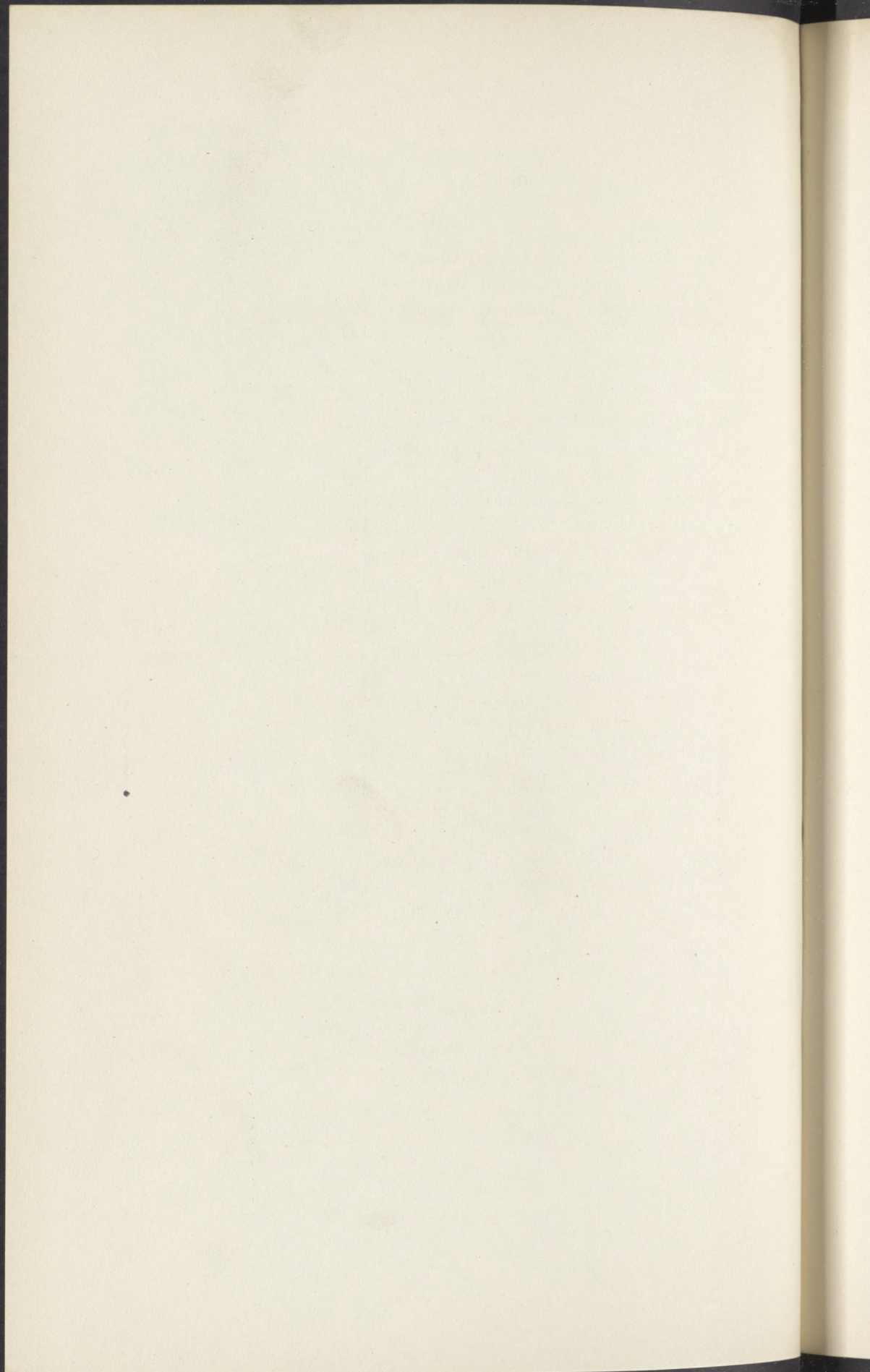
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New Jersey Court of Errors and Appeals

S. S. THOMPSON & COMPANY,	}	10
Plaintiff,		
vs.		Action at Law
THE COUNTY OF ATLANTIC,		
Defendant.		

NOTICE OF APPEAL. 20

*To Enoch A. Higbee, Esquire, Attorney for the
Defendant:*

SIR:

PLEASE TAKE NOTICE that the plaintiff in the above entitled cause appeals to the Court of Errors and Appeals in the Last Resort in all Causes in New Jersey from the whole of the judgment entered in this cause. 30

Respectfully yours,

QUINN, PARSONS & DOREMUS,
Attorneys of Plaintiff.

Service of the within Notice of Appeal is hereby acknowledged this 7th day of September, 1929.

E. A. HIGBY,
Atty. of Defendant. 40

GROUNDS OF APPEAL.

NEW JERSEY COURT OF ERRORS AND
APPEALS

10	<p>S. S. THOMPSON & COMPANY, Plaintiff-Appellant, vs. THE COUNTY OF ATLANTIC, Defendant-Respondent.</p>	<p>On Appeal from the Supreme Court</p>
----	---	---

*To Enoch A. Higbee, Esquire, Attorney for De-
fendant-Respondent:*

20 TAKE NOTICE that the Appellant, S. S. Thomp-
son & Company, a body corporate, writes down
the following grounds of appeal on its appeal
from the whole judgment of the Court of Errors
and Appeals:

1. The Trial Court erred in granting a non-
suit to the defendant as to the second and fourth
counts of the complaint.
- 30 2. The Trial Court erred in directing a verdict
in favor of the plaintiff in the sum of \$3,035.08,
whereas said verdict should have been for a
greater sum.

Respectfully yours,

QUINN, PARSONS & DOREMUS,
Attorneys of Plaintiff-Appellant.

Service of the within is hereby acknowledged
40 Sept. 7th, 1929.

E. A. HIGBY,
Atty. of Deft.

SUMMONS.

THE STATE OF NEW JERSEY, to THE COUNTY OF
ATLANTIC:

YOU ARE SUMMONED to answer the Com-
(Seal) plaint of S. S. THOMPSON & Co.,
body corporate, in an action at law 10
in the Supreme Court.

AND TAKE NOTICE, that unless you file your an-
swer to said complaint with the Clerk of the Su-
preme Court, at Trenton, within twenty days
after service upon you of this writ and the an-
nexed complaint, the plaintiff may proceed in the
suit and judgment may be entered against you.

(And see notice hereon endorsed) 20

Witness, WILLIAM S. GUMMERE, Esquire, Chief
Justice of the Supreme Court, at Trenton, this
day of October, A. D. Nineteen Hundred
and Twenty-eight.

FRED L. BLOODGOOD,
Clerk.

QUINN, PARSONS & DOREMUS,
Attorneys 30

COMPLAINT.

NEW JERSEY SUPREME COURT

MONMOUTH COUNTY

10	S. S. THOMPSON & Co., a body corporate, <div style="text-align: right; padding-right: 20px;">Plaintiff,</div>	}	Action at Law
	vs.		
	THE COUNTY OF ATLANTIC, <div style="text-align: right; padding-right: 20px;">Defendant.</div>		

Plaintiff, S. S. Thompson & Co., a body cor-
 20 porate of the State of New Jersey, having its
 principal office in the Borough of Red Bank, in
 the County of Monmouth and State of New Jer-
 sey, says that:

FIRST COUNT:

1. The defendant is a body corporate existing
 under and by virtue of the laws of the State of
 New Jersey, and has full power to make, enter
 30 into and execute contracts for the construction,
 rebuilding, repairing, alteration or erection of
 bridges in and for and on behalf of the County
 of Atlantic.

2. Prior to December 15th, 1923, the defendant
 did advertise for bids for the construction of a
 certain bridge at Atlantic City, in said County,
 known as the Albany Avenue Bridge, and in said
 advertisements and specifications did make ma-
 40 terial representations as to ground conditions,

Complaint

tide conditions, manner of doing work and other material matters to be considered by prospective bidders.

3. The plaintiff submitted a bid for said work, pursuant to said advertisements, after an examination of and in reliance upon the plans and specifications, and the matters and representations contained in said plans and specifications, and when the bids were received by the defendant it was ascertained that the bid of the plaintiff was the lowest of those received, and its said bid was accepted by the defendant accordingly. 10

4. Pursuant to said bid a contract was entered into between the plaintiff and defendant for the construction of said work, which contract bears date December 30th, 1926. 20

5. Said plans and specifications contained material misrepresentations of ground conditions as they existed, and of tide conditions as they existed, and of other conditions materially affecting the completion of said work and said contract.

6. Said contract was further subsequently altered, amended, supplemented and otherwise changed due to conditions imposed upon the plaintiff other than as contained in said plans and specifications, and due to conditions ascertained as the work progressed, which were not provided for in the said contract or contemplated in the preparation of plaintiff's bid. 30

7. Plaintiff duly entered upon the work of the construction of said bridge, and proceeded there- 40

Complaint

with as diligently as possible, notwithstanding the changed plans and material misrepresentation of existent conditions and obstructions known to defendant, all of which hindered and prevented it from the completion of said work, and which
10 greatly increased the expense thereof. Plaintiff, notwithstanding the existence of said changes, misrepresentations and obstructions, fully completed said contract.

8. Plaintiff has expended large sums of money in the construction of said bridge, and has been financially damaged greatly because of the obstructions and changes of plans caused by the
20 defendant.

SECOND COUNT:

1. Plaintiff repeats paragraph one of the First Count.

2. On December 30th, 1926, plaintiff and defendant entered into a contract for the construction of a certain bridge known as the Albany Avenue Bridge, located in Atlantic County.

30 3. By said contract the plans and specifications of said bridge were made a part of said contract.

4. In accordance therewith the defendant became obligated to furnish to the plaintiff within ten days after the acceptance of the bond, the location to complete said bridge in accordance with the plans and specifications.

40 5. Said bond was accepted by the defendant on January 12th, 1927.

Complaint

6. Thereafter it became the duty of the defendant to furnish a place to perform said contract in accordance with the plans and specifications, on or before January 22nd, 1927.

7. Notwithstanding the obligation of the defendant to so furnish such place, defendant refused and failed to furnish such place, contrary to the plans and specifications, and did neglect and refuse to furnish such place. 10

8. As a result of the refusal of defendant to furnish such place, and a result of this breach of said contract in that behalf, the plaintiff was delayed greatly in its work, and was forced to expend large sums of money in the maintenance of equipment, employment of labor and was forced to expend large sums of money beyond the terms of the contract in order to erect and construct said bridge at the place aforesaid, though encumbered by obstructions not set out in the plans and specifications. 20

9. Plaintiff has demanded a settlement of said account, from the engineer of the County of Atlantic, who has refused to certify the same. 30

10. Plaintiff has been damaged greatly by the failure of the defendant to furnish a site free from obstruction.

FOURTH COUNT:

1. Plaintiff repeats paragraphs one and two of the Second Count.

2. It thereafter became the duty of the defendant to furnish to the plaintiff a place to perform said work in a free and unobstructed manner. 40

Complaint

3. Notwithstanding said premises, the defendant permitted other contractors to enter upon the premises and approaches to said bridge, and to obstruct the plaintiff in its work.

10 4. Plaintiff was thereby damaged greatly and the completion of said work was delayed and other extra expenses caused by hiring of labor, by additional time which was required to complete said job, and by constant transfer of equipment and labor.

FIFTH COUNT:

1. Plaintiff repeats paragraphs one and two of
20 the Second Count.

2. Pursuant to the terms of said contract, which has been fully completed by the plaintiff, plaintiff demands the balance due upon the agreed contract price of \$2,513.76.

3. Defendant has further deducted from mon-
eys rightfully due and owing plaintiff, wrongfully
the sum of \$2,724.28 for inspection fees wrong-
fully charged to the plaintiff, all of which inspec-
30 tion fees were caused by the acts of the defend-
ant, and which plaintiff demanded.

4. Plaintiff further used in accordance with
the terms of said contract extra steel sheeting.
Under the terms of said contract the defendant
agreed to pay a sum of five cents a pound for said
additional sheeting. The price of extra steel
sheeting used at the direction of the defendant
and its authorized agents, is \$4,445.70. Plaintiff
40 demands payment thereof.

Answer and Notice

5. Plaintiff further removed piling and caps under the old water main, built a concrete wing wall and furnished strips for safety gates at the express request of the defendant, and upon the defendant's promise to pay therefor, all of which items remain unpaid and owing the plaintiff. The reasonable agreed cost of such work was \$591.76. 10

6. Plaintiff demands upon the Fifth Count the sum of \$10,275.50, and costs of this suit.

Plaintiff demands as damages the sum of \$200,000.00 and costs of this suit.

QUINN, PARSONS & DOREMUS,
Attorneys of Plaintiff. 20

ANSWER AND NOTICE.

NEW JERSEY SUPREME COURT

MONMOUTH COUNTY

S. S. THOMPSON & Co., body corporate,	}	30
Plaintiff,		Action at Law
vs.		
THE COUNTY OF ATLANTIC,	}	
Defendant.		

The County of Atlantic, defendant, a body corporate under and by virtue of the laws of the 40

Answer and Notice

State of New Jersey, hereby reserving the right to apply to the Court for a change of venue from the County of Monmouth to the County of Atlantic, and further reserving the right to move to dismiss the complaint filed against it in this
 10 cause, pursuant to notice hereto attached, says:

ANSWERING THE FIRST COUNT THIS DEFENDANT
 SAYS:

1. It admits Paragraph 1 of the First Count.
2. The defendant admits advertising for bids for the construction of the bridge referred to in Paragraph 2 of the First Count of the Complaint,
 20 prior to December 15th, 1926, but not prior to December 15th, 1923, and denies the other allegations set forth in said paragraph.
3. The defendant admits that plaintiff submitted a bid for said work, which was accepted by this defendant, but upon what the plaintiff relied in submitting said bid this defendant has no knowledge.
4. It admits Paragraph 4 of the First Count.
- 30 5. It denies Paragraph 5 of the First Count.
6. It denies Paragraph 6 of the First Count.
7. It admits that plaintiff entered upon the work of the construction of said bridge, but denies all other allegations set forth in Paragraph 7 of the First Count.
8. It denies Paragraph 8 of the First Count.

Answer and Notice

ANSWERING THE SECOND COUNT THIS DEFENDANT
SAYS:

1. It admits Paragraph 1 of the Second Count.
2. It admits Paragraph 2 of the Second Count. 10
3. It admits Paragraph 3 of the Second Count.
4. It denies Paragraph 4 of the Second Count.
5. It admits Paragraph 5 of the Second Count.
6. It denies Paragraph 6 of the Second Count.
7. It denies Paragraph 7 of the Second Count.
8. It denies Paragraph 8 of the Second Count.
9. It denies Paragraph 9 of the Second Count. 20
10. It denies Paragraph 10 of the Second
Count.

AND FOR A FURTHER DEFENSE TO SECOND COUNT
THIS DEFENDANT SAYS:

1. That the plaintiff well knew at the time it
bid upon the work contemplated in the contract
between it and the defendant, referred to in the 30
complaint, that the defendant had control only
over the space where the bridge proper was to be
erected and that the terminals at each end of said
proposed bridge were owned and controlled by
the City of Atlantic City, a municipality of the
State of New Jersey, which was about to erect
new approaches at each end of the proposed
bridge, and that plaintiff would have to make its
own arrangements for access to the place where 40

Answer and Notice

it was to erect said bridge and that the plaintiff did bid upon and attempted to secure from said City of Atlantic City, controlling the approaches to said bridge, the work of constructing same, and that defendant furnished the site upon which
 10 the bridge was to be erected, which was all that it was required to do, as provided in said contract.

ANSWERING THE THIRD COUNT THIS DEFENDANT
 SAYS:

1. It admits Paragraph 1 of the Third Count.
- 20 2. It repeats its answers to Paragraph 1 and 2 of the Second Count.
3. It admits Paragraph 3 of the Third Count.
4. It denies Paragraph 4 of the Third Count.
5. It denies Paragraph 5 of the Third Count.
6. It denies Paragraph 6 of the Third Count.
7. It denies Paragraph 7 of the Third Count.

30 ANSWERING THE FOURTH COUNT THIS DEFENDANT
 SAYS:

1. It repeats its answers to Paragraphs 1 and 2 of the Second Count.
2. It denies Paragraph 2 of the Fourth Count.
3. It denies Paragraph 3 of the Fourth Count.
4. It denies Paragraph 4 of the Fourth Count.

Answer and Notice

AND FOR A FURTHER DEFENSE TO FOURTH COUNT
THIS DEFENDANT SAYS:

1. This defendant here repeats the further defense to the Second Count as its further defense to the Fourth Count. 10

ANSWERING THE FIFTH COUNT THIS DEFENDANT
SAYS:

1. The defendant repeats its answers to Paragraphs 1 and 2 of the Second Count.

2. The defendant denies that plaintiff has fully completed said contract, pursuant to the terms thereof, and denies that there is any sum due to plaintiff until said contract is fully completed. 20

3. It denies Paragraph 3 of the Fifth Count.

4. It denies Paragraph 4 of the Fifth Count.

5. It denies Paragraph 5 of the Fifth Count.

AND FOR A FURTHER DEFENSE TO FIFTH COUNT
THIS DEFENDANT SAYS:

1. Defendant admits that if the plaintiff had completed its work as provided in said contract, there would have been due to it upon completion thereof, the sum of \$2513.76, which would be due and payable after plaintiff presented to the defendant its verified bill for same but the said plaintiff has presented no such bill and in fact has not completed its said contract. 30

2. That if any extra steel sheeting not contemplated by the contract was furnished by the 40

Answer and Notice

plaintiff, as claimed in Paragraph 4 of the Fifth
Count of its complaint, it was done for its own
convenience and not at the request or direction
of the defendant, and with no agreement, ex-
pressed or implied, that defendant would pay for
10 same and that defendant is not indebted to plain-
tiff in any sum whatever for same.

3. That defendant is not indebted to plaintiff
in the sum of \$591.76, as set out in Paragraph 5
of plaintiff's Fifth Count, but that defendant
would be indebted to plaintiff in the sum of \$521-
32 for extra work performed by the plaintiff,
which was agreed between plaintiff and defend-
20 ant to be paid plaintiff for removing piling and
caps at or adjoining the site of the said bridge,
which would become due and payable when plain-
tiff completed its entire contract and furnished
a duly verified bill for same; and the plaintiff has
neither entirely completed its contract nor has it
presented a proper verified bill for the said
amount.

E. A. HIGBEE,
Attorney for Plaintiff.

30

NOTICE

SIRS:

TAKE NOTICE, that at the time this cause is
moved for trial the defendant, by its attorney,
will move to strike out the complaint in this cause
for the following reasons:

1. Because the First Count of said complaint
40 is vague, indefinite and shows no cause of action.

Answer and Notice

2. Because said First Count purport to relate to a certain contract and parts of a contract, a copy of which contract is not attached to the complaint and made a part thereof, nor are the parts of said contract apparently relied on by the plaintiff set out in the said count, nor does the said count allege in what particulars the referred to contract was altered, amended, supplemented or otherwise changed, nor are facts set out showing that the plaintiff was hindered or prevented in the completion of its work, nor are any specific allegations set forth which show how, in what manner or to what extent the plaintiff was damaged. 10

3. Because the Second Count in said complaint purporting to be based on a breach of an alleged contract, has no copy of the contract attached thereto, nor are covenants from the said contract on which the plaintiff claims a breach, recited in this count and because no facts are set forth which show a resulting injury to the plaintiff, or right to recover damages by it, and because no damages are asked under this count. 20

4. Because the Third Count states no facts which show that the plaintiff was damaged by anything alleged in said count, and because no damages are set forth or claimed in this count and no basis established by said count on which damages could be fixed or determined. 30

5. Because the Fourth Count of the complaint sets forth no contract and does not relate to any contract attached thereto, and does not specify any terms or covenants of any contract upon which the truth of the allegations in said com- 40

Answer and Notice

plaint can be determined and because no basis is therein set forth by which damages could be measured, and because this count sets forth no specific amount of damages alleged to be suffered by the plaintiff and makes no claim for any specific
10 sum by reason of anything alleged in this count.

6. Because the Fifth Count of the complaint has no copy of an alleged contract annexed thereto, nor does it state the consideration or price to be paid the plaintiff under any alleged contract, nor does it show payments made on account thereof, nor any basis upon which can be determined what amount, if any, is due to the plaintiff.

20 7. Because the entire complaint, purporting to refer to an existing written contract between plaintiff and defendant has no copy of said contract annexed thereto and sets forth no specific covenants or conditions purporting to be recited in said contract, for violations of which the plaintiff claims damages and is so uncertain, vague and indefinite as to prevent defendant from properly answering same and properly defending said cause.

30 8. Because neither the whole complaint nor any count therein sets forth a cause of action.

Respectfully,

E. A. HIGBEE,
Attorney of Defendant.

To:

Messrs. Quinn, Parsons & Doremus,
40 Attorneys of Plaintiff.

REPLY.

NEW JERSEY SUPREME COURT

ATLANTIC COUNTY

S. S. THOMPSON & Co., body corporate, <div style="text-align: right; padding-right: 20px;">Plaintiff,</div> <div style="text-align: center; padding: 5px 0;">vs.</div> THE COUNTY OF ATLANTIC, <div style="text-align: right; padding-right: 20px;">Defendant.</div>	}	10 Action at Law
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Plaintiff, by way of reply to the answer filed herein, says that: 20

It denies the new matter raised therein, and joins issue upon the same.

QUINN, PARSONS & DOREMUS,
Attorneys of Plaintiff.

AMENDED POSTEA.

NEW JERSEY SUPREME COURT

ATLANTIC COUNTY

10	S. S. THOMPSON & Co., body corporate, <div style="text-align: right; padding-right: 20px;">Plaintiff,</div>	}	Action at Law
	vs.		
	THE COUNTY OF ATLANTIC, <div style="text-align: right; padding-right: 20px;">Defendant.</div>		

20 This case was tried on May 21, 1929, before Honorable William F. Sooy and a jury in the Atlantic Circuit, at Atlantic City, New Jersey. The Trial Court struck out the first and third counts of the complaint. The Trial Court ordered a nonsuit as to the second and fourth counts of the complaint and directed that a general verdict be entered in favor of the plaintiff and against the defendant, the County of Atlantic, upon the fifth count in the sum of \$3,035.08.

30

W. F. SOOY,
Judge.

RULE FOR JUDGMENT

Whereupon it is adjudged that the second and fourth counts of the complaint be dismissed.

Judgment signed and entered September 17, 1929.

Wm. J. Gummere,
C.J.

Entered on motion of Enoch A. Higbee, Attorney.

RULE FOR JUDGMENT.

NEW JERSEY SUPREME COURT

MONMOUTH COUNTY

S. S. THOMPSON & Co., body corporate, Plaintiff, vs. COUNTY OF ATLANTIC, Defendant.	}	10 Action at Law
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It is ordered that judgment be and hereby is entered in favor of plaintiff and against the defendant on the 5th count of the complaint for the sum of \$3035.08 besides costs to be taxed nisi. 20

Entered June 5th, 1929, on motion of

QUINN, PARSONS & DOREMUS,
 Attorneys.

Damages	\$3035.08	
Costs	67.22	
	\$3102.30	30

JUDGMENT.

NEW JERSEY SUPREME COURT

MONMOUTH COUNTY

10	<p>S. S. THOMPSON & Co., body corporate, vs. COUNTY OF ATLANTIC,</p>	}	<p>Plaintiff, Defendant.</p> <p>Action at Law</p>
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Quinn, Parsons & Doremus, Attys.

20

Judgment entered this 5th day of June, A. D. 1929, in favor of the plaintiff and against the defendant on the 5th count of the complaint for \$3035.08 damages and \$67.22 costs.

WILLIAM S. GUMMERE,
 C. J.

TESTIMONY.

NEW JERSEY SUPREME COURT

ATLANTIC COUNTY

<p>S. S. THOMPSON AND COMPANY, a corporation, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>THE COUNTY OF ATLANTIC, Defendant.</p>	} Action at Law	10
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Appearances:

Messrs. Bleakley, Stockwell and Burling (Mr. Babcock of counsel), and Messrs. Quinn, Parsons and Doremus, for the plaintiff. 20

Enoch Higbee, Esq., and Edmund C. Gaskill, Esq., for the defendant.

The above entitled case was tried May 20, 1929, before Honorable Williams Frank Sooy, Judge, and a Jury.

(Mr. Higbee moved to strike out the first, second, third, fourth and fifth counts of the complaint. The Court ordered the first count stricken, but denied the motion to strike the second, third, fourth and fifth counts.) 30

Mr. Higbee: Your Honor will grant me an exception to the Court's refusal to strike out the second and third, and the Court's refusal to strike out the fourth and fifth counts. 40

The Court: Yes.

Fred W. Willits—Direct

Mr. Parsons opened the plaintiff's case to the jury.

Mr. Higbee opened the defendant's case to the jury.

10 FRED W. WILLITS, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

Direct-examination by Mr. Parsons:

Q. You are connected with the Board of Freeholders of Atlantic County, are you? A. I am.

20 Q. Have you the records of the Board of Freeholders here? A. I have.

Q. Have you also the contract and the plans and specifications of the Albany Avenue Bridge? A. I think the Judge has the contract there, Judge Gaskill.

Mr. Gaskill: No, it is in that envelope.

The Witness: Oh, is it in this envelope here?

Mr. Gaskill: Yes.

The Witness: Yes.

30 Q. Is that the original contract signed by S. S. Thompson and Company? A. Yes.

Mr. Parsons: I offer that contract in evidence.

Mr. Higbee: I object unless the specifications are offered with it.

Mr. Parsons: Well, the entire contract and specifications.

40 The Court: They are annexed, aren't they, the specifications?

Fred W. Willits—Direct

Mr. Higbee: Specifications and forms, yes.

The Court: Just the specifications.

The Witness: The specifications and the map.

Mr. Higbee: The plans are part of the specifications, or part of the contract, too, and while they may not be annexed, they were in theory of law. 10

The Court: Well, I assume he wants everything in.

Mr. Parsons: They are the plans, I understand, if you are willing that they be introduced.

Mr. Higbee: I am perfectly willing. 20

The Court: All right.

Q. And these are the plans also? A. I didn't have any custody of the plans, only the contract.

Mr. Higbee: We will consent that both the plans and the contract go in.

The Court: They will be marked separately; contract and specifications as one exhibit, and the plans as another.

(The contract and specifications are received in evidence and marked as one exhibit for the plaintiff, P-1; the plans are received in evidence and marked as exhibit for the plaintiff, P-2.) 30

Q. Will you refer to the contract and tell us when the bond was approved by the county?

Mr. Higbee: Isn't it marked on the contract, Mr. Willits? 40

The Witness: Yes.

Fred W. Willits—Direct

Mr. Higbee: On the outside?

The Witness: No; the approval is on the inside, Judge.

Mr. Parsons: The very last page, I think it is.

10 The Witness: Twelfth day of January, 1927.

Q. Have you your minutes here? The date—let me just get that so we will get it clear. The date is January 12, 1927, that the bond was approved; is that correct? A. No; they would not be approved before the date of the meeting.

20 Q. But I mean the date that appears in the contract, the approval of the bond, was January 12, 1927? A. Well, didn't I read that?

The Court: Yes; that is what you read.

Q. Have you your minutes here? A. I have.

Q. Will you refer to the meeting of October 10, 1928?

(Witness does so.)

Q. Now, those are the regular minutes of the Board of Freeholders; are they? A. They are.

30 Q. Is there a reference there to the Albany Avenue Bridge in those minutes? A. In regard to payments, yes.

Q. In regard to what? A. In regard to payments.

Q. Will you read from the—

Mr. Parsons: Instead of offering the minutes themselves I imagine he can read the extract into the record.

40

The Court: Yes.

Fred W. Willits—Direct

Q. Will you read from those minutes what appears there? A. Dr. Stehle offered the following resolution and moved its adoption: "Whereas the Albany Bridge as reconstructed by S. S. Thompson and Company, Inc. under its contract awarded by this Board has been completed in full accordance with the plans and specifications for the work, and the bridge has been in successful operation for more than four months, now, therefore, be it resolved that the work as completed be and it is hereby accepted; that the County Engineer be and he is hereby authorized and directed to pay to the contractor the amount of \$2,513.76 which is the final payment due the contractor as shown on the construction estimate certified by the County Engineer and bearing the affidavit of the aforesaid contractor as provided by law and the rules of this Board." This is submitted to the County Treasurer for payment. Do you want the roll call on that?

Mr. Parsons: No.

The Court: Well, it was passed; wasn't it?

Q. What was that amount, Mr. Willits, please?

The Witness: Yes, the resolution was adopted by the following roll call: Now, there is another resolution?

Q. Yes. A. Dr. Stehle offered the following resolution and moved its adoption: "Whereas in the reconstruction of the Albany Avenue Bridge, S. S. Thompson, Inc., the contractor, was under the necessity of removing the foundations of the

Fred W. Willets—Cross

forty-eight-inch main across the channel of Inside
 Thoroughfare for the reason that these founda-
 tions interfered with the construction of the pier
 required in the new bridge, for which work the
 10 Water Department of Atlantic City refused to
 pay regardless of an understanding between the
 city and county that the city would remove its
 water mains so as to permit the county to re-
 construct the bridge; and whereas the bridge com-
 mittee of this Board is of the opinion that the
 contractor should be reimbursed for the work
 since the necessity of doing it did not appear in
 the plans and specifications under which the con-
 tract was awarded to him, and it is recommended
 20 to this Board that the amount of \$521.32 cover-
 ing that work be paid to the contractor, now,

Therefore, be it resolved that the County
 Treasurer be and he is hereby authorized to pay
 to S. S. Thompson and Company, Inc., the afore-
 said amount when he has received a proper bill
 bearing the County Engineer's approval as to
 its correctness and the contractor's affidavit as
 provided by law and the rules of this Board."
 30 Resolution adopted.

Mr. Parsons: That is all. Cross-ex-
 amine. It will be understood I offer the
 minutes in evidence.

CROSS-EXAMINATION by Mr. Higbee:

Q. I call your attention to the first resolution.
 I understood you to say that the County Engineer
 be authorized to pay—whether I misunderstood
 40 you or not, is that what the minutes say? A.

Fred W. Willets—Cross

County Treasurer; "Certified by the County Engineer."

Q. Who was authorized to pay? A. County Treasurer.

Q. You read it "County Engineer." A. The County Treasurer be and is hereby authorized and directed to pay the contractor the amount. 10

Q. Did the contractor ever return to the Board of Freeholders, insofar as you know, the estimate of the County Engineer or a bill for \$2,513.76 bearing the County Engineer's certificate and with the affidavit that the same was correct? A. Not to my best knowledge.

Q. Did he ever return to the Board of Freeholders to your knowledge a bill bearing a certificate of the County Engineer and an affidavit that the same was correct for the sum of \$521.32? A. Not to my knowledge. 20

Q. And have they ever been presented to the Board of Freeholders by anyone and shown upon the minutes to have been so presented? A. Not to my knowledge, no.

The Court: What is your official position with the County Board? 30

The Witness: Clerk.

The Court: And do you have charge of the minutes and all records of the Board?

The Witness: All records but not the bills.

The Court: Not the bills?

The Witness: No.

Q. Your minutes, however, record the bills that are paid or presented? A. Yes, sir. All the bills that are paid are recorded in the minute book. 40

Alex H. Nelson—Direct

The Court: Suppose a bill is presented and not paid, does it appear?

The Witness: Never reaches the minute book.

10 The Court: Unless it is properly before the Board and rejected upon a roll call it is never referred to in the minute book.

Q. But all bills that are brought before the Board are recorded in the minute book that have not been paid, or rejected; is that right? A. That is right.

Witness excused.

20

ALEX H. NELSON, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

Direct-examination by Mr. Parsons:

Q. Mr. Nelson, you are the County Engineer of the county, are you? A. I am.

30 Q. And you were the engineer for the county during the construction of the Albany Avenue bridge? A. I was.

Q. I show you a letter, Mr. Nelson, bearing date January 14th, and ask you if that letter was written by you, bearing date January 14th, and your signature? A. Yes.

Mr. Parsons: I offer the letter in evidence.

40 Mr. Gaskill: Is that the letter you noticed us to produce?

Alex H. Nelson—Direct

Mr. Parsons: I have every letter here. I never got your notice, Mr. Gaskill.

Mr. Higbee: I have no objection.

(The paper offered is received in evidence and marked as an exhibit for the plaintiff, P-3.) 10

Q. Mr. Nelson, in accordance with that letter had Mr. Thompson's superintendent produced before you a draft showing the work they planned, showing the way they planned to do the work? A. I don't recall it.

Q. I show you a pencil sketch and ask you if that is the sketch that was submitted to you and of the plan of doing the work? A. I don't recall. My recollection was that the superintendent made sketches that I had in mind, and I wrote to Mr. Thompson—and I may be wrong about that, though. 20

Q. You would not be prepared to identify that? A. No, sir.

Q. Now, on January 25th, I show you another letter and ask you if this letter bears your signature and was written to Mr. Thompson? A. Yes. 30

Mr. Parsons: I offer this in evidence.

(The paper offered is received in evidence and marked as an exhibit for the plaintiff, P-4.)

Q. I show you another letter bearing date March 14th, 1927. A. Yes.

Mr. Parsons: I offer that.

(The paper offered is received in evidence and marked as an exhibit for the plaintiff, P-5.) 40

Alex H. Nelson—Direct

Q. I show you letter, Mr. Nelson, bearing date January 3, 1928, and ask you if that letter was written by you? A. Yes.

10 Mr. Parsons: I offer that in evidence.
(The paper offered is received in evidence and marked as an exhibit for the plaintiff, P-6.)

Q. Directing your attention to the site where the bridge was to be erected, do the plans which have been offered in evidence marked P-2 provide the erection of the bridge? A. Yes.

20 Q. I will ask you to refer to those plans, Mr. Nelson and show us the portion of the plans that would portray the abutment—the location of the abutment—similar to this tracing which I have here. Is there a portion of the plans which provides that? A. I don't know that I exactly understand your question. The plans here show the details of the abutment and piers, and the general plan—they show the location of these piers and elevation.

Q. Do they also show the location of the piers from above looking down? A. Yes.

30 Q. Now, have you a plan among those plans there showing that, showing the location of the piers? A. Yes; the front sheet shows it.

The Court: How is that numbered?

The Witness: That is sheet number one.

40 Mr. Parsons: I might say to Mr. Nelson and to the Court instead of calling three or four witnesses back and forth, I want to get from Mr. Nelson that this plan was

Alex H. Nelson—Direct

submitted to him and if he can verify that this is the approximate location of the piers, and so on, instead of dragging it out and calling witnesses back and forth.

The Witness: I remember seeing this general lay-out, but I don't recall that it was in the early stages of the erection. I suppose you mean the location of these piers? 10

Q. I mean the location of these piers and the way the derricks were to be placed. A. They are not tied together by any dimensions.

Q. But the sketch, I believe, is one-inch to twenty feet. A. Yes. That is the general lay-out, yes. It just agrees with this. 20

Q. Now, Mr. Nelson, so that the jury can see—I now show you the same thing in an enlarged size. Will you just check over that and see if it is an enlargement of this drawing which you have last seen on an enlarged scale? A. I think it is, yes.

Q. Now, if you will tack it up on the black-board. A. (Witness does so.)

Q. Now, for the benefit of myself and the jury and the Court also, will you explain to us just what that represents? A. It represents the location of the floor—sub-structures of the bridge. 30

Q. And by sub-structures, so that we may understand that, will you just tell us what a sub-structure is? A. This is the—as you call it, the abutment at the end of the bridge. That is a pier, and that is a pier, and the other is an abutment, the same class as this one. 40

Alex H. Nelson—Direct

Q. Now, will you locate on that bridge, or on that plan there, Mr. Nelson, the location of the water pipe as near as you can recollect? A. I don't know where it was.

10 Q. You were down and saw the work? A. Yes, but I don't know where the water pipe was.

Q. Well, can you give us the approximate location of it? A. No, only that it was on this side of the bridge, on the easterly side of the bridge.

Q. On the easterly side of the bridge. Can you tell us—

The Court: Why do you call that the easterly side? It is the northerly side—
20 oh, yes; I understand now.

Q. In other words, so that we can all understand it, the bridge travels crosswise of that picture? A. Yes.

Q. Runs north and south? A. This is the center line.

Q. This is the center line of the bridge and the water pipe was on the easterly portion of the bridge? A. Yes.

30 Q. Do you know of your own knowledge, and can you tell us, Mr. Nelson, of the location of the water pipe, if the location of the water pipe was in the position and place where the easterly half of these sub-structures were to be erected? A. Yes; it was on this side of the bridge, and there was some obstruction, something occupying the same ground; but I don't know the details of it.

40 Q. Directing your attention to the northerly side of the bridge—rather, the westerly side, can you tell us what was located along the westerly

Alex H. Nelson—Direct

side of the bridge? A. There was a temporary footbridge.

Q. Can you tell us with relation to the westerly end of the sub-structures where that foot bridge was located? A. Well, it was somewhere beyond the ends of these piers. I think as a matter of fact it was 100 feet from the center line of this bridge to the center line of the footbridge, although I am not sure of that. 10

Q. Can you tell us—can you indicate on the map to us, so we will be able to visualize it more, Mr. Nelson, the location of the water main, so we will simply get an idea of the location of it? A. Well, I couldn't do anything but just by the merest approximate methods. It ran along here some where but I don't know where. You see it is not on the plans. 20

Q. It is not on the plans. Can you tell us the size of the main, Mr. Nelson? A. It was a 48-inch water main that separated into 42-inch syphons, I think, although I am not sure of that.

Q. At either end? A. No. The syphons were under the channel. This is the channel—the channel, and a wooden water main came up here somewhere, divided by cast iron, and went down into the water. 30

Q. Those four syphons were located, then, right across the channel; is that right? A. Yes.

Q. Will you just—I don't know whether we are all quite certain—that drawing which is before you represents, in other words, a bird's-eye view of the location of the piers, the substructure upon which the bridge was to be built; is that right? A. That is right. 40

Alex H. Nelson—Direct

Q. As if you were above, looking from the top down on it? A. That is right.

Q. And that water main which you have mentioned, is that one of the main supplying Atlantic City? A. It is the older one of the two. It is
10 the less effective one.

Q. You have mentioned four syphons going down in the channel. Will you locate those four syphons for us? A. (No answer.)

Q. I show you a picture and ask you if that correctly portrays the location of the syphons in the channel? A. There isn't much on here that shows location, I notice. The four cast irons are shown going down in the water, but there is nothing
20 on here from which I could say whether I can locate it or not. This is taken behind one of the old piers. It may be of one manner or another.

Q. I show you another, and see if, using those two pictures, they will aid you in locating them. Here is a third one. We can use all three of them. A. This looks better.

Q. I would like to have you locate on the drawing. A. Yes; that is a syphon there.

Q. Now, with the use of those three pictures,
30 could you indicate to us approximately on the draft there the location of the syphons and the water main? A. No. You see, there is a distance there. I don't know what it is.

Q. You are an engineer, of course, and used to figuring exactly in feet. But I would like you, if you would, to indicate to us approximately on the drawing the location. I don't care whether it is two or three or five feet out of the way, if
40 you will indicate to us approximately the location.

Alex H. Nelson—Direct

The Court: Merely for the purpose of illustration.

Q. That is all, merely for the purpose of illustration. I have here a crayon with which you may mark it on, Mr. Nelson. A. I haven't any knowledge of what it is. Anything that I would do would be the merest guess. 10

Q. Well, I would like to have the location for illustration.

Mr. Higbee: I object. If the gentleman does not know the location he has no right to undertake to put a mark there.

The Court: I assume you have some witness who knows that accurately. 20

Mr. Parsons: Well, I wanted Mr. Nelson as an unbiased witness to indicate the location; that is all.

The Court: But he says he cannot do it with any degree of accuracy at all.

Q. You do know, Mr. Nelson, however, that the water main was in the position where the easterly half of the sub-structures was to be erected; is that correct? A. Yes, yes. 30

Mr. Parsons: Cross-examine.

Mr. Higbee: No questions.

Witness excused.

Henry Crawford—Direct

HENRY CRAWFORD, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

Direct-examination by Mr. Parsons:

10

Q. You live where? A. Northfield.

Q. That is in Atlantic County, is it? A. Yes.

Q. During the year 1927 did you hold any official position in Atlantic County? A. I did.

Q. What position was that, Mr. Crawford? A. Freeholder.

Q. At the same time were you employed by Mr. Thompson? A. I was.

20 Q. In what position were you employed by him? A. I was in the office taking care of time.

Q. Timekeeper? A. And paymaster, and office work.

Q. And was that on the particular job of Albany Avenue Bridge? A. It was.

Q. And while you were on that job did you keep a diary of the work as it progressed? A. I did.

30 Q. Do you have that diary—describe to us how you made the diary. A. Well, every morning I would make the diary out for the day before, of the work that was done.

Q. So that the entries in the diary show what was done the preceding day? A. Exactly.

Q. And does that diary contain a true and accurate account of the work that was done? A. To the best of my knowledge; yes, sir.

Q. Who was the superintendent on the job, Mr. Crawford? A. Mr. Downs.

40 Q. Was there an assistant superintendent there? A. Yes.

Henry Crawford—Direct

Q. Mr. Casaro? A. Mr. Casaro.

Q. I show you a diary for the year 1927, and ask you if that is the diary which you kept? A. Yes, sir.

Q. I also show you the diary for 1928 and ask if that shows it down to the completion? A. Yes. 10

Q. Are most of those entries in your handwriting, Mr. Crawford? A. Yes, sir.

Q. You were familiar at the time with the occurrences on the bridge work and the different steps that were taken? A. Why, not all of it.

Q. Can you from your own knowledge, without referring to that diary, testify to the different happenings on the bridge? A. Just what do you mean? 20

Q. Well, can you answer questions about, for instance, when the bridge was opened for traffic, when it was closed, and about the pipe line, without referring to the diary? A. I couldn't give you the exact date.

Q. May I ask you when the bridge was first closed so that you could work on it, closed to traffic? Can you tell me that date? A. It was sometime in January. It was only closed for a day or so and then we had to open. 30

Q. Have you the exact date in your diary when it was closed? A. I think we have.

Q. Will you refer to your diary, please? Will you refer to the date of January 25th? A. Twenty-five?

Q. Yes. A. Yes, sir; bridge closed at nine A. M.

Q. That was January 25th? A. Yes, sir.

Q. 1927? A. Yes, sir. 40

Henry Crawford—Direct

Q. Now, will you refer to January 22, 1927, and tell us whether there was equipment on the job and any men upon the job working?

10 Mr. Higbee: May I have the purpose of this question?

Mr. Parsons: Under the terms of the contract we were obligated to start work January 22d. I am simply offering proof that we were there.

Mr. Higbee: Well, what difference does it make whether he was there or not? The question is whether the work was completed. The question is whether he completed the contract.

20

Mr. Parsons: And the terms of the contract.

Mr. Higbee: I object.

Mr. Parsons: I will withdraw the question. There is no use taking up the time.

Q. Will you refer now, or run through your diary briefly—

30 Mr. Parsons: Just strike that question out please.

Q. You say the bridge was opened to you and closed to traffic on January 25th? A. Yes, sir.

Q. Now, will you tell us when it was closed to you and open to traffic after that? A. When it was closed and open?

Q. I mean closed to you and open for traffic, when traffic was again let on, over the bridge. Will you refer to the date of January 27th? A.

40 Yes.

Henry Crawford—Direct

Mr. Higbee: I object, if your Honor please, to this. Suppose the bridge was closed to traffic. There is nothing to show who closed it unless the Board of Freeholders closed it.

The Court: I guess that is what they are going to prove, and that the time during which they closed it, it was not a free and unobstructed place for them to work.

Mr. Higbee: Well, how can they prove it by having this man testify from a diary when it was closed?

The Court: Well, the only thing they can do is go by stages.

Mr. Higbee: I have no objection if your Honor will strike it out unless they connect it up with the action of the Freeholders. My objection goes to it unless it is connected up.

The Court: Oh, yes.

A. Bridge ordered closed by County Engineer Nelson and Dr. Stehle on January 27th.

The Court: January 27th.

Q. Now, will you run through your diary quickly—

Mr. Higbee: May I ask just one question there? That was closed to traffic you mean?

The Witness: Yes.

Mr. Parsons: It was open to traffic and closed to them, Judge Higbee.

Mr. Higbee: He did not say that.

Henry Crawford—Direct

The Court: What is the true fact? Was it open to traffic and closed to you?

The Witness: It was open to traffic, yes.

The Court: And closed to you?

The Witness: Closed to us.

10 Mr. Higbee: And on January 27th, it was ordered closed to you and opened to traffic?

The Witness: Yes, sir.

Q. Now, will you run through your diary quickly down to March 24th and tell us whether the bridge was kept open to traffic during that period of time—from January 27th until March 14th? A. Yes.

20 Q. And on March 14th what happened?

The Court: With reference to traffic?

A. I don't seem to have anything on there about the bridge being opened that day.

Q. It may have been two days before. I may have it down here wrong. I was referring to the letter. Look at March 12th, a couple of days before. A. Pontoon bridge opened, and had trouble with the plates on it. So they told us to
30 keep the bridge open until Monday. That was on Saturday; afraid the traffic might be so great they would have to come back and use the old bridge.

Q. That was March twelfth? A. That was March 12th, yes.

Q. And on March 14th? A. On March 14th it was closed to traffic.

Q. And turned over to you? A. Exactly.

40 Q. Now, from March 14th for a period of time were you acquainted with the site of the work, Mr. Crawford? A. Somewhat, yes.

Henry Crawford—Direct

Q. Do you know about the water main? A. Yes.

Q. And was there a water main existing at the time at the site of the work? A. Yes, there was.

Q. Did you as timekeeper and paymaster, in keeping this diary, watch the work done upon this water main? A. Yes. 10

Q. And have you made notations in your diary from time to time about the work done on this water main? A. Yes; I think there is.

Q. Pardon me? A. Yes.

Q. May I further ask you if that work was not done by the company by which you were employed? A. No. 20

Q. I ask you to refer to your diary as of June 4, 1927, and tell us the condition of the water main at that time. A. June 4th?

Q. Yes. A. Had to send men home on account of Water Company holding up main in the way.

Q. And on June 10th? A. Mr. Van Gilder promised to remove the water mains on Saturday, June 11th.

Q. And who is Mr. Van Gilder? A. Superintendent of the Water Company; Atlantic City Water Company. 30

Q. Will you refer to June 13th? A. No work done on water mains.

Q. Now, was there a conversation held with Mr. Nelson, the county engineer, on June 17th? A. Mr. Nelson on the job, looked up Mr. Van Gilder to show him how much time Gandy's men (Gandy is the contractor on the water main) lost, taking out old main. 40

Henry Crawford—Cross

Q. Now, at what time was S. S. Thompson and Company able first to place stone upon the masonry? I direct you to the dates of August 26th and 27th. A. Placed on what?

10 Q. On the masonry?

Mr. Babcock: I suppose that means the sub-structure.

Mr. Parsons: That means the sub-structure.

A. On August 27th set stone in south shore cofferdam.

Mr. Parsons: Cross-examine.

20 CROSS-EXAMINATION by Mr. Higbee:

Q. Mr. Crawford, how did you obtain the information that the bridge was closed on January 27th? Who ordered it closed? A. I believe Mr. Nelson was around there; had a conference.

Q. Did he talk with you about this? A. No, sir.

Q. Did you hear him order the bridge closed? A. No, sir.

30 Q. How did you get your information that the bridge was ordered closed by Mr. Nelson? A. From the superintendent.

Q. Did you ever have any conversation with Mr. Nelson touching the closing or opening of this bridge? A. No, sir.

40 Q. Then all the memoranda that you made here which you have been reading from were made on information furnished you by the superintendent; was it? A. Only in regards to the closing

Henry Crawford—Cross

at that time. I was instructed to keep the diary, as I understand that that was their—one of their systems; to keep a diary every day of everything that was done on their job, or any job.

Q. But my question is, these memorandas which you have entered in your diary stating the opening and closing of this bridge on different occasions proceed from a conversation that you had with Mr. Nelson? A. No, sir. 10

Q. Did they in any event proceed from a statement made to you by the superintendent? A. Yes, sir.

Mr. Higbee: I ask that be stricken out.

The Court: Do I understand that he said insofar as his testimony went with reference to Mr. Nelson having ordered the bridge closed he had no knowledge of his own? But insofar as the bridge actually being closed he saw that with his own eyes? Is that right? 20

The Witness: Yes, sir.

Mr. Higbee: Well, I have no objection to that; but what I ask to have stricken out is the memoranda which he read or any testimony which he has given that the bridge was closed by anybody's order—that is, by the county's order—be stricken out. 30

The Court: Was there a statement in advance that that would be stricken out and that the rest would be stricken out if it was not connected up by Mr. Nelson's orders or the orders of the Board of Freeholders? 40

Henry Crawford—Cross

Q. You read a memorandum about Mr. Van Gilder promised to remove all the water mains by a certain time. Did Mr. Van Gilder make that statement to you? A. No.

10 Q. How did you get that information? A. From the superintendent.

Mr. Higbee: I ask that be stricken.

The Court: Yes. I do not think this witness should testify as to a memorandum of conversations had with the superintendent.

Q. Then when you saw that the bridge was closed on the dates concerning which you have read from your memoranda—you don't know under whose orders it was closed, do you? A. No, only from the superintendent.

Q. You were a member of the Board of Freeholders at this time, were you not? A. Yes.

Q. Did you attend the regular meetings of the Board of Freeholders at that time? A. I did.

Q. Do you recall the Board of Freeholders ever passing any resolution authorizing this bridge to be opened to traffic and closed to the contractors during the time which you have recited? A. I don't recall, Judge.

Q. How early did you enter upon the job as timekeeper for this company? A. What do you mean, in the mornings?

Q. No, what stage of their proceedings in relation to the contract? What date? A. Right after they started.

Q. And what date was that? A. Oh, I couldn't tell you off-hand. It was around the middle of
40 January.

Henry Crawford—Cross

Q. Could you tell by referring to your books or otherwise the date that you first entered upon your duties as timekeeper or became an employee of this company in relation to this bridge? A. I think it was about around the fifteenth of January. 10

Q. Is that the exact date? A. No; I couldn't tell you the exact date, Judge.

Q. Didn't you begin to keep a memorandum the first day that you went there? A. I went in on Friday morning.

Q. That would be January 18th? A. That was two days after the job was supposed to be started.

Q. When you went in on this job as timekeeper had the S. S. Thompson Company done any work at all on the bridge? A. They had moved some equipment down; yes, sir. 20

Q. Had they started to do any work on the bridge either by tearing away the old bridge or driving the piling or anything of the kind? A. No, sir.

Q. They just moved their equipment there? A. Just got their equipment there.

Q. And did you know at that time that this water main was there? A. Yes, sir. 30

Q. And you knew of the gas main? Was it perfectly patent to anyone who would look that the water main was there? A. Yes.

Mr. Higbee: That is all.

Mr. Parsons: That is all.

Witness excused.

William Curchin—Direct

WILLIAM CURCHIN, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

Direct-examination by Mr. Parsons:

10

Q. Mr. Curchin, you live in Red Bank, do you?

A. Yes, sir.

Q. And you are employed by S. S. Thompson and Company? A. Yes, sir.

Q. And in what capacity? A. Timekeeper and paymaster, and I keep a record of equipment as it moves from job to job.

20 Q. And did you keep a record of the equipment in the year 1927? A. Yes, sir.

Q. And did you keep a record of the equipment upon the Atlantic City job? A. Yes, sir.

Q. Have you the record of the equipment here? A. Yes, sir.

Q. Will you produce them please? A. (Witness does so.)

30 Q. Is that record of requirement which you have there kept—the entire equipment of S. S. Thompson Company month by month? A. Yes, sir.

Q. And does it show the equipment on each job and the location of each piece of equipment month by month? A. Yes, sir.

Q. And by going through this schedule can you tell what equipment was on the Atlantic City job? A. Yes, sir.

40 Q. Have you at my request gone over this schedule and prepared a list of the equipment upon the Albany Avenue job? A. I have.

William Curchin—Direct

Mr. Parsons: Instead of having Mr. Curchin go through it month by month, he has prepared a schedule, if that is satisfactory.

The Court: Yes.

10

Q. Will you state the equipment that was on the Atlantic City job, when it came there and how long it was there down to and including August 22, 1927? A. We had a local boiler—

Mr. Higbee: I object. I do not think in law that makes such a record as this evidential. I do not know any law that makes such a record as this evidential. It is true that he can refer to a memorandum that he made and may testify from that memorandum, but he cannot read from it.

20

The Court: Well, Mr. Parsons suggests that he has the entire memoranda here that he could get in the evidence; but that he has made a summary of it and that by looking at that summary he can get it into the record much more quickly. Now, technically he has no right to use that. It is all a question of whether or not we are not going to waste a lot of time by reading over what practically amounts to—

30

Mr. Higbee: As long as the Court agrees with me I don't think it makes any difference, anyway.

The Court: All right. That will make it shorter.

A. (Continuing.) We had a local type boiler, arrived in Atlantic City, April 1st; northwest

40

William Curchin—Direct

crane, January 17th; a derrick, February 1st; two derricks February 18th; Lambert hoist, three-drum, January 19th; pile driver January 28th; universal crane, March first; submarine hammer, February 26th; compressor, March 1st; 10 an electric Gould pump, March 7th; Lambert swinging engine, February 21st; foot mixer, April 26th; electric two-drum hoist and swinger, June 4th; steam boiler, June 14th; number 7 steam hammer, July 1st; centrifugal steam pump, July 1st; another steam pump, May 17th; double diaphragm pump, July 1st; three-drum hoist and swinger, April 26th; a Lambert hoist, three-drum, February 18th; and you have another swinging 20 engine down there of which I have no date on its arrival. I think it was a new one that was bought and sent down there to the job and I have no knowledge of it.

Q. You have undertaken to give the year as to all those dates in 1927? A. Yes, sir.

Q. In the list of equipment you have given, was that equipment all there from the date you have given until August 22d or August 30th, 1927?

30 A. There was one exception there. The northwest crane left the job on March 31st.

Q. And with that exception all the equipment was there? A. Yes, sir.

Q. Now, do you know during that period of time if any of that equipment or if a piece of that equipment was rented out to someone else? A. I think there was; yes, sir.

Q. Have you a record of that? A. I have not.

40 Q. Was it rented out down here in Atlantic City? A. At the job.

William Curchin—Cross

Q. Have you as timekeeper a record of the salaries of the superintendent, assistant superintendent, the timekeeper here on the job and the watchman? A. Yes, sir.

Q. Can you tell us what they were? A. Yes, sir. 10

Mr. Higbee: I object. What materiality can that have with this?

The Court: I assume that is offered for the purpose of showing that during a certain portion of this time by reason of the defendant not having done what it agreed to do, it had to spend the sums by way of wages.

Mr. Higbee: That seems to cover the whole period of the transaction. 20

The Court: I assume he has to get the wages per day and then show the number of days that it was delayed if it was delayed; and if he does not show that the evidence will have no materiality. I will permit it at this time subject to that.

Mr. Higbee; Allow me an exception.

The Court: Yes.

A. Superintendent received \$140 a week; the assistant superintendent \$120 a week; the timekeeper \$50 a week; and the watchman \$28.00. 30

Mr. Parsons: Cross-examine.

CROSS-EXAMINATION by Mr. Higbee:

Mr. Higbee: Are you willing that the paper from which he has read giving the dates be offered in evidence? 40

Mr. Parsons: Yes.

Edward W. Downs—Direct

The Court: That is the only way the jury is going to remember them.

(The paper referred to is received in evidence and marked as an exhibit for the plaintiff, P-7.)

10

Mr. Higbee: No questions.

Witness excused.

EDWARD W. DOWNS, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

20 Direct-examination by Mr. Parsons:

Q. You live at Red Bank, do you? A. Yes, sir.

Q. You were the superintendent on the Albany Avenue job? A. Yes, sir.

Q. How long have you been engaged in the contracting business? A. With this company?

Q. With this company? A. About ten years.

Q. During that period of time have you superintended the construction of bridges? A. Yes, sir.

30

Q. And approximately how many bridges? A. Fourteen.

Q. When did you first come on this job? A. February 12th or 13th, 1927.

Q. Of what month? A. January.

Q. January 12th, 1927? A. Yes.

Q. Did Mr. Crawford work on the job? A. Yes.

40

Q. And was the diary kept by him as testified? A. Yes, sir.

Edward W. Downs—Direct

Q. Was that kept under your supervision? A. Yes, sir.

Q. Did you examine the diary from time to time? A. Yes, sir.

Q. Did you give him instructions as to what was to be put in the diary? A. Most of the time. 10

Q. Can you of your own recollection testify as to dates without reference to that diary? A. Some of them.

Q. Is it a custom on every job in which you are to keep a diary of the progress of the work? A. Yes, sir.

Q. And it is as a matter of business in the company? A. Yes.

Q. Now, will you tell us what you did when you came down January 12th? Just tell us the first few steps that were taken? A. Well, the first thing I looked over the ground, went up to the engineer's office as well as I remember, and laid out places for unloading equipment; attending to the things in general, such as getting an office, getting my layout; attending to having wires removed, and so on and so forth; looking for obstructions and planning the work in other words. 20

Q. When did you first start moving the equipment down to the job, Mr. Downs? A. On the 13th. 30

Q. Did you rent an office here? A. Yes, sir.

Q. When did you rent that office? Do you remember that? A. Not off-hand; about the first week I believe; something like that; we will say around the—probably around the 20th or 21st, somewhere. 40

Edward W. Downs—Direct

Q. Was this office rented during the construction of the bridge? A. Yes, sir.

Q. Do you know the rental paid for that office? A. Yes, sir.

Q. What was the rental? A. \$75 a month.

10 Q. After you had moved the equipment on will you tell us when the bridge was first closed to traffic and turned over to you? A. January 22, I think it was—let me see—yes.

Q. If you are not sure of the date can you refer to the diary and tell us the date? A. January 25—yes, I can refer to the date in the diary.

Q. Well, please do that then. A. January 25; started to dismantle bridge.

20 Q. Will you tell us what work you did during that period of time? A. During the period between the—

Q. From January 25th on what did you do in the way of dismantling the bridge? A. Why, merely tearing off the sidewalk and curb guards, wheel guards, such things as that.

Q. When you had that done what happened? A. The bridge was ordered to be opened to traffic.

30 Q. What did you have to do? A. We merely put back the wheel guards and fixed it up in a suitable, safe way for traffic to travel over.

Q. How long was the bridge—can you tell us when the bridge was ordered opened to traffic again? A. March 12th.

40 Q. I mean ordered opened to traffic after the January 26th date? Just give us that date. A. Well, that was 1927; that is what I was telling you.

Edward W. Downs—Direct

Q. January 27th? A. Yes.

Q. Well, then from January 27th when was the first date that the bridge was closed to traffic and turned over to you? A. On March 12th.

Q. During that period of time from January 27th to March 12th was the bridge continuously opened for traffic? A. Yes. 10

Q. What were you able to do in the way of construction upon the bridge during that period of time? A. Nothing any more than moving the bridge-tender's house and driving some piles upon the westerly side of the bridge in order to set up the first derrick, which we designated as number one derrick over on the westerly side of the bridge. 20

Q. Will you indicate the first derrick upon the map there which you set up? A. Right here (indicating). The bridge-tender's house sat here. So we moved that back and ran in here alongside of the bridge out of the way of traffic and set up this one derrick.

Q. Were you able to do any other work between January 27th and March 14th? A. No, sir; nothing more than getting our equipment there and unloading some equipment and materials. 30

Q. Now, on March 14th what happened? What did you start to do? A. March 14th, the bridge then was closed to traffic. We had full use of it; that is, full use of the bridge; and then we started in and set up our derricks, started in and tore out its abutment first and started in on this pier, and then on the second pier; also set up number two derrick over there (indicating).

Q. Mr. Downs, when you started—before you had started in to work had you previously shown 40

Edward W. Downs—Direct

the system of doing the work to Mr. Nelson? A. Yes, sir.

Q. Will you tell us the original plan of doing the work? A. This is the original plan, the layout, and this sketch is a copy of it, looking down upon it, with the four derricks set up in such a position whereby we could reach the entire super-structure of the bridge—each one of these are our derricks—whereby we could work with four derricks at any time and reach any part of the bridge.

Q. And will you tell us in what plan you had intended going ahead and constructing the sub-structure? A. In what plan?

20 Q. In what manner? A. Well, our original plan was, of course, to reach this half with this derrick, at the same time this half, which would keep on and reach the whole the whole thing; in other words, the four derricks would be working at one time, either driving sheathing or excavating. Of course, if we were driving sheathing or driving piles, or whatever it was that was done, these two derricks, were to take care of this pier, the same way with that other side. This shows
30 our boom arranged—this shows our boom range whereby we could reach the entire layout.

Q. Now, for our information, Mr. Downs, will you simply explain to us, just as simply as you can, without technical terms, the construction of the sub-structure? Just tell us what it is and how you constructed it. A. Well, these piers are all practically twenty or twenty-five foot under water. We had to sink a man down. As we did
40 that—we did it in half—of the exact size of our

Edward W. Downs—Direct

cofferdam. These frames were sunk down and braced, and then we drove steel sheathing, interlocked joints, all the way around this frame. Of course this frame is braced across, and then we excavated that to the proper depth at the old piles, 45-foot piles, into this cofferdam, after that we put a seal coat in there of about 8-foot of concrete. After that was done we then pumped these out dry, sawed these piles off to a proper elevation and went on to our concrete, to a certain portion of it. Two-thirds of this pier we put in then, leaving the other third to be done. We could only do two-thirds of this one-half of the pier until this other half was done. 10

Q. And in your original plan could all the excavation, laying of the frame and sheathing to be done on all of the piers at once? A. Yes, the entire pier. 20

Q. When you started work on March 14th what condition existed with relation to the easterly half, the side where the easterly half of the pier was to be built? A. There was a 48-inch stave wood water main strung along this pier about in that direction, and then entered down into a cast iron syphon with four pipes underneath the channel, and come up on the other side, and continued on to the 48-inch stave main. That was an obstruction that was in our way. 30

Q. Can you indicate that obstruction upon the drafting there to the best of your ability? A. From memory I know that it stuck along about in here (indicating), and I think it came over a little bit, more out on this pier here, right straight across. 40

Edward W. Downs—Direct

Q. Will you make those lines heavier, Mr. Downs, so that we can see them? A. (Doing as directed.) This is just an approximation.

10 Q. Will you continue the lines right across the bridge so that we will have the location of the pipe there? A. This entered into a big syphon here and come across, if I remember right, in four pipes down underneath the water.

Q. So that we will have a permanent record, will you simply letter that "water pipe" or "water main," rather? A. (Witness does so.)

20 Q. Now, with the location of that water main there, Mr. Downs, is it possible to build the bridge as you had originally planned? A. Was it possible?

Q. Yes. A. No, sir.

30 Q. And will you tell us how you had to build that bridge? A. We built it in one-half as these blue lines indicate. We had to put in half of this pier, half of that, and half of each one of them; and as I told you before, we couldn't finish the full half of this foundation because we had to break joints in our concrete. We have a map, I believe, which will show you that better than I can explain it to you; but, in other words, we had to build half at a time. We had to put in an extra amount of heavy steel sheathing, 45-foot long, in these three piers. These are, I believe, 30-foot deep.

Q. Did you have to use extra frames in that point there? A. Of course, extra, twelve by twelve bracings.

40 Q. Have you, with the aid of your diary, computed the actual number of working days that

Edward W. Downs—Direct

were consumed in laying the westerly half of this sub-structure or piers? A. Yes, sir.

Q. Will you tell us the number of days used in laying the westerly half? A. Eighty-two and a half days.

Q. Had you also, with reference to your diary, 10
computed the number of days—actual working days actually used in the construction of the easterly half? A. Eighty-one working days.

Q. I show you now a picture and ask you if you took the original of this picture? A. Yes, sir; I did.

Q. Is that an enlargement of the original? A. That is an enlargement of the original.

Q. Is that an enlargement of the small picture, 20
Mr. Downs? A. Yes, sir.

Q. Does that correctly portray the conditions existing at the site when the picture was taken? A. Yes, sir.

Mr. Parsons: I offer the picture in evidence.

The Court: When was it taken?

Q. Just refer to that and tell us when that— 30
when that was taken? A. June 13, 1927.

The Court: That is the date of this particular picture; and was that taken at the same time?

The Witness: That one is June 13th; that one June 13th; June 13th; June 13th—all of them taken the one day.

(The photographs offered are received in evidence and marked as exhibits for the 40
plaintiff, P-8, P-9, P-10, P-11 and P-12.)

Edward W. Downs—Direct

Q. I show you now P-4 and ask you if you will step down before the jury and explain that picture to them, pointing out what it represents?

10 A. This is a picture of the old bridge as was, and the one-half of the cofferdam, which is in blue there.

Q. Just point out the cofferdam so that everybody can see that. A. Here you see the steel sheathing, with these whalers on the outside, also on the inside. There isn't a whole lot that I can—

Q. Now, will you indicate the end of the cofferdam? A. Well, this is the center of the cofferdam as far as we could go. That shows the center line of the bridge. This end is right here.

20 Q. I show you Exhibit P-9, and ask you what that represents, and ask you to explain that picture. A. This represents the old water main, and the old syphon, I presume, yes; there is the old water main coming up and emptying into the wooden stave main. This would be a picture standing at Atlantic City looking towards Pleasantville.

30 Q. Does it show the end of the cofferdam on the side, Mr. Downs, from the westerly half of the cofferdam—where the westerly half of the cofferdam would be? A. No, I cannot say that.

Q. With reference to the location where this syphon is shown in this picture, will you indicate on the map approximately which side of the picture this syphon would be shown on? A. That syphon would be shown right in here, standing at Atlantic City looking towards Pleasantville. That

40 is the syphon there. It also shows the four sy-

Edward W. Downs—Direct

phons coming up out of the opposite side. This picture practically shows the same thing with the four syphons coming up. You see the old syphon head has been taken off and the old wooden water main was removed at this time.

Q. I show you Exhibit P-12, and ask you to explain that. A. Here is one of the four syphons running down, with the four valves on to them. That is probably on the other side. Here is a man you see unbolting that now. (Indicating.) 10

Q. I show you Exhibit P-10. A. This shows practically the same thing with the cofferdams here. That is the only thing that is different in this picture.

Q. Now, take the stand again, Mr. Downs. Mr. Downs, with relation to the time taken in building the sub-structure in a half section, in relation to the time to build it as a whole, will you tell us in what length of time the whole sub-structure could be built. A. The whole sub-structure should be built in the same time as one-half of it is built. 20

Q. And will you explain why? A. Because we were only able to use two of these derricks, where we should have been using four, as we had planned to use; and, of course, we couldn't employ as many men in doing so. But there was no reason why we couldn't run four derricks and do the same amount of work as we did with the two with one-half. 30

Q. Could you do the excavation in both sections at the same time? A. Yes, sir.

Q. Could you drive the sheathing in both sections at the same time? A. Yes, sir. 40

Edward W. Downs—Direct

Q. And the piling? A. Yes, sir.

Q. Could you do the concrete work and the cementing at the same time? A. Yes, sir.

Q. And the entire work of the sub-structure in one section could be done in the same time it
10 took to do half a section? A. Yes.

Q. And did you have the equipment there to do it with? A. Yes, sir.

Q. Did you have the four derricks there? A. Yes, sir.

Q. During the period of time you were on the job—as bookkeeper—were you there continuously? A. Yes, sir.

Q. From January 27th, down until August 30th,
20 were you there continuously? A. On the entire job; yes, sir.

Q. Was your timekeeper, Mr. Crawford there during that period of time? A. Yes, sir.

Q. During that period of time was the watchman there? A. Yes, sir.

Q. And the assistant superintendent? A. I would have to look that record up.

Q. Have you got a record of that? A. I have not—yes, I have got it by looking it up, yes.

Q. Well, will you check up for us? A. Now?

Q. Yes, if you please. A. If I am permitted to get my time sheets.

The Court: All right.

The Witness: Between which dates did you ask?

Q. From January 27th until August 30th. A.
You are speaking of the assistant superintendent?
40 ent?

Edward W. Downs—Direct

Q. Yes. A. January 27th, 1927?

Q. January 27th, 1927. Can you tell us when he first came on the job? May I ask you that then? A. Yes. He came there on February 13th.

Mr. Higbee: What was his name?

10

A. Michael Tesaro.

Q. Saving and excepting Tesaro were there—there were three employees including yourself, the timekeeper and the watchman, there continuously from January 27th, down until August 30th? A. Until August 30th. August 25 (referring to memorandum). Yes, they were until August 30th; yes, sir.

20

Q. Directing your attention now, Mr. Downs, to the condition along the westerly side, after you had completed the sub-structure and also had completed the super-structure, a portion of the super-structure, will you tell us what existed along the westerly side of the bridge? A. Well, the foot bridge above the—the gas main of course, ran through here, and we did get that out, and the latter part was a foot bridge running right across, which strikes the fender piles which came around these piers here, which is not drawn on this plan. The foot bridge ran about where this printing is.

30

Q. Was it part of your contract to put in the fender piles? A. Yes, sir.

Q. And were you able to put in the fender piles when the bridge was completed? A. No, sir.

Q. And will you give us the reason why? A. Because this wall went right out across the trunnion pier or the center pier of the foot bridge.

40

Edward W. Downs—Direct

We couldn't—it was impossible for us to drive any piles there.

Q. Approximately how long did you wait for that? A. I will have to look at the record for that. It was not finished for practically a month
10 or so after the bridge was opened to traffic.

Q. And did you remain on the job during that period of time? A. Yes, sir.

Q. Now, have you estimated, Mr. Downs, figured the number of days—working days between January 27th and March 14th? A. Working days, fifty.

The Court: No.

20 The Witness: Fifty, January 27th.

Q. January 27th? A. Oh! Thirty-six and a half, I think. In my diary I start from the date of the contract signed to March 27th—or February 27th, which would bring it fifty working days. If we estimate from that it will bring us 36½ working days, I am sure.

Mr. Higbee: That is from what date to what date?

30 Mr. Parsons: January 27th to March 14th, the time the bridge was kept closed.

Mr. Higbee: Fifty working days?

The Witness: Forty-six and a half.

Q. From March 14th until the time that you completed you sub-structure, can you tell us how many working days elapsed? A. One hundred sixty-three and a half.

40 Q. And can you tell us the time had, had you had full possession of the site in which you could

Edward W. Downs—Direct

have completed the sub-structure? A. Eighty-two and a half working days.

Q. So that the total number of working days then that were caused by the condition—by the addition of those figures was 117 working days; is that correct? A. I haven't added them. It is 81 plus $36\frac{1}{2}$ — $117\frac{1}{2}$; yes, sir. 10

Q. Now, Mr. Downs, with reference to the water main, when the water main was taken out, what was left there, after the water main itself had been removed? A. The old walls and cribbing which supported the water main was still left in there; that is, under the syphon, under the steel—cast iron water main.

Q. And what was done with reference to those piles? A. Well, we pulled our ourselves what was in our way in order to finish the piers. 20

Q. And under whose instructions was that? A. Well, I don't know.

Q. Just a minute. I have a letter here. I show you— A. We had a conference.

Q. I show you letter dated July 12, 1927, and ask you if you received that letter from Mr. Nelson?

Mr. Parsons: I will show it to you, Judge Higbee, in just a minute, after Mr. Downs has read it. 30

A. Yes, sir.

Mr. Parsons: Have you any objection?

Mr. Higbee: No objection.

Mr. Parsons: I offer it in evidence.

(The paper offered is received in evidence and marked as an exhibit for the plaintiff, P-13.) 40

Edward W. Downs—Cross

Q. In accordance with that letter did you proceed with the removal of the piles, Mr. Downs?

A. Yes, sir.

Q. Were all of the piles removed that were necessary for the construction of the pier? A. Yes.

Q. Did you—did your contract have anything to do with reference to any of the piles connected with the water main? A. No, sir.

Q. Were the inspectors, the county inspectors there when you were removing the piles that had to do with the water main? A. Yes, sir.

Q. Did you remove those under their supervision and in their presence? A. Yes, sir.

CROSS-EXAMINATION by Mr. Higbee:

Q. Did you render a bill to the County of Atlantic for the S. S. Thompson Company for removing these piles? A. I rendered a bill to our own office.

Q. Do you remember what that bill was? A. No, sir; I don't.

Q. Have you a memorandum of it, a record of it? A. I don't know as I have here.

Q. Didn't you keep a record of the cost of removing these piles? A. Yes, sir.

Q. Where is that record? A. Well, it may be here or it may be in our office in Red Bank.

Q. Do you remember what the cost was? A. No, I do not.

Q. Do you know that the County Engineer gave a certificate to the contractor for the amount that he rendered for that work? A. I do not.

Edward W. Downs—Cross

Q. Never had any conversation with Mr. Thompson about that, eh? A. No, sir.

Q. Now, I understood you to say that it took 81 days to erect the piers on the easterly side of this bridge; is that correct? A. Yes, sir.

Q. And that it took 82½ days to erect them on the westerly side; is that correct? A. Yes, sir. 10

Q. Then the obstruction—there was the same number of piers on either side, weren't there? A. It was a half-piece pier; yes, sir; same number of halves.

Q. Well, there is the same number of piers, is my question, on each side of the bridge, isn't there? A. Yes.

Q. And you erected piers on the easterly side where the obstruction was a day and a half sooner than you did on the westerly side of the bridge? A. Yes, sir. 20

Q. Now, what date did you come on the job? A. On February 12th—or January 12th or 13th.

Q. And did you see the water mains and the syphons which are shown on the photos offered in evidence, at the time you came there? A. I did.

Q. They were there at that time, were they not? A. Yes, sir. 30

Q. You—they were there before ever you started any work, were they not? A. Yes, sir.

Q. You spoke about erecting the piers on the easterly side in halves or sections? A. Yes, sir.

Q. Wasn't that privilege granted you by the County Engineer at the request of your company, the company for which you superintended? A. The president of our company authorized me to go ahead and erect them that way. 40

Edward W. Downs—Cross

Q. I asked you whether your company didn't ask that favor from the county, that you might erect those piers on the easterly side in sections?

A. I couldn't say. I didn't hear the conference.

Q. You don't know? A. No, sir.

10 Q. But you were instructed by the president of your company to erect them in sections? A. Yes, sir.

Q. That was not strictly in accordance with the specifications, was it? A. No, sir.

Q. You say that the bridge was closed to you and open to traffic on January 27th; is that correct? A. Well, I think so; within a day.

Q. Well, do you know? A. Bridge ordered
20 open by county engineer on the 27th (referring to the diary).

Q. Were you present at a conference in the City Hall of Atlantic City at which there were present Director Ruffu, Mr. Murtland and Dr. Stehle and Mr. Nelson on the afternoon of January 27, 1927? A. No, sir.

Q. Touching the opening or closing of this bridge? A. No, sir.

Q. Do you remember that you were present?

30 A. I don't remember of my meeting Ruffu.

Q. Well, were you present at a conference in the City Hall in which Mr. Murtland and Dr. Stehle and Mr. Nelson were present, touching the closing of the—or the opening of this bridge to traffic? A. I don't remember.

Q. You don't remember? A. No, sir.

Q. Well, if I refresh your memory—try and refresh your memory to the fact that it was
40 agreed between you and these gentlemen that if

Edward W. Downs—Cross

the contractor on the Albany Bridge would open the bridge for a period of not less than two weeks, that they would report that fact to the Board of Freeholders of Atlantic County, and give you an extension of an equal number of days for which the bridge was closed, and in the meantime that you could proceed with such work as you could do when the bridge was opened to traffic; that it would not be charged against you? A. I don't remember that, no. I remember they all wanted to close. I remember Mr. Nelson coming down to the bridge, also Dr. Stehle, and it was generally agreed that it was to be closed, but I don't remember any conference or my being there.

Q. You don't remember being at the City Hall at all? A. No, not at that time.

Q. Well, at any other time, approximately around that time? A. Not in regards to that, although I might have been.

Q. Who ordered the bridge open to traffic? A. Dr. Stehle and Mr. Nelson.

Q. And to whom did they give that order? A. To me.

Q. And did you close the bridge on their order? A. I did.

Q. Without any understanding between them as to what recommendation they should make, if any, to the Freeholders, about extending your time? A. I did.

Q. Did you make any objection to the closing of that bridge, or the opening of the bridge? A. I made objections. I am pretty sure that I got in touch with our home office before I closed it;

Edward W. Downs—Cross

because they wanted it closed and, of course, I didn't. I wanted to proceed with my work. I have to. It was generally understood the bridge would be closed until the pontoon bridge was opened.

10 Q. Well, you had no orders from the Board of Freeholders, or presentation of a resolution or writing that they authorized this bridge closed, did you? A. Not to my knowledge, no.

Q. I mean, closed to you and open to traffic. Then you took your orders from Mr. Nelson and Dr. Stehle? A. Yes, sir.

20 Q. Without any understanding at all as to your being probably granted an extension of time? A. To my knowledge there was not.

Q. Well, what was your object in closing this bridge that had been turned over to you on their orders? A. I think my object was from our home office.

Q. That your home office instructed you to do so? A. I think so.

Q. Then you closed the bridge on instructions from your home office, did you? A. I am pretty sure, yes.

30 Q. And do you know whether or not there was an extension of time by resolution passed by the Board of Freeholders extending your time by reason of the fact that this was closed? A. Yes, sir.

Q. What did you say? A. Yes, sir.

Q. Have you a copy of that resolution? A. Not here, I have not.

40 Q. And do you recall the number of days that they extended your time? A. They extended it and started again on March 12th.

Edward W. Downs—Cross

Q. They gave you an extension of time for all of the time— A. Preceding—

Q. —that the bridge had been closed, didn't they? A. Yes, sir.

Q. And during the time that this bridge had been opened to traffic you were doing some work there, were you not? A. Nothing more than unloading some equipment and some material and starting to set up one derrick; moving the bridge-tender's house. 10

Q. Mr. Thompson, the president of the company, had notice of this closing, didn't he? A. I presume.

Q. When do you say that the equipment for the building of this bridge was on the ground in Atlantic City? A. I started to move equipment here on the 13th and continued from then right on up. 20

Q. I am asking you when it arrived here. A. At the bridge site?

Q. At the bridge site? A. One derrick was here on January 16th, two on the 18th and one on the 19th, if I am not mistaken.

Q. And what other equipment did you have here? A. We had pumps, a Northwest crane, Universal crane, trucks, mixer. 30

Q. Your local boiler, what service did that perform in the building of this bridge? A. A locomotive boiler was set up to supply the steam for the derricks.

Q. And you couldn't work your derricks without the local boiler, could you? A. Not unless I put up a different one.

Q. Well, you couldn't work it unless you had a locomotive boiler there, could you? A. Well, 40

Edward W. Downs—Cross

one derrick was the only one, at the pumps that ran off the locomotive boiler.

Q. Well, when did your locomotive boiler arrive? A. I cannot say off-hand.

10 Q. Well, was it in January? A. I couldn't say off-hand, but our records would show that; but I got no way of remembering that.

Q. Well, the record submitted by one of the previous witnesses shows that it arrived here February 6th. Would you say that is correct?

A. I presume it is.

Q. Now, what did you say was here on January 17th? A. We had two derricks on the job at that date.

20 Q. Two derricks? A. No. Wait a minute—

Q. How many derricks did you have altogether? A. Had altogether four.

Q. Well, the record submitted in evidence shows that one derrick arrived February first and the other—another February 18th, and another February 18th. A. And one January first—or sixteenth.

Q. What? A. And one January sixteenth.

30 Q. Where do you get that from? There is no such record on this paper. A. Is there a record offered in evidence?

Q. Showing that there was a derrick arrived on February first, one February 18th, another on February 18th. Correct? A. Yes, sir.

Q. Is the record offered in evidence showing a derrick arrived on February first, one February 18th, another on February 18th, correct? A. Yes.

40 The Court: That is only three. There were four.

Edward W. Downs—Re-direct

Q. Well, that is all they seem to have on here. This derrick—they say “derrick” but they don’t say when it arrived. Now, when did your fourth derrick arrive? A. The fourth—the derrick you have not mentioned arrived on January 16th.

Q. Well, you didn’t keep a record of the arrival of these derricks and machinery, did you? A. Most of them, yes.

Q. Wasn’t that intrusted to another man whose special duty it was to keep that? A. Yes.

(Recess to the following morning at ten o’clock.)

20

May 21, 1929.

Trial resumed pursuant to adjournment.

EDWARD W. DOWNS, recalled.

Re-direct examination by Mr. Parsons:

Q. I show you another draft and ask you what this draft represents? A. This represents the side view of the piers. 30

Q. In other words, that is a cross-section of the pier? A. That is a cross-section of the piers.

Q. And were all the piers in similar style to that cross-section? A. All similar in size.

Q. Describe the different representations about your cross-section, starting from the bottom and placing the work up. A. The first portion we 40

Edward W. Downs—Re-direct

will show is the steel sheathing coming down here to a certain elevation. Then we show our piles, and then this shows the line of excavation, where it was excavated down to this line—no, down to this line; and this section in here shows
 10 the first layer of concrete that was put in under water. After that, of course, this part, from this line here, this half of the cofferdam, was pumped out and these piles were cut off to a certain elevation; and then a layer of concrete put in up to this point here. This blue indicates all that could be done upon any of these four piers until the balance of this work was put in, which was a continuation of the cofferdam.

20 Q. Now, the red section which was put in was the second section that was put in, Mr. Downs?
 A. Yes.

Q. And that red section, second section, is the location where the water main was? A. Water main running to this section.

Q. And it could not be put in until the water main was taken out? A. It could not.

30 Q. Now, with reference to that second section it shows an overlapping. Will you tell us why that was done? A. This is a seal coat. Then, of course, we put another layer in. We broke like in this way, in this manner, in order that when we put this other layer in we would overlap that and break joints on our concrete; and last layer was put in with a continuous layer of concrete, which made one continuous layer whereby we could then start our masonry.

40 Q. The vertical lines are what, indicate what?
 A. This is the sheathing line, and this is the

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cross dam, an extra dam that we did have to put in by building it in two sections, in order to pump this half out to work on these piles, and to put this concrete in the dry cofferdam.

Q. Was that cross dam built from each one of the four piers? A. Yes, sir. 10

Q. And that cross dam was built of what? A. Of steel sheathing, Lackawanna steel sheathing, 45-foot lengths. It is an unlocked joint, sheathing.

Q. Did that steel sheathing extend through the depth of each pier? A. Yes, sir.

Q. Now, you have mentioned a seal coat. Do you represent that seal coat on the drawing? A. This is what we call a seal coat, because it is put in under water in order to seal this bottom pier, so that the pressure would not push up, see—push the mud and sand up. 20

Q. Now, Mr. Downs, when you had completed the side that is done in blue, or the west side—after that had been completed, the water pipe was finally out; is that correct? A. After this?

Q. After this— A. After this had been completed, then the water line, most of it was removed. 30

Q. And you were able to start on the red side. Were you able— A. We were able to start setting up our derricks and work with reference to equipment which was on the blue side, or the west side.

Q. With reference to the equipment which was on the blue side or the west side, as you had completed the piers on the west side, were you able to use your equipment at all? A. None of this 40

Edward W. Downs—Re-direct

equipment on this side could be used until this equipment had—until the equipment on this side, these two derricks as shown there—until all this work was completed. Then at that time when this last coat was put across, why, then we could
10 use all four derricks to set our stonework up above.

Q. During the period of time that you were actually down there, and when you first arrived on the job, did you talk to Mr. Nelson about this water main? A. Yes, sir; quite often.

Q. Will you relate the conversations you had with Mr. Nelson? A. It was understood that the water main would be out within a period of six
20 weeks.

Mr. Higbee: I move to strike that.

The Court: Strike it.

Q. Tell me what Mr. Nelson, as near as you can recollect— A. Mr. Nelson said that the water mains would be out in a period of six weeks.

Q. That was when you went down there? A. Yes, sir.

30 Q. And did you speak to him from time to time about the water mains? A. Yes, sir.

Q. What was his conversation with relation to that? A. That he was doing all that he could to push the work along, to get them out.

Q. Now, there was some question yesterday about the work that was done in removing the piling of the water mains. I show you a carbon copy of the bill, the original of which was sent to
40 Atlantic County—

Edward W. Downs—Re-direct

Mr. Parsons: I suppose you have it, Judge?

Q. I just want to ask, Mr. Downs, if it is a true copy of the bill which you made up?

Mr. Higbee: We have no objections to that being offered in evidence. 10

The Court: That is the item of \$491?

Mr. Parsons: Yes.

Q. I show you a carbon copy of the bill and ask you if that is the bill for the taking out of the piling from the water mains? A. Yes, sir.

Q. And was that work performed under your supervision? A. Yes, sir.

Q. And also under the inspectors of Atlantic County? A. Yes, sir. 20

Mr. Parsons: I offer that.

(The paper offered is received in evidence and marked as an exhibit for the plaintiff, P-14.)

Q. Now, Mr. Downs, during the period of time while you were laying off from the west pier, or the first pier that you did, and until you were able to start work on the entire job, was it necessary to keep all the equipment there which has been mentioned? A. Yes, sir. 30

Q. And the men; yourself and— A. Yes, sir.

The Court: When you say "the men" you mean the superintendent, assistant superintendent, timekeeper and watchman?

Mr. Parsons: And watchman. That is all. Cross-examine. 40

Edward W. Downs—Re-cross

RE-CROSS EXAMINATION by Mr. Higbee:

Q. Mr. Downs, Mr. Nelson didn't tell you that the county would be responsible for removing this water main, did he? A. No, sir.

10 Q. You knew from the very beginning that the removal of the water main was up to the Atlantic City Water Company, did you not; the Atlantic City authorities? A. From the beginning, no, sir. I didn't know who it was up to.

Q. Well, you knew the water main was there, didn't you? A. Yes, sir.

Q. Did you read the contract and the specifications? A. Yes, sir.

20 Q. Did you find anything in them that stated that the County of Atlantic, one of the contracting parties, was obliged to remove the water main or was to do that? A. No, sir.

Q. Did you make any inquiry as to who was to do it? A. Well, no; I cannot say that I did.

Q. Well, how soon was it after you came here that you spoke to Mr. Nelson about the water main? A. Possibly the first or second day.

30 Q. What question did you ask him in relation to it? A. I asked him how soon the water main would be out of the way.

Q. And what did he say? A. He said approximately six weeks.

Q. What? A. Six weeks.

Q. Did he say six weeks? A. Yes, sir.

Q. Sure? Or approximately six weeks? A. Six weeks.

40 Q. Did you ask him who was to remove it? A. No. I knew who was to remove it.

Edward W. Downs—Re-cross

Q. Whom did you know was to remove it? A. Mr. Gandy was moving it.

Q. Mr. Gandy was removing it? A. Yes.

Q. Did you know how he was removing it—did you know whom he was removing it for? A. Well, I knew it was an Atlantic City water main. 10

Q. And did you know that Gandy was working for Atlantic City? A. I presumed that he was.

Q. You presumed that he was? A. Yes.

Q. Did you know that Mr. Thompson bid on a contract approximately at the time this contract was entered into for the construction of the approaches to this bridge, that was let by Atlantic City? A. No, sir.

Q. You didn't know that? A. No. 20

Q. You didn't make any of these estimates? A. No, sir.

Q. He never communicated to you the fact that he had bid upon the approaches? A. Not that I know of. I wasn't there at that time.

Q. Did you read the plans and specifications of the contract in this case? A. After?

Q. At any time? A. Yes, sir.

Q. Did you read them during the progress of the work? A. Certainly, sir. 30

Q. Did you read them before you called upon Mr. Nelson? A. I probably had looked them over; yes, sir.

Q. Well, you had them in your possession, did you not? A. Yes, sir.

Q. And what position do you occupy with this company? A. Superintendent.

Q. How long have you been superintendent? A. Ten years. 40

Edward W. Downs—Re-cross

Q. And as superintendent is it your duty to inspect the contract and plans and specifications under which you are doing the work? A. It is my duty to follow out the specifications and plans.

10 Q. Well, in order to do that you would have to read them, wouldn't you? A. Yes, sir.

Q. You had no connection with this prior to the bidding, had you? A. No, sir.

Q. Did you read this section in the specifications, being section 5 on page 2, which reads: "Any change or modification in plans and specifications as may be required by the county may be evidenced by an additional contract, work or
20 elimination order, accompanied by the necessary plans to show the same; and when any such change requires any material or work and it is an essential feature to the plans and would constitute extra work by a supplemental contract between the parties to the original contract, fixing the cost of such extra material and work, additional contract, work or elimination order and supplemental contract will be authorized by the Board of Chosen Freeholders, and all such will be
30 delivered in multiple copy to the contractor or or his representatives on the work. All copies must be properly and fully signed by the contractor, and all but one copy returned to the engineer before the work is begun thereunder." Did you read that? A. I did.

Q. Did you have any supplemental contract for the sheet piling for which the plaintiff is now claiming the price of? A. No, sir.

40 Q. You knew that under the contract set forth in the specifications none other than the Board

Edward W. Downs—Re-cross

of Chosen Freeholders had a right to change this contract in any way, did you not? A. The contract was changed. I got my orders from the president of the company.

Q. (Repeated by the stenographer) You knew that under the contract set forth in the specifications none other than the Board of Chosen Freeholders had a right to change this contract in any way, did you not? A. According to the specifications, yes. 10

Q. You had read section seven, or paragraph seven, on page two which says: "Neither the contract nor the specifications may in any way be affected by verbal agreement or by inference on the part of either party to the contract. Changes or alterations of any kind as already provided, can be made only by written order and in the manner prescribed." You had read that, hadn't you? A. Yes, sir. 20

Q. You had read that, hadn't you? A. Yes, sir.

Q. And you say that you never had any written order for the sheet piling for which they are now claiming— 30

Mr. Higbee: What is the amount of your claim?

Mr. Parsons: 44 tons at \$100 a ton.

Mr. Higbee: Well, the Court and jury, I think, will know the claim is for extras.

The Court: \$4,445.70.

Q. (Repeated by the stenographer) And you say that you never had any written order for the sheet piling for which you are now claiming \$4,445.70? A. No. 40

Edward W. Downs—Re-cross

Q. Who authorized you to put in that sheet piling, if anyone? A. Mr. Thompson, the president of the company.

10 Q. And who authorized you, if anyone, to build the sub-structure of these piers in sections? A. Mr. Thompson.

Q. Your attention is directed to the last map attached to the board, and particularly to that portion of the map enclosed in blue, having written therein, "The second layer of concrete; first layer of concrete, and also showing piling," which you testified was the first—that is from here, up here, up here, here, and down here—which you testified was the first part of the sub-structure erected on the westerly half of the bridge; and you are asked what is the width of this sub-structure that you first erected. A. I was asked that.

20

Q. I am asking you now. A. The length—which would be the length of the pier, one pier; the two end piers—if I remember right, was 86 foot across; and the two trunnion piers—

Q. That is the center pier? A. Center pier—was 113, if I remember correctly.

30 Q. Now, what is the width of the piers? A. The two end abutments or piers, whatever you call them, was ten foot, six; and I am sure—around 13 foot was the trunnion piers; the two trunnion piers.

Q. Now, what is the capacity, or what amount of concrete in tons was taken to complete your first job of the sub-structure? A. I couldn't say.

40 Q. Can't you give us an approximate estimate of that? A. No, not without figuring the quantity.

Edward W. Downs—Re-cross

Q. Well, how long would it take you to figure it? A. Just the yardage; that is all.

Q. Well, a yard of concrete weighs how much, about a ton and a quarter, doesn't it? A. No, more than that; about two and a quarter.

Q. Two and a quarter tons. Now, will you figure up the approximate yardage of this? In other words, how high— 10

Mr. Higbee: Strike out the other question and put this one:

Q. How high from the bottom of the concrete to the top of the concrete which you first finished is it? A. It would be about twenty-six feet, I presume, from there to there. 20

Q. I am asking you to here. This is what you figured first. A. That is 22 foot, we will say. This is an eight-foot layer.

Q. Now, all of the east of the bridge, each pier, was finished in this style first, was it not? A. Westerly.

Q. Westerly side, I mean? A. Yes, sir.

Q. And your cofferdams were driven on either side of this, which would approximate fifty feet at least on the end piers, and sixty or seventy feet on the center piers, wouldn't it, in length? 30
A. Yes; fifty-five or sixty feet.

Q. And that would approximate in width ten feet, you say, for the— A. Ten feet, six on the end abutment.

Q. Ten feet, six on the end abutment and thirteen feet on the center? A. Thirteen, point six, I presume. 40

Harry C. Lewis—Direct

Q. And they all would approximate in height about twenty-two feet? A. Well, the north shore pier was more shallow.

10 Q. Well, approximately that would be it, wouldn't it? All excepting the north shore pier, then, we will say, would approximate twenty-two feet. And what would be the approximate height of the north shore pier? A. Probably fourteen foot.

Q. Well, can you take time to figure up approximately the number of yardage of concrete that was placed in your first operation on the west side of the pier? A. No, sir.

20 Q. Well, please do that.

Mr. Parsons: We might save some time by putting on another witness while Mr. Downs is doing that.

The Court: Yes, we might as well conserve that time by putting another witness on.

Mr. Higbee: Well, all right.

(Witness withdrawn for present.)

30

HARRY C. LEWIS, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

Direct-examination by Mr. Parsons:

Q. Where do you live, Mr. Lewis? A. Newark, N. J.

40 Q. What is your business, Mr. Lewis? A. I sell, rent and buy railroads' and contractors' equipment.

Harry C. Lewis—Direct

Q. How long have you been in that business?

A. Fifteen years with the exception of about eleven months in the service.

Q. And during the war time were you associated in that business with the Government?

A. I had charge of all of the equipment at Camp Dix, Sandy Hook, and a lot of the eastern camps.

10

Q. During that period of time have you rented contractors' equipment? A. Oh, yes.

Q. And have—over what period of time, and during what period of time have you rented contractors' equipment? A. Well, we rent contractors' equipment around New Jersey, and we don't like to have it go out of the state, and we rent it sometimes in New York, and we sell it—any length of time that a contractor wants to rent it.

20

Q. Will you state some of the equipment that you have rented? A. Yes. Compressors, pumps, derricks, hoisting engines, Northwest cranes, truck cranes, concrete mixers, piling, mostly anything that a contractor would use; railroad engines, cars, and so forth.

Q. Were you renting equipment during the year 1927? A. Yes, sir.

30

Q. And do you know the fair rental value of various items of contractors' equipment? A. Yes, sir.

Q. And do you know it as of 1927? A. Yes, sir.

Mr. Parsons: Now, so that the jury can understand, if your Honor please, I am going to ask Mr. Curchin, who has already testified, and has a list of equipment, if

40

Harry C. Lewis—Direct

he will tabulate the amounts which Mr. Lewis testifies as to the rental value of this equipment, and then total it up for the number of weeks, so that the jury can understand what we are doing also.

10 Mr. Higbee: I object, for the purpose of getting it on the record, through the introduction of this evidence, as it has no pertinency to this case, as I see it; and in the event the Court decides later on that it has some pertinency, I ask the privilege to reserve a motion to strike it out.

20 The Court: Yes; you are entitled to that privilege, and, as I understand it, that is introduced for the purpose of attempting to prove, at least, the loss by reason of the equipment remaining idle during a portion of the time, and will be admitted subject to the right to move to strike it out.

Q. Mr. Lewis, can you place the rental value per week on a Northwest crane? A. A ten-ton crane or fifteen-ton crane?

30 Q. Ten-ton Northwest crane? A. Sixty dollars a day with operator; forty-five dollars without operator.

Q. Will you calculate that by the week? Can you give these by the week? A. \$270.

Q. Can you tell us the rental value—and I am going to ask you in all cases to give your answers without operators. A. Without operators?

40 Q. Yes. A. All right, sir.

Harry C. Lewis—Direct

Mr. Higbee: His last answer didn't show whether the weekly rental was with or without an operator.

The Court: No, it did not.

Q. And was that—that is \$270 if it was \$45 10
a day. It would be \$270 a week without an operator; because \$45 was without operator and \$60 was with operator. So it would have to be without operator.

Q. Well, not necessarily. It might be a different method between the weekly and daily rental.

The Witness: I don't want to argue with you, sir.

The Court: There isn't any difference? 20

The Witness: The operator gets \$15 a day, \$90 a week.

Q. Mr. Lewis, can you tell us the fair weekly value, without operator, of a wooden—Woods stove-legged derrick? A. What capacity?

Q. Ten-ton derrick? A. \$75 a week.

Q. Can you tell us the rental value of a Lambert hoist, three-drum? A. With boiler or without boiler? 30

Q. With boiler? A. \$50 a week.

Q. Can you give us the rental value per week, without operator, of Universal crane? A. Truck crane? Universal truck crane?

Q. Yes, sir. A. That is worth \$45 a day.

The Court: A day?

The Witness: \$270 a week.

Q. \$270 a week. Now, of a steam hammer, 9B- 40
2? A. \$75 a week.

Harry C. Lewis—Direct

- Q. Of a compressor? A. 110, 220 or 330 cubic feet?
- Q. 110. A. \$60 a week.
- Q. Of a Gould electric pump? A. Single stage or double stage?
- 10 Q. Single stage, four inch? A. \$45 a week.
- Q. Of a Lambert swinger? A. \$15 a week.
- Q. Of a "Foot" mixer? A. 26E, or 27E, or 25B?
- Q. 21E? A. 21E? \$135 a week.
- Q. Of a two-drum electric hoist and swinger? A. \$40 a week.
- Q. Of a boiler? A. What horsepower?
- Q. 15 horsepower boiler? A. \$30 a week.
- 20 Q. Of a hammer, number 7? A. \$40 a week.
- Q. And of a hammer, number 6? A. \$30 a week.
- Q. Or a two-stage centrifugal pump? A. Motor driven or gasoline driven?
- Q. Gasoline driven. A. \$50 a week.
- Q. Of a two-stage Wellington well pump? A. Electric driven?
- Q. Gasoline. A. Same price.
- Q. Pardon me? A. Same price.
- 30 Q. Of a gasoline saw? A. \$20 week.
- Q. Of a 14-inch electric pump and hose? A. Motor driven or gasoline driven?
- Q. Motor driven. A. \$100 a week.
- Q. Of a double diaphragm pump? A. \$30 a week.
- Q. Of an American well one-stage "Budar" pump, gasoline motor? A. Single stage? \$25 a week.
- 40 Q. Single stage, how much? A. \$25 a week.

Harry C. Lewis—Direct

Q. Of a G. M. C. five-ton truck without a driver? A. Well, the truck with driver is worth \$25 a day. I don't know—the driver about \$30 less.

Q. A week? A. Yes; that would be about \$120. 10

Q. Of a Ford truck without driver? A. \$50 a week.

Q. Of a Williams three-quarter yard bucket? A. \$8.00 a day; \$48 a week.

Q. Of a Hayes one-yard bucket or hoist? A. \$54 a week.

Q. Of a "Blaunarcus" half-yard bucket? A. \$35 a week.

Q. Of a National three-drum hoist and swinger? A. Attached swinger or separate swinger? 20

Q. Attached swinger. A. \$50 a week.

Q. Of a National swinger, steam? A. \$50 a week.

Q. \$15? A. \$15.

Q. Of a pile driver and scow? A. Well, was it a double drum with air compressor and water pump and leads? 30

Q. Yes. A. \$240 a week.

Mr. Parsons: Cross-examine.

Mr. Higbee: No questions.

(Witness excused.)

Edward W. Downs—Re-cross

EDWARD W. DOWNS, recalled.

Q. (Repeated by the stenographer) Now, can you take time to figure up approximately the number of yardage of concrete that was placed
10 in your first operation on the west side of the pier? A. I should say about seven thousand tons; this is just roughly.

The Court: That is in the west half?

The Witness: No, that is in one pier.

The Court: Seven thousand tons in one pier.

RE-CROSS EXAMINATION (Continued) by
20 Mr. Higbee:

Q. Then the four piers would be 28,000 tons?

A. That is approximate; that is just rough. I took the center of the large pier.

Q. Then all the concrete that went into your first portion on the four piers approximately was 28,000 tons? A. Well, we will say that. I didn't verify that because it is best to take some time to figure it up.

30 Q. And that, of course, all had to be mixed; didn't it? A. Yes, sir.

Q. And then poured? A. Yes, sir.

Q. How many mixers did you have? A. One mixer.

Q. Now, referring again to this plan, was the easterly half of the sub-structure erected separate from the top part—your sub-structure ran up to here, did it not? A. Yes, sir.

40 Q. And from this on stone went up, didn't it? A. Yes, sir.

Edward W. Downs—Re-cross

Q. Now, then, was this portion shown in red all erected at one time? A. Yes, sir.

Q. So that in erecting your sub-structure for the easterly half of the bridge, you erected it from this point clear down? A. Yes, sir.

Q. And also poured at the same time from in here? A. Yes, sir. 10

Q. Now, you testified yesterday that the easterly side of this sub-structure took $82\frac{1}{2}$ days,—or the westerly half—and the easterly half took 81 days? A. Yes, sir.

Q. How did you divide the easterly and the westerly halves? Down this line? A. Yes, sir.

Q. How can you tell the number or working days it took to pour in this piece here when it was poured all at the same time as the other? Did you just estimate that? A. We considered this half as this blue line. This is our first portion. From this blue line we considered that the half. 20

Q. And the other one-half included all this? A. Yes; that is it.

Q. This half took a great many more tons of concrete than the westerly half, didn't it? A. Yes, sir. 30

Q. Approximately how much more? One-third more? A. Possibly.

Q. And what was your testimony yesterday in relation to what you could have completed the whole sub-structure in, if it had not been for the water main and you were allowed to erect it in one structure? A. Eighty-two and a half days.

Q. In other words, you could have erected the whole of this and poured approximately 36,000 40

Edward W. Downs—Re-cross

tons more of concrete in the same time that you erected this, could you? A. Yes, sir.

Q. With one concrete mixer? A. Yes, sir.

Q. And that is your testimony? A. Yes, sir.

10 Q. Now, Mr. Downs, the only additional work in building this in sections was the dividing line in each one of these piers, was it not? The cofferdam—in other words, you erect your cofferdam in the nature of a square box, do you not? A. Yes, sir.

Q. And then by erecting this in sections you made a division in the center of that box? A. Yes, sir.

20 Q. That is the only additional work so far as that is concerned? A. Additional work of putting the sheathing in and the additional work of moving my equipment from one—and my different operations from one to the other; and the additional work of running my mixer out and preparing that concrete, this little batch of concrete when I could have concreted all of it. The concrete in these piers amounts to nothing. But as far as the time, the quantity of concrete in those piers, each one of them could have been
30 mixed in approximately four days to a pier.

Q. But my question goes to the erection of your cofferdam in the first place. The only additional work that you had by erecting your cofferdam in sections instead of in whole, was your partition in the center? A. Partition of the center and then moving my equipment around.

40 Q. Well, wouldn't you have to move your equipment to carry your cofferdam across here any way? A. No, sir.

Edward W. Downs—Re-cross

Q. Well, why did you have to move it then? Why did the erection of the westerly half of the pier necessitate your moving your cofferdam—or your equipment, I mean? A. Equipment? Because I had to move my mixers out and back; because it was a long ways in between these two operations. You had to move out here to do a day's work; then you had to move back again. 10

Q. Well, you would have had to do that if it had been continuous; wouldn't you? A. No, sir.

Q. And it would have made it shorter if you made it continuously? A. Instead of pouring one day I would have poured two days continuously, and instead of pouring a half a day I would have poured a day continuous concrete. 20

Q. You say Mr. Thompson instructed you—the plaintiff in this case—instructed you to make this division? A. Yes, sir.

Q. During the building of that cofferdam as you did build it, were all your men employed?

A. All of my men?

Q. Yes. A. Well, my straight time men?

Q. Well, your workmen? A. Why, yes; I employed my workmen as needed.

Q. Then you still want your testimony to stand that if you had been permitted, or could have erected these cofferdams all the way across on this—without this partition through the middle, you could have erected your cofferdams and poured the extra amount of concrete in the same time that you erected the first westerly half of the substructures? A. I do. 30

Q. Did you have a locomotive boiler on the work? A. Yes, sir. 40

Edward W. Downs—Re-cross

Q. When did that arrive? A. I couldn't say.

Q. Well, did it arrive before April 1st? A. I couldn't say. We have a record of the locomotive boiler.

10 Q. Well, the record which is offered in evidence says April 1st. Do you say that is correct to the best of your knowledge? A. To the best of my knowledge.

Q. When did your first crane arrive? A. I couldn't say that. Our records shows that.

Q. When did your first derrick arrive? A. I couldn't say that.

20 Q. Do you know when your second derrick arrived? A. No; not off-handed; not without looking at the records.

Q. When did the fourth derrick arrive? A. I can't remember those dates. I don't keep track of that.

Q. Well, did your fourth derrick arrive before sometime in June? A. I couldn't say.

Q. When did your universal crane arrive? A. I don't carry those dates. I don't keep track of those dates.

30 Q. When did you first take possession of this job? A. Around January 13th.

Q. And what machinery did you have on the job at that time? A. I started hauling machinery on the 13th.

Q. I asked you what you had on the job at that time? A. I couldn't tell you.

Q. You had none? A. I couldn't tell you.

40 Q. Do you know when you first had machinery on the job and were able to do any work? A. Our machinery—our equipment started to arrive

Edward W. Downs—Re-cross

on the 13th and continued on there for many days; and I would have to look up my records to show what I was doing on certain days.

Q. Well, when did your pile driver arrive?

A. I would have to look up my records for that.

Q. You don't wish the jury to understand, do you, that you had all your equipment that is set forth in the list that has been offered in evidence there on January 13th? A. No, sir.

Q. It was not there on February 1st; was it?

A. All of the equipment?

Q. Yes. A. That is not on that list? If it says not; no, sir.

Q. Well, this list says that one hammer arrived July first, a number 7 hammer. Is that correct? A. I presume it is; yes, sir.

Q. Is that the hammer with which you drove your piling? A. Number 7?

Q. Yes. A. No, sir.

Q. What did you say? A. No, sir.

Q. What hammer did you drive your piling with? A. Number 9-B. Which piling? Piling or sheet piling?

Q. Sheet piling? A. Number 7 drove sheet piling.

Q. What did the number 6 hammer drive? A. Number 6, I can't remember. Possibly—I don't know whether it was sheet piling or whether it was—probably sheet piling.

Q. Number 7 and number 6 both drove sheet piling; did they? A. I presume so.

Q. They seem to be the only two hammers on this list. Did you have another hammer? A. Yes, sir.

Edward W. Downs—Re-cross

Q. What was it? A. 9-B-2.

Q. When did that arrive? A. I couldn't say.

Q. Now, in the course of construction of these cofferdams, the first thing you did was to drive sheet piling; was it not? A. After setting up my
10 equipment the first was to saddle my bench, or whalers, as we call them.

Q. Your what? A. Our whalers. We bench into the form—the cofferdam; that is the first operation.

Q. And will you just tell the Court and jury and myself what they are? A. Well, it is a frame the exact size of whatever we want to build; we will say a twelve by twelve running down the
20 side and across the end and up there, and braced across; and also one of those runs at the top of the water and one of them was sunk down, we will say, fifteen or eighteen foot below the top of the surface, in which the form or location for this sheet piling to go around, in order to get it plumb and true, because the bottom has to be the same size; and then we started to drive our sheet piling.

Q. In other words you first make a frame and then you drive the sheet piling around it? A.
30 Correct.

Q. That being done, what next? A. Next you excavate.

Q. And after the excavation takes place, then what? A. Driving the piling.

Q. And after the driving of the piling then what? A. You seal coat with concrete; this here
(indicating).

40 Q. And after the seal coat with concrete what next? A. Then we pump out the cofferdams and

Edward W. Downs—Re-cross

saw off our piles to a certain elevation, the elevation given us; then we continue with this layer of concrete.

Q. Now, the same number of piling, and the same amount of concrete and the same amount of frame work, and the same amount of sheet steel for a cofferdam would have to be used if you had built your cofferdams all in one piece or whether you separated them, with the exception of the division in the center, would it not? A. Yes, sir; with the exception of the division. 10

Q. The division in the center took extra sheet piling? A. Yes, sir.

Q. There were two cofferdams approximating ten feet six inches in width? A. Yes, sir. 20

Q. And another cofferdam—two other cofferdams approximating thirteen feet in width? A. 13.6; something like that.

Q. And that division only came up on the west-erly side as shown on each cofferdam, as shown in your illustration? A. As shown on each pier.

Q. And after that the cofferdam was continuous and the concrete was poured continuously? A. As shown in red.

Q. And now do you still say that you could have built this whole structure—that is the piers if allowed to build them in one cofferdam, including the driving of the cofferdam, making your braces, pumping out your cofferdam, driving your piling, putting in your different layers of concrete, just as quick as you built that section on the westerly half shown on the plans? A. Yes, sir. 30

Q. When did you begin work on your piers on the easterly side; that is the side where the water 40

Edward W. Downs—Re-cross

main was? A. At what date? I couldn't tell you the date off-hand.

Q. Haven't you got your books? Haven't you got a reference to when you began? A. Yes, sir.

10 Q. Please refer to it. Look for the east half of the north side and the east half of the south four piers, and tell me when you began to work on them. A. On June 22. We then started to set up what we call our number four derrick. That was approximately at the time we started upon the easterly side of the piers.

Q. And there was no obstruction at that time that prevented you from going to work, was there? A. On the number four—that was on the
20 northerly end of the east side, we could then set up our derrick. There was no obstruction then with reference to the old pipe, excepting the obstructions that were in the bottom of the river.

Q. Which you removed? A. Which we removed.

Q. And for which you rendered a bill to the county for \$521.00 and some cents? A. Yes, sir.

Q. Now, then when did you begin the pier on the south shore, easterly pier on the south shore?
30 A. To set up—to begin the pier and to set up the derrick, I don't know which you would designate—which you want.

Q. Well, when you began work to build those piers on the east side? A. Well, it was approximately the same time; because I was working on number three derrick at that time.

Q. So that in June the obstruction had been removed so that you could build the pier on the
40 east side of the piers? A. June 22d they had

Edward W. Downs—Re-cross

been removed so that I could start to set up my derricks and continue on with my pier.

Q. And they were removed by Atlantic City, I think you said; didn't you? They were removed by Atlantic City, did you say—the water mains?

A. The water mains were removed by the contractor—the contractor was Gandy. 10

Q. Now, during the time that you went there, or about January 13th, 1927, did you keep some men on the job continuously from that time until the pier was completed? A. Yes, sir.

Q. And there was other work to be done besides building these piers, was there not? A. Nothing more than preparing for the piers.

Q. Did you have to remove the old structure? 20

A. That was done after the sub-structure was erected.

Q. And the first thing you did was to build the piers, was it? A. Yes, sir.

Q. Didn't you have to remove a portion of the old bridge before you could build the piers? A. Nothing more than cutting off—driving a few piles and cutting off and taking out the supports of the old piers in order for new piers to go where the old piers were. 30

Q. Well, that was work; wasn't it? A. That was—yes, certainly it was work.

Q. Occupied some time, didn't it? A. Yes, sir.

Q. You had to cut a hole through the old bridge in order to work your pile-driver? A. Yes, sir.

Q. And that occupied time, did it not? A. Yes, sir.

Q. You weren't prevented by the Board of Freeholders or anyone else in authority in At- 40

Edward W. Downs—Re-cross

lantic County from tearing down the old bridge, were you? A. After.

Q. After you were given charge of the job? A. No, sir.

10 Q. Well, you retained the old bridge for a portion of the time merely for your own convenience, didn't you? A. Yes, sir.

Q. On which you could operate some of your machinery? A. Yes, sir.

Q. My attention has been called to the fact that the water main that you marked upon the map apparently is below the surface of the water. Is that the fact? A. Well, where have I marked it showing it below the surface of the water?

20 Q. Those marks, don't they indicate that it is below the surface of the water? A. Here?

Q. Yes. A. No; this is the plan looking down right in front of the work. That is the plan looking down.

Q. Well, as a matter of fact the water main was above the water, wasn't it? A. Part of it, except across the channel.

Q. And easily to be seen by anyone? A. Yes, sir.

30 Q. And you knew when you went there that the location of this bridge was to occupy a portion—a portion of it was to occupy where the water main then was? A. After measuring it off I found that the channel pier was in the way—or the main.

Q. Now, I understood that your figures—approximate figures—show that there were seven thousand tons of concrete in the westerly half of
40 each pier which you first constructed? A. Yes,

Edward W. Downs—Re-cross

but I would not verify that; that may be wrong.

Q. And that would approximate 28,000 tons for the whole four piers? A. That may be wrong.

Q. And the map correctly shows, before the jury, does it, the relative space occupied by the westerly half which you say you erected, and the easterly half afterward erected, shown in red ink? 10

A. Yes, sir.

Q. Correctly represents the proportion.

Mr. Higbee: Do you have any objection to having Mr. Gaskill examine this witness? Of course it is improper unless you consent to it. He wants to offer a photograph and ask him some questions about it. I don't know what it is going to be. 20

Mr. Parsons: Certainly.

By Mr. Gaskill:

Q. Mr. Downs, I show you what purports to be a photograph of the bridge, and ask you to identify that as the Albany Avenue bridge which you did work on. A. Yes, sir.

Q. That is the bridge, is it not? A. Yes, sir. 30

Mr. Gaskill: Any objection to offering it at this time?

Mr. Parsons: This can be offered.

Mr. Burling: He ought to identify when it was taken.

Q. Can you tell by the appearance of the bridge, whether or not the work had been completed on the bridge when that photograph was taken? A. Apparently it had. 40

Edward W. Downs—Re-cross

Mr. Parsons: If you will just state on the record when it was taken.

Mr. Nelson: That is a finished picture.

Mr. Gaskill: Well, after the bridge was completed.

10

Mr. Nelson: Yes, sir.

The Court: After it was fully completed and taken over by the county?

Mr. Nelson: Yes, sir.

Mr. Parsons: We consent that it be in evidence.

(Photograph offered is received in evidence and marked as an exhibit for the defendant, D-1.)

20

Q. Now, Mr. Downs, what part of that bridge, indicated in that exhibit, did you do work on?
A. On this pier and this pier here; in other words, from this pier to this pier over here; in other words, two-plate spans and one draw span or lift span.

Q. In other words, up here? A. That is it.

Q. To here? A. Yes.

30

Mr. Parsons: May I suggest that when you interrogate or indicate those points, they may be marked A and B?

Q. Shall we mark the westerly side as "A" and the easterly side as "B"? A. North and south ends.

Q. The side towards Pleasantville is the north end, is it not? A. Yes.

Q. That is marked "A"; and the side towards the ocean and Atlantic City property is marked "B"? A. South end.

40

Edward W. Downs—Re-cross

Q. Now, who built from the point indicated as "B" toward the ocean and Atlantic City? A. F. W. Schwiens.

Q. Well, for whom? A. For Atlantic City.

Q. Yes. In other words the side of—the City of Atlantic City constructed from the left— A. 10
Yes, sir.

Q. —to the pier at the end of the draw indicated by "B"—that was done by the City of Atlantic City? A. City of Atlantic City.

Q. And from the point indicated as "A" towards Pleasantville, by whom was that built? A. City of Atlantic City.

Q. In other words, when you refer to approaches, to the portion of the bridge that you 20
did, that was built by Atlantic City, from the easterly side to Point "B" and from the westerly side to point "A"—that was built by Atlantic City? A. Yes.

Q. And indicated as approaches? A. Yes.

The Court: Why do you say east and west? It is north and south.

Mr. Parsons: It is north and south.

Mr. Higbee: Suppose we get it correct. 30
It is north and south and let the question be north and south.

The Court: Well, it is north and south, as we call it in Atlantic City. Going toward Pleasantville is north and toward the ocean is south.

Q. In other words, Atlantic City built the approaches on the north and south side of the present bridge and those approaches were approxi- 40

Edward W. Downs—Re-direct

mately how wide, Mr. Downs? A. Sixty-foot between curbs; ten-foot sidewalk on each side.

Q. I mean between the shore and where you connected with the bridge that you built? A. I couldn't say. I think—I couldn't say that exactly. I can give you our work but not their work.

Q. Your bridge—that is, the bridge that Thompson Company built, did not reach to the shore on either side? A. No, sir.

Q. By ten or fifteen feet? A. Oh. By more than that; much more.

Q. Would you say fifty to sixty feet? A. Well, on one side it was approximately fifty-foot and on the other side they met the shore; it was up to the shore, but they extended the shore back; they dug out and made the approaches on the Pleasantville side.

Mr. Gaskill: I think that is all.

RE-DIRECT-EXAMINATION by Mr. Parsons:

Q. Just one question, Mr. Downs. Now, with reference to the time between January 28th and March 14th, March 14th is when you took possession of the bridge permanently; is that right? A. Yes; yes, sir.

Q. Now, between that time and January 28th, 1927, and March 14th, while the bridge was opened to traffic, was there a pontoon bridge being built? A. A pontoon being built between what dates?

Q. January 28th and March 14th? A. Yes, sir.

Q. Thompson and Company have anything to do with that pontoon bridge? A. No, sir.

Edward W. Downs—Re-direct

Q. And the pontoon bridge was to take the traffic that was going over the old structure? A. Yes, sir.

Q. So that while the pontoon bridge was being built the old structure was maintained open to traffic? A. Yes, sir. 10

Q. And S. S. Thompson and Company had nothing to do with that pontoon bridge? A. No, sir.

Q. Now, you have also testified that after you got possession you left the old structure remain; is that right? A. Yes, sir.

Q. And did you use that old structure in the building of the new bridge? A. Yes, sir.

Q. And Judge Higbee brought out that you kept all the men working, and then he asked you the question after he brought out that you kept all the men working, that you still say despite the fact that you kept all the men working, that you could build the whole bridge in the same length of time that it took you to build it in two sections? A. I said all the men I needed. 20

Q. That is right. Now, will you explain to us if you had the whole section of the bridge, what you would have done with reference to workmen—if you had built the bridge in one section? 30

A. What I would have done?

Q. Yes. A. If I had built the whole bridge as one unit, with the four piers, I would have hired more men and worked my full amount of equipment as planned to work.

Q. So that with a larger gang and working the equipment which you had there, altogether, you could have built the whole bridge in half the time? A. Yes, sir. 40

Lionel W. Lancaster—Direct

Q. And there is no claim in this suit made for actual labor expenses, is there? A. Not to my knowledge; no, sir.

Q. The claim is for the extra time, of your time and the assistant superintendent and the watch-
10 man and the timekeeper? A. Yes, sir.

Mr. Higbee: I object to that. The complaint speaks for itself.

Mr. Parsons: Well, I was anxious to clear that point up.

The Court: Well, as I understand the proof at the present time, the only damage they have attempted to prove was the
20 superintendent at so much per week; the assistant superintendent at so much; the timekeeper and watchman at so much per week.

Mr. Parsons: That is right.

The Court: And I suppose that stands for this witness' testimony.

Mr. Parsons: Yes, that is all.

Witness excused.

30

LIONEL W. LANCASTER, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

Direct-examination by Mr. Parsons:

Q. Mr. Lancaster, you live at Red Bank, New Jersey? A. Yes, sir.

40 Q. You are an engineer? A. Yes, sir.

Lionel W. Lancaster—Direct

Q. And you are employed by S. S. Thompson?
A. That is correct.

Q. Were you employed by S. S. Thompson in the year 1927? A. Yes, sir.

Q. And are you acquainted with the plans and specifications of the Albany Avenue Draw Bridge here in Atlantic City? A. I am. 10

Q. Did you assist in estimating and figuring upon the job? A. I did.

Q. How long have you been engaged in construction work? A. About thirteen years.

Q. Will you tell us by whom you have been employed during that period of time? A. Employed by the Pennsylvania Railroad Company as bridge inspector about a year; Iron and Steel Company in Coatsville, Pennsylvania, as engineer on heavy iron work; and Roller Mills for about a year; United States Army, Engineer Corps branch; about a year on heavy dock work; five years as bridge engineer for Monmouth County, New Jersey; and about three years with this present company as engineer on bridge work. 20

Q. And during your experience approximately how many bridges have you superintended, or supervised? A. I should say approximately fifty. 30

Q. Directing your attention to the Albany Avenue bridge in Atlantic City, do you know the manner under which it was constructed? A. I do.

Q. I call your attention to the fact of the testimony and the plan which is on the board, of the construction of this bridge, rather the sub-structure of this bridge in two sections, and I ask you first if you know the equipment that was on the job? A. Yes, sir. 40

Lionel W. Lancaster—Direct

Q. With the equipment that was on the job, and the supervisory orders, can you tell us the length of time it would take to build the bridge, or the sub-structure of the bridge in one section as compared to building it in two sections? A.

10 It would take practically twice as long to build the bridge in two sections as it would to build it in one complete section.

Q. And will you explain why? A. For the reason that the plan of arrangement of building the bridge provided for simultaneous operations throughout the work, with the arrangement of four derricks, and that would provide for the operation to go on at one time. The actual method

20 which was finally employed, building it in two sections, tied up half the equipment and prevented the operations on one side to be completed while the other operations were going on on the other side.

Q. And getting out—could the sub-structure, the pier, with the concrete, the driving of the piling, the excavation in one pier be completed throughout that pier in the same length of time that you could complete it in half? A. Oh, yes.

30 Q. And the reason for that is what? A. For the fact that you—if you have access to the full section can employ sufficient labor to complete it in the same time, because it utilizes the same amount of equipment in each case.

Q. Directing your attention to the steel sheathing which was used in the piers, dividing them so that the work could be done in two sections, Mr. Lancaster, do you know about that steel

40 sheathing? A. I do; yes, sir.

Lionel W. Lancaster—Direct

Q. Can you tell us the weight per section used?

A. The weight per section?

Q. Yes.

Mr. Higbee: I object for the sake of getting my objection on the record, on the ground that it is incompetent, irrelevant and immaterial. 10

The Court: Well, it is offered in support of their contention that they are entitled to extra pay for the extra sheathing.

Mr. Higbee: I understand, but my contention is that under the contract it does not make any difference. They had no supplemental contract and I want the exception to that. 20

The Court: I will permit the testimony and allow an exception.

A. The calculation of the quantity of sheet steel piling involved in those four cross walls involves two piers of the width of practically ten-foot six, and two of say thirteen-foot; and three of the piers used sheathing 45 feet long, and one thirty-five. I don't know whether there is a calculation there that we have, it was made to arrive at the total amount used, it was done at the time that sheathing was ordered. 30

Q. Do you know the calculations? A. I do.

Q. And can you tell us—will you just tell us how much extra sheathing was used in those center piers? A. Slightly in excess of forty-four tons.

Q. Will you just explain to us, just the sheathing that was used so that we will get it clearly?

A. The sheathing that was used was eight—what 40

Lionel W. Lancaster—Direct

we call "T" sections which provided for a connection of the cross walls to the side walls.

Q. Can you indicate on the diagram where a "T" section would go? A. A "T" section would be given right beside the center line of this cross wall which also has a member pointing in that direction. It is an interlocked piece with a joint on each end, and also a sheet—and also a joint on the cross piece; and this is driven the same as an ordinary piece would be driven in the wall, with the exception that it has an additional piece fabricated right with it to provide for a connection going in the opposite direction, which would complete two separate and complete cofferdams when they were ready to be built that way.

Q. Was the "T" section—were those "T" sections necessary to the cofferdams and the sub-structure, had the cofferdams and the sub-structure been built in one section? A. No, sir.

Q. Then the change was a "T" section for each side, as I understand it? A. Yes, sir.

Q. And then a cross intersection? A. A spread piling driven exactly as provided for the other side.

Q. Have you got the exact figures of the amount of steel sheeting that was—for those four cross sections? A. Yes, sir.

Q. Will you give us the exact figures, Mr. Lancaster?

Mr. Higbee: In order that I may have my rights protected I am objecting to all this testimony and ask the right to have it stricken out unless they can show the county is legally liable for it.

The Court: Yes.

Lionel W. Lancaster—Direct

Mr. Higbee: The present testimony shows that Mr. Thompson gave the order to build it in two sections.

The Court: Yes. You will have that privilege.

A. There was six "T" sections used, forty-five-foot long, weighing 72.1 pounds per lineal foot, which made a total of 196,467 pounds. There were two "T" sections used weighing 72.1 pounds per lineal foot, 35 feet in length, making a total of 5,047 pounds; there was also one wall section used nine-foot six in length and thirty-five pounds per square foot of wall surface, thirty-five feet in length, making a total of 11,638 pounds. There were also three walls used, totaling thirty-three foot, six lengths, for all three, at thirty-five pounds per square foot of wall, with a depth of 45 feet, making a total of 52,762 pounds, with a grand total of sheathing used of 88,914 pounds or 44.45 tons.

Q. 44.45 tons? A. Yes.

Q. At five cents a pound for that sheathing, Mr. Lancaster, can you tell us the correct amount for the sheathing? A. That would make a total cost of \$4,445.

Mr. Parsons: Cross-examine.

Mr. Higbee: No questions.

Witness excused.

John F. Hoagland—Direct

JOHN F. HOAGLAND, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

Direct-examination by Mr. Parsons:

10 Q. You live at Red Bank, do you? A. Yes, sir.

Q. And you are employed by S. S. Thompson Company? A. Yes, sir.

Q. And you are the chief engineer for that company? A. Yes, sir.

Q. And you are acquainted with the Albany Avenue bridge? A. Yes, sir.

20 Q. Did you go with Mr. Lancaster—did your company, with Mr. Lancaster, make the estimate on the job? A. Yes, sir.

Q. Are you acquainted with the manner in which the work was carried out? A. Yes.

Q. How long have you—how long have you been engaged in the contracting business? A. Seven years with S. S. Thompson Company, and ten years prior with the County of Monmouth as Bridge Engineer.

30 Q. During the period of time with Mr. Thompson, or with the County of Monmouth, how many bridges have you built or had charge of? A. In the neighborhood of seventy-five to one hundred.

Q. And directing your attention to the Albany Avenue bridge, and the method of construction, can you compare the length of time which it would take to build the substructure of the bridge in the manner in which it was built and as delineated on the plans there in two sections, and
40 to build it in one complete section?

John F. Hoagland—Direct

Mr. Higbee: I object for the same reason heretofore stated—that the testimony shows that the date that the building in two sections was under instructions from Mr. Thompson and the county has been up-to-date in no way charged with the building of the bridge in that way, and therefore the evidence as it stands is not competent. 10

The Court: I will permit it subject to your right to move to strike.

A. It will take approximately twice as long to build the bridge in two sections, as it would to build it in one complete section. 20

Q. Will you explain that? A. By building it in one section, you could utilize all your equipment and it would take additional labor. That would be the only additional cost on the job; whereas to build it in two sections it would string it out over twice the period of time and your equipment would be standing around idle.

Q. With reference to the superintendents on the job; the timekeeper and the watchman on the job, watching the equipment, can you tell us in building it in two sections whether it is necessary to have a superintendent and watchman, timekeeper and assistant superintendent there during that period of time? A. It was necessary. 30

Q. And in building it in one section it would be necessary to have them there half the time? A. Approximately, yes.

Q. Mr. Hoagland, directing your attention now to the lay-out, it was testified—or questions were 40

John F. Hoagland—Direct

asked here yesterday, with reference to Mr. Downs presence at a conference with relation to keeping this bridge open after possession of it had been delivered to you. Were you present at that conference or do you recollect that conference? A. I was in Atlantic City on several occasions, and at different times I would talk with Dr. Stehle, who I understood was chairman of the Bridge Committee of the Board, and Mr. Nelson; and as far as I can recall there was a conference right at the beginning of the job and I remember distinctly Dr. Stehle was there, but I don't remember if Mr. Nelson was; and at that time the bridge had been closed and there was a question of opening it, and one of the reasons—the reason I can remember distinctly was that there was a colored funeral wanted to cross the bridge, and we agreed to open it at that time. Later on there was another conference that I can't distinctly remember what happened at that time.

Q. Now, to one side of the bridge was there being constructed, or was there subsequently constructed a pontoon bridge? A. I understood there was.

30 Q. Were you down here? Did you see it yourself? A. I didn't see it.

Q. You didn't see it? A. No.

Q. Do you know, however, that S. S. Thompson and Company had nothing to do with the construction of the pontoon bridge? A. Yes, sir.

Q. Were you also down here during the beginning of the work and inspecting the site and did you see the water main located there? A. No.

40 Q. You didn't see it? A. Didn't see it.

John F. Hoagland—Cross

Q. Did you have any conversation with Mr. Nelson about the water main at all? A. No, I don't remember any.

Mr. Parsons: That is all. Cross-examine.

10

CROSS-EXAMINATION by Mr. Higbee:

Q. Did you make the estimate on which Mr. Thompson bid in this case? A. Yes, sir.

Q. Did you visit the scene before making the estimate? A. It was sometime before.

Q. Did you get a copy of the specifications that were issued in this matter? A. Yes, sir.

Q. Did you read them? A. Yes, sir.

20

Q. Do you remember reading this provision: "Prospective bidders are hereby directed to carefully read and consider the plans and specifications; to visit the site of the work so that they may thoroughly familiarize themselves with the conditions, particularly the difficulties existing at the site. No consideration will be given to any claim that a bid has been made without full comprehension of the conditions to be encountered."

Do you remember reading that? A. Yes, sir.

30

Q. Now, did you follow the instructions contained in that? A. Yes, sir.

Q. Well, if you went upon the bridge and examined the site, couldn't you have seen the water main that was there? A. No, sir.

Q. Why not? A. It was under water, as I understood later on; but at that time it was covered over entirely.

Q. Covered over with what? A. With water.

40

John F. Hoagland—Cross

Q. How many times did you visit it? A. I was on the job approximately three or four times.

Q. When did you first see the water main? A. Shortly after we had started the job; that is, I saw it working. I never knew then it was a water
10 main.

Q. Well, you saw the structure there; didn't you? A. No, sir. I saw a scow working in the river, in the thoroughfare.

Q. You never saw the structure at any time? A. The part that was under water; no, sir.

Q. Well, wasn't there part of it above water? A. There were headers, I would call them, at each end of the pier—of the bridge; but there was no
20 indication that the water main was under water at that point where we were building the bridge.

Q. Well, did you see—how large is this water main? A. The part that I saw was the wooden stave part, which is exposed on the end. I would say that was about four-foot in diameter.

Q. And that came down right to the meadow edge; didn't it? A. Yes, sir.

Q. And you saw it there? A. Yes, sir.

Q. You didn't see any hole in it; did you? A.
30 There was a small one, I believe, but it didn't amount to anything.

Q. But the hole end was not open, was it? A. No, sir.

Q. Didn't you fancy or have some imagination that that was some sort of water main or sewer or something of that kind that went across the thoroughfare? A. Yes, sir.

Q. And you saw that on the other side of the
40 thoroughfare; didn't you? A. Yes, sir.

John F. Hoagland—Cross

Q. And you believed at that time that that was some structure that was used to convey water; didn't you? A. Yes, sir.

Q. And that it continued across the channel? A. Yes, sir.

Q. Then you did see it, didn't you? A. Not the part in the channel; no, sir. 10

Q. But you saw the part on either side? A. Yes, sir.

Q. And now—your best judgment dictated to you that that went under water; didn't it? A. I presumed it went under water.

Q. Now, who prepared the bid that was submitted? Did you prepare it? A. Yes, sir.

Q. Under the name of S. S. Thompson and Company, Inc. and signed S. S. Thompson, President, Red Bank, New Jersey? Was that signed by Thompson himself, or by you? A. Mr. Thompson. 20

Q. And did you read the bidding blank? A. Yes, sir.

Q. And did you read this part of it: "Having carefully examined the specifications and all the plans covering the proposed reconstruction of the bridge spanning inside thoroughfare, Atlantic City, known as the Albany Avenue Bridge, upon which bids have been invited by advertisement to be submitted to you on December 15, 1926; and having carefully studied the site of the work to ascertain the conditions, particularly the difficulties existing there, the undersigned will provide the necessary machinery, tools, apparatus, and other means of construction, do all the work, furnish all the materials and labor required by the 30 40

John F. Hoagland—Cross

plans and specifications, in the manner shown by the plans and in accordance with the instruction of the engineer." Do you remember reading that? A. Yes, sir.

10 Q. Now, you still think that your—you are still in Mr. Thompson's employ; aren't you? A. Yes, sir.

Q. And you were in his employ—have been in his employ continuously since you made these specifications? A. Yes, sir.

Q. Now, did you prepare for Mr. Thompson a bid to be submitted to Atlantic City for building the approaches on either side of this bridge?

20 Mr. Parsons: I object to that. I think it is absolutely immaterial.

The Court: It is not cross-examination of anything this witness testified to.

Mr. Higbee: Well, this witness was put on to show that there was a condition that existed there that he didn't know about, or that this water main was an obstruction.

30 The Court: No, he was put on to testify the method by which they built a bridge required otherwise as against the method they contemplated building the bridge, and that is all he has testified to.

Mr. Higbee: Well, I understand that their claim, however, is that it took twice as long because of this water main.

The Court: Yes, but this witness only testified to what actually occurred.

40 Mr. Higbee: All right. I will withdraw it.

John F. Hoagland—Cross

Q. You were present at a conference in the City Hall in which you saw Dr. Stehle, you say?

A. Yes, sir.

Q. You don't remember seeing Mr. Nelson at that time? A. I think Mr. Nelson was at that conference; yes, sir. 10

Q. You think he was at that conference? A. Yes, sir.

Q. And was that the time the question whether Atlantic City would open the bridge to let a colored funeral go over, came up? A. No, sir.

Q. Who discussed that proposition with you? A. As I recall it was Dr. Stehle down at the bridge.

Q. And you opened the bridge to let the funeral go through; did you? A. Yes, sir. 20

Q. That was voluntary on your part; wasn't it? A. Yes, sir.

Q. You knew there was no obligation on your part to do that; didn't you? A. Yes.

The Court: I do not think there is any claim being made for that, either.

Mr. Parsons: No.

Q. Now, you remember the date that you met Dr. Stehle and Mr. Nelson at the City Hall conference? A. No, I don't recall it. 30

Q. What was the discussion at that conference? A. The City of Atlantic City either had awarded or was about to award a contract to F. W. Schwiers Company for the construction of the approaches, and which claimed, of course, at that time would interfere with the progress of this work, and the object of that discussion was to 40

John F. Hoagland—Cross

make some arrangement whereby Atlantic City would be able to go on with their work without interfering with us.

Q. And did you come to some understanding with each other? A. I believe we did.

10 Q. And what was the understanding that you came to? A. That the Schwiers Company would have the use of the west approach. I would not say all of it, because I don't just recall the details; but generally that they could start their work on the west—wait a minute—the north end of the bridge, the Pleasantville end.

Q. And you were representing the plaintiff in this case, Thompson Company, weren't you, at
20 that conference? A. Yes.

Q. And you consented that that be done? A. Yes.

Q. There was no insistment on the part of Mr. Nelson or Dr. Stehle that that should be done; was there? A. I don't recall any.

Mr. Parsons: We are making no claim on that point.

The Court: I was going to say I thought
30 there was no claim on that.

Mr. Parsons: There has been no testimony on it.

Mr. Higbee: They abandon that claim?

The Court: There is no testimony directed to that at all.

Mr. Higbee: Well, if you say you abandon that claim—

The Court: Well, in the opening he said
40 he was not going to ask for that.

Mr. Parsons: Yes; that is right.

John F. Hoagland—Cross

Mr. Higbee: Then you abandon the claim for moving the machinery from one end to the other?

Mr. Parsons: Oh, yes. We make no claim for that, Judge Higbee.

Q. At this conference was it agreed—that is, mutually agreed between the parties in interest—that is, you representing Thompson and Company, and Mr. Nelson and Dr. Stehle as emissaries of the County—that you could close the bridge if you saw fit, or open the bridge to traffic if you saw fit, and then close it again when the pontoon bridge was opened, and that they would intercede with the Board of Freeholders to extend your time that many days? A. You are referring to this conference in the City Hall now? 10 20

Q. Yes. I don't remember that decision being made at all at that time.

Q. Well, was there a decision made at which you were present with any of these gentlemen, to the effect that if you opened the bridge to traffic they would allow you that number of days in extension of your contract? A. I don't recall being present at any discussion of that sort. 30

Q. You don't know anything about a conference of that kind? A. No, sir.

Q. Who was present at this conference that you had in the City Hall? A. Mr. Nelson, Mr. Stehle, Mr. Thompson. I am not sure whether Mayor Ruffu was or not, but his name was mentioned at the time; and I believe Mr. Hackney, the city engineer, although I am not certain, because I don't recall seeing him there. 40

Schenck S. Thompson—Direct

Q. Well, were you present in the Mayor's office—or in the City Hall in the Mayor's office on January 27th? A. I don't recall the date.

Q. At which there was Mayor Ruffu—Commissioner Ruffu, Director Ruffu; Mr. Murtland,
 10 Dr. Stehle and Mr. Nelson, and the question of opening to traffic the Albany Avenue bridge for a period of not less than two weeks was discussed with the understanding that the county would extend the time for the completion of the work next fall by the number of days the bridge was kept open? A. I don't recall any such discussion.

Q. At any time? A. No, sir.

20 Q. You didn't receive any orders, did you, from the Board of Freeholders of Atlantic County, authorizing you to open the bridge? A. Directly from the Board?

Q. Yes. A. No.

Q. The bridge was turned over to you, or your company, on what date? A. I don't know.

Mr. Higbee: All right; that is all.

Witness excused.

30

SCHENCK S. THOMPSON, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

Direct-examination by Mr. Parsons:

40 Q. Mr. Thompson, you are S. S. Thompson and Company; are you? A. I am president of the company.

Schenck S. Thompson—Direct

Q. And it is your company; isn't it? A. Yes.

Q. How long have you been engaged in the contracting business? A. Twenty-three years.

Q. Been engaged in the general contracting business; have you, Mr. Thompson? A. Yes, sir.

Q. Contractor generally with various counties, municipalities and the state? A. Yes, sir. 10

Q. Did you personally examine the site of this Albany Avenue bridge? A. Yes, sir.

Q. When you made the examination before this bid, will you tell us what you found? A. Well, practically two or three weeks before we made the bid, before the time for the bids to be received, I visited the site, went over the bridge, and looked around; went down and saw what is known as the east side; saw some men with two machines, operating divers, and so forth, removing the pipe line; saw the rest of the bridge in toto, as was; asked some questions. 20

Q. Did you obtain information as to what those men were doing? A. Yes, sir.

Q. And as the result of the information that you obtained, what did you find out about this pipe line? A. Well, I asked them how long they would be before the pipe line would be out of there. I asked—the man I saw was the foreman on one of the scows. 30

Q. And what information did you receive as to the length of time the pipe line would be out?

A. He said about a month.

Mr. Higbee: I object to this testimony as not binding the county in any way.

The Court: Well, the testimony is already in without objection, and I assume 40

Schenck S. Thompson—Direct

that all the purpose of the testimony is to show the investigation made by Mr. Thompson.

Mr. Parsons: That is the purpose of it.

10 Q. Did you as the result of your investigation and the information that you obtained, make your bid? A. Yes, sir; had it done.

Q. Now, after the bid was made, Mr. Thompson, did you again talk to Mr. Nelson, the county engineer, or did you talk with Mr. Nelson? A. Yes, sir; after the bids had been received.

Q. And you had been awarded the contract? A. Well, after the bids had been received, any-
way.

20 Q. Directing your attention to the water main, did you talk to him about the water main? A. Yes, sir; at different times; a number of times.

Q. And what information did Mr. Nelson at the start of the work, may I ask you—the beginning of the work—give you with reference to this water main?

30 Mr. Higbee: I object—I will get my objection in time this time—on the ground that any representation Mr. Nelson may have made cannot bind the county.

Mr. Parsons: Well, he is made the sole authority in the contract, may your Honor please.

The Court: Let's see what his authority is.

Mr. Parsons: Page 3, Section 11.

40 The Court: (Referring himself to the portion of the contract in question.) I do

Schenck S. Thompson—Direct

not see how he can change the terms of the contract.

Mr. Higbee: Below, probably on the second page, paragraph seven, page two, "Neither contract nor specifications may in any wise be affected by verbal agreement or by inference on the part of either party to the contract. Changes or alterations of any kind, as already provided, can be made only on written order, in the manner prescribed." It is immaterial what Mr. Nelson or anyone else may have said to him about the situation. 10

The Court: I do not see how Mr. Nelson could bind the county by verbal conversation had with Mr. Thompson. 20

Mr. Parsons: I will withdraw the question at the present time, then, if your Honor please.

Q. Mr. Thompson, did you have a conversation also with Dr. Stehle, chairman of the Bridge Committee, with reference to this water main? A. No, sir.

Q. Was Dr. Stehle present— A. Pardon me. 30

Q. At a conversation you had with Mr. Nelson— may I ask you that? A. Not with reference to the water main.

Q. Did you have any conversation with Dr. Stehle about the water main then? A. I may have had later on, after the contract was awarded.

Q. Later on? A. Yes, sir.

Q. But at the time when you started work did you have any conversation? A. I may have had. 40

Schenck S. Thompson—Direct

I met him down at the bridge different times when the water main was there.

Q. Well, now; did you read your contract and specifications? A. In a general way, yes.

10 Q. Under the terms of your contract, and under the plans and specifications, was there anything shown on either the contract or in the specifications or in the plans, as to the existence of this water main? A. No, sir.

Q. And under the plans and under the specifications—did both the plans and specifications call for this bridge to be built in one entire unit? A. Yes, sir.

20 Q. And did the plans give any evidence as to the time that this bridge was to be constructed in accordance with the specifications, and in accordance with the plan, that that water main would be there? A. No, sir.

Q. Was it possible, and would it have been possible to have built the bridge in accordance with the plans and the specifications, with the water main located on the site? A. No, sir.

30 Q. Now, I am not going to ask you to answer what the conversation was, but I am going to ask you if you did repeatedly, during the start of the work, have conversations with Mr. Nelson, about the water main? A. Yes, sir.

Q. And did you during that period of time—I cannot ask you to state what you said, but did you make objections to Mr. Nelson about the water main? A. Yes, sir.

40 Q. Now, under the terms of the contract, of the provision that the bridge should be completed, work should be started at once, or otherwise the

Schenck S. Thompson—Direct

contract would be forfeited and the county could complete the work—did you as the result of that water main being there, have a conference with Mr. Nelson? A. I met him in the Freeholders' room; yes, sir.

Q. And did you submit to Mr. Nelson a plan of building the bridge as the result of the notification which he served upon you on March 12th? Did you submit a plan at that time, or thereabouts? A. That was right at the beginning; yes, sir. I looked over the plan that was submitted to him. 10

Q. I see. Now, when you found that you were only going to have half the site, did you submit a plan to him for building then? A. Not a plan. I talked it over with him in reference to building it half at a time. 20

Q. And did you discuss that then? A. Yes, sir.

Q. Under the contract and under the specifications—did you submit that plan to him for his approval? A. Well, there was no plan submitted in reference to that. It was sketched out.

Q. Well, that is what I mean. A. In fact, Mr. Nelson sketched it out himself in a room in this same building, off from the Freeholders' room. 30

Q. How the work should be done? A. Well, I asked him by doing it that way—we were both disgusted with reference to not getting the water main removed, and we tried to figure out some other way, where we could make some progress, as the time was being charged against us and nothing done, nothing being done.

Q. Was there a penalty in your contract if you did not complete? A. Yes, sir. 40

Schenck S. Thompson—Direct

Q. Now, at the time you made your estimate, at the time you submitted your bid, Mr. Thompson, did you have any conversation that at the time you would be ready to insert these piers, that you would have to put them in in two sections? A. No, sir.

Q. And was the information you had obtained both from the plans and specifications, and from an inspection of the site that you would be able to put it in in one section and the water main would be out? A. Yes, sir; that was my understanding.

Q. As the result of building the sub-structure in two sections, can you compare the length of time which it took to build the sub-structure in two sections with the length of time that it took to build it in one section? A. As far as time is concerned, the whole sub-structure could be built as quick as half.

Q. Directing your attention, Mr. Thompson, to the fact that this delay was caused, did it throw the work over in the winter time? A. Yes, sir.

Q. Can you tell us from your general experience, the comparative expense, and the comparative quickness in which work can be done in the winter compared with summer work? A. We usually figure as far as the labor is concerned, about twenty-five per cent more.

Q. On winter work? A. Yes.

Q. Was there submitted to you sometime in August of 1928, I think it was, or July, 1928, a final estimate upon this work? A. Yes, sir.

Q. And did that estimate show that the voucher or construction estimate which you were to cer-

Schenck S. Thompson—Direct

tify—showed that the payment therein claimed was to be the final payment? A. Yes, sir.

Q. And in that final payment was there a deduction for inspection? A. Yes, sir.

Q. Had you previously taken up with Mr. Nelson by letter, or otherwise, a contract of these inspection charges? A. Yes, sir. 10

Q. And as the result of the advice of counsel did you refuse to send that final statement, or final payment in, duly sworn to? A. Yes, sir.

The Court: That you are going to introduce in evidence, I assume?

Mr. Parsons: I am going to ask Judge Higbee, instead of serving a formal subpoena on the treasurer, I would like to have the records produced here if you have them. 20

Mr. Higbee: Is Mr. Willits around?

Mr. Willits: Yes.

Mr. Parsons: I simply want to introduce this estimate, Mr. Willits.

Mr. Higbee: The estimate Mr. Nelson sent in?

Mr. Parsons: Yes. 30

Mr. Higbee: I have no objection.

Q. Then there was—

Mr. Parsons: Then there was an estimate which I don't find in my file, which I think I have lost, \$521.

Mr. Higbee: If you will submit the bill that Mr. Nelson sent along, and his letter, that is all. 40

Discussion

Mr. Parsons: That is what I cannot find, Mr. Higbee. I have lost the \$521 estimate.

10 The Court: That is the estimate that was sent to Mr. Thompson to fill out and swear to, and which he refused to swear to because he testified counsel advised him not to, because it contained some deductions that he didn't think were proper.

Mr. Higbee: I have no objection to these being offered.

The Court: And what is the amount of deduction for inspection work there?

Mr. Parsons: \$2,724.28.

The Court: \$2,724.28?

20 Mr. Burling: That is right.

(The paper referred to is received in evidence and marked as an exhibit for the plaintiff, P-16.)

Mr. Parsons: Now, may I ask if it can be agreed that the voucher or estimate for \$521 was sent to us? I have lost that out of my files?

30 Mr. Higbee: We will admit that there was a voucher sent to Mr. Thompson for \$521.32 for removing the piling under the water main.

The Court: That was a separate voucher. And may we also stipulate that neither of these vouchers have been sworn to by Mr. Thompson or returned or presented to the Board of Freeholders?

Mr. Parsons: We will stipulate that.

40 Mr. Higbee: That is so stipulated to, Mr. Stenographer.

Schenck S. Thompson—Cross

Mr. Parsons: For the reason testified by Thompson.

The Court: Yes, but I don't understand what reason Mr. Thompson gave for not returning the \$521 separate voucher.

Mr. Parsons: I may have to take the stand on that. I dislike to, but when they were brought down to me they were brought jointly, together, and it was upon my advice. 10

The Court: In other words, the \$521 you thought was included in the other?

Mr. Parsons: Yes, an integral part of the whole transaction.

The Court: Yes. . 20

Mr. Higbee: Well, what did he say?

The Court: He said the reason he didn't sign the other voucher and return it was because he was advised by counsel not to because there was deductions.

Mr. Higbee: I will make the same—he will make the same answer to this, I suppose—his counsel does?

The Court: Yes, his counsel makes the same answer as to the other. 30

Mr. Parsons: Cross-examine.

CROSS-EXAMINATION by Mr. Higbee:

Q. Mr. Thompson, will you point out to the Court and jury where the balance—wherein the plans and specifications and contract required that this bridge or any portion of it be built as a unit? In other words, whether the piers were required to be built as a unit? A. Well, it shows them as a unit. 40

Schenck S. Thompson—Cross

Q. Well, will you—is there any requirement in the contract or specifications that requires that should be built in a unit? A. There may be. I don't know about that. I cannot remember.

10 Mr. Parsons: You may refer to the plans, Mr. Thompson. They are right there.

Q. I understood you to say in your direct-examination it was? A. It was understood they were to be built at one time.

Q. But is there anything in the specifications, plans or the contract that requires that they be built at one time, as a unit? A. A seal coat is always considered at one time, yes, whether it is
20 mentioned or not.

Q. I am not asking you whether it is considered at one time. I am asking you whether there is anything in the contract, plans or specifications which requires that? A. I don't know now.

Q. In your direct-examination you testified that there was? A. I don't think it specifically specified that it had to be done at one time, but it may be.

30 Q. I understand that you asked Mr. Nelson, if you could build them in sections; did you not? A. Yes. I went to Mr. Nelson and we talked the matter of this pipe. I asked him if—what we could do in order to get it out of the way, and so on. We talked the thing over, and went back in a little room in this building, near the Freeholder's room, and I suggested, or mentioned, anyway, that—“How about doing it half at a time?” So we could do something.

40 Q. And he permitted you to do so; did he not? A. Yes, sir.

Schenck S. Thompson—Cross

Q. He didn't instruct you to do it; did he?
 A. No, I couldn't say that he instructed me to do it.

Q. You visited the *locus in quo*, or the scene of this bridge before preparing your bid; did you not? A. Yes, sir. 10

Q. And you saw men there removing the water pipe? A. Yes.

Q. You therefore knew that the water pipe was there; didn't you? A. Yes, sir.

Q. You knew at that time that the men removing that water pipe were not employees of Atlantic City; didn't you? A. I didn't ask them that.

Q. Did you make any inquiry as to who they were or who the water pipe belonged to, or anything of that kind? A. No, sir. I assumed that the water pipe belonged to Atlantic City. 20

Q. And you afterwards found that that was correct; did you not? A. Yes, sir; as far as I know; I assumed—I assume it is yet.

Q. Witness is shown a letter written on the letterhead of S. S. Thompson and Company, Inc., and signed S. S. Thompson and Company, Inc. S. S. Thompson, President, letter dated January 8, 1927, and is asked if you sent that letter to the person to whom it is addressed, Mr. A. H. Nelson, the engineer? A. Yes, sir; that is my signature. 30

Mr. Higbee: I ask that it be marked for identification.

(The paper referred to is marked for identification for the defendant, D-2.)

Q. Witness is shown letter dated January 24, 1927, addressed to Mr. A. H. Nelson, county en- 40

Schenck S. Thompson—Cross

gineer, signed S. S. Thompson Company, Inc., S. S. Thompson, President, and is asked if you sent that letter to Mr. Nelson? A. Yes, sir.

10 (The letter referred to is marked for identification for the defendant, D-3.)

Mr. Higbee: Will counsel for the plaintiff furnish me with a copy of the letter of October 10th, 1928, addressed to S. S. Thompson Company, by Mr. Nelson, engineer, and also of October 3, and September 4th?

The Court: Maybe you can agree to use the copies.

20 Mr. Parsons: I only have a copy of the letter of October 10th.

Mr. Higbee: What did you say?

Mr. Parsons: I have a copy of the letter of October 10th.

Mr. Higbee: Do you want to consent to using these copies?

Mr. Parsons: Certainly; that will be all right. May I look at them?

30 Mr. Higbee: Yes; I don't know that they are very material, but they have some materiality.

Q. Witness is shown letter on letterhead of S. S. Thompson, Inc., addressed to A. H. Nelson, county engineer, under date of March 23, 1927, signed S. S. Thompson Company, Inc., S. S. Thompson, President, and is asked if you sent that letter to Mr. Nelson? A. Yes, sir.

40 (The paper referred to is marked for identification for the defendant, D-4.)

Schenck S. Thompson—Cross

Q. Witness is shown letter of January 6, 1927, addressed to A. H. Nelson, County Engineer, S. S. Thompson and Company, Inc., S. S. Thompson, President, on the back of which is purported to be a copy of a letter sent by Mr. A. H. Nelson, county engineer, and is asked if you caused that letter to be sent? And then look on the back of it, and say if you received the reply from Mr. Nelson? A. That is the letter. The only thing, you and I differ a little; that is all. 10

(The paper is marked for identification for the defendant, D-5.)

Mr. Parsons: There is no objection.

Mr. Higbee: There is no objection that Mr. Nelson signed it. 20

Q. Witness is shown letter addressed to Board of Chosen Freeholders, under date of December 31, signed, S. S. Thompson, and Company, Inc., S. S. Thompson, President, on which there is a reply signed by Mr. Nelson, county engineer, and you are asked if you sent that letter and received the reply which is on the back of the letter? A. Yes, sir.

(The paper referred to is marked for identification for the defendant, D-6.) 30

Q. Witness is shown letter of September 4—copy of letter of September 4, 1928, sent to S. S. Thompson and Company by Mr. A. H. Nelson, county engineer, and asked if you received the original of that letter? A. Yes, sir; I think we did.

(The letter referred to is marked for identification for the defendant, D-7.) 40

Schenck S. Thompson—Cross

Q. Witness is shown copy of letter dated October 3, 1928, signed A. H. Nelson, addressed to S. S. Thompson and Company, Inc., and asked did you receive the original of that letter? A. Yes, sir.

10 (The letter referred to is marked for identification for the defendant, D-8.)

Q. Witness is shown letter of October 10, 1928, addressed to S. S. Thompson and Company, Inc., signed A. H. Nelson, county engineer, and asked if you received the original of that letter? A. Yes, sir.

20 (The paper referred to is marked for identification for the defendant, D-9.)

(Recess to 1:30 P. M.)

After recess.

SCHENCK S. THOMPSON, recalled.

Cross-examination (resumed) by Mr. Higbee:

30 Q. When was the bridge first turned over to you by the Board of Freeholders, so that you were authorized to proceed with your work? A. Well, sometime the first of January; that is all I can tell you. The records show that, the letters.

Q. Was the bridge afterward opened to traffic—

Mr. Higbee: Strike that out.

40 Q. When it was turned over to you to proceed with your work, it was turned over by a letter that was sent you by Mr. Nelson; was it not? A. Yes, sir.

Schenck S. Thompson—Cross

Q. Which has been offered in evidence? A. I think so; yes, sir.

Q. And was it subsequently opened for traffic again? A. Yes; it was opened for traffic again.

Q. Do you remember about when? A. Well, I remember the day that I gave orders to have it opened. 10

Q. And you gave orders to open it to traffic to your superintendent on the job? A. Yes, sir.

Q. Will you tell us why you sent orders to open it to traffic? A. Yes, sir. On January 27th—in 1927 I received a telephone—on January 27th, about the middle of the afternoon Enoch Johnson called me on the phone and said he was talking for Dr. Stehle who sat alongside of him, and asked me if there was not some way possible whereby that bridge could be opened to the public. He said the public here would not stand to have that bridge closed until the pontoon bridge had been completed; also spoke about what would happen if they had a fire on the other side of the river, and he said they had also taken it up with our superintendent and he refused to open it, and that is why they were calling me. And I says: “Well, you know, that means a lot of expense to us to close that bridge,” and so on. He said, “I will assure you if you close that bridge until we can get that pontoon bridge built, you won’t lose anything by it.” And later on that evening Downs called me up and I told him to go ahead and open it up. 20 30

Q. Did they hold out any promise to you that they would have your time extended or anything of that kind? A. Well, I assumed at the time it would be extended; yes, sir. 40

Schenck S. Thompson—Cross

Q. And as a matter of fact the time was extended; wasn't it? A. Yes, sir.

Q. And the time was extended so that your work began—that is, the date from which your work was to be reckoned began on March 14th; 10 didn't it? A. Yes, sir.

Q. That was by resolution of the Board of Freeholders of which you have a copy, I take it? A. Yes, sir.

Q. Well, at any rate, your estimates were made up and your time counted from March 14th, 1927? A. Yes, sir.

Q. And your 200 working days went from that time? A. Yes, sir; through my objections.

20 Q. Through your objections? A. Yes, sir.

Q. To whom did you object? A. I think there is correspondence here to Mr. Nelson whereby I objected to it.

Q. The county itself never served you with any notice—the Board of Freeholders? A. No, sir. If you will look in our answer to Mr. Nelson's letter of the 14th—

The Court: 14th of March, do you mean?

30 The Witness: Yes, sir.

Q. Don't you really have reference to your letter of March 23, 1927, addressed to Mr. Nelson, relative to this matter, marked Exhibit D-4? A. Yes, sir. It starts off saying: "Replying to your letter of the 14th."

Q. Among other things you say: "We are perfectly willing to have the official date of starting the job to be set as of March 14th. * * * We 40 feel we should have a fair allowance for what

Schenck S. Thompson—Cross

work we did before that date, * * * we should not be charged the full time." That is the letter you refer to? A. Yes, sir. I didn't think it was right to charge for all the time when they only gave us half the bridge.

Q. But you actually opened the bridge on telephone conversation which Enoch Johnson had with you? A. Yes, sir. 10

Q. Now, you knew that Atlantic City was letting the contract to build these approaches; did you not, Mr. Thompson? A. Yes, sir.

Q. And you bid on the contract for the approaches, did you not? A. Yes, sir.

Q. And that was about the same time with the other contract? A. I believe it was; yes, sir. 20

Q. And their plan which they had for building the approaches, showed this water main; did it not? A. That I don't know.

Q. Well, you examined the plans, didn't you? A. At that time, yes; but I don't remember that.

Mr. Parsons: May I ask Judge Higbee before he starts his examination on those, if those plans were prepared before the contract was made with the Thompson Company, or if they were prepared afterwards? 30

Mr. Gaskill: May, 1926, they are marked.

Mr. Parsons: When was the plan shown? I think the letter of Mr. Nelson is after the contract was signed. We bid in December and I think any plan after that date would have no relevancy.

The Court: Mr. Thompson said he made a bid to Atlantic City for the approaches 40

Schenck S. Thompson—Cross

about the same time that he made the bid to Atlantic County.

Mr. Parsons: It was sometime afterward.

10 The Witness: Thirty days afterward, about.

The Court: At the time you made your bid to Atlantic County, had you been furnished by Atlantic City with the plans for the Atlantic City approaches to the bid?

The Witness: No, sir. That was on the 29th, I think; December 29th, 1926, and on January 27th, 1927, was when these plans were figured on.

20 Q. At what date did you see these plans first?

A. I imagine somewhere—somewhere between the twentieth and twenty-seventh of January, 1927.

Mr. Higbee: I want to have him testify to what the situation is. He had not done any work at that time as a matter of fact.

30 The Court: Well, what work could he have done if, as a matter of fact, he did not have these plans before him when he made his bid, or entered into his contract with the county?

40 Mr. Higbee: Well, I don't know. I want to be entirely frank to the Court. I don't think it makes any difference; because he has already testified he knew of the existence of that water main and that he saw them removing it and he assumed it belonged to Atlantic City, and he afterwards ascertained that it did. Now, this

Discussion

would only really confirm that as early as January, 1926, he bid on a plan which showed that water main there, and that the plans showed it was to be removed by Atlantic City. Now, I do not think that it adds anything to it.

10

The Court: I would not say so because he has already become bound by his contract with Atlantic County, and he knew prior to that time of the existence of the water main.

Mr. Higbee: If he had not known it prior to that time it might have some relevancy on the ground that he might have rescinded his contract; but he having acknowledged that he knew of the existence of it, I do not think it makes any difference myself, and as far as I am concerned Miss Deering can go back.

20

Mr. Parsons: May I, before she goes back, ask her on this set of plans—the water main is shown, the location of it, and we may want to offer it as part of our plans.

The Court: If there is no objection on the part of the defendant, I assume they may be offered.

30

Mr. Higbee: I have no objection at all; but all that is necessary to offer is the first sheet, I think. We can just stipulate what the plans show.

Mr. Parsons: We would like to use them on cross-examination—that is all—of the county engineer.

40

Schenck S. Thompson—Cross

Mr. Higbee: Well, if they want to have the first sheet there is no need of having the rest. You want to show the water main?

10 The Court: Why not offer it in evidence and let it be marked by consent and let the young lady go home.

Mr. Higbee: It is stipulated between counsel for the plaintiff and counsel for the defendant that the first sheet of plans for building the approaches by Atlantic City, on which the plaintiff bids, be admitted in evidence by consent, as evidential of the fact thereon stated.

20 (The sheet referred to is received in evidence and marked as an exhibit for the defendant, D-10.)

The Court: We will make Mr. Gaskill custodian of that, with the responsibility to get it back.

Mr. Gaskill: I accept the responsibility.

Q. Now, Mr. Thompson, the County of Atlantic thereafter granted you additional extension for
30 the completion of the job; didn't it? A. Yes, sir.

Q. They granted you an extension of time on every application which you made to it; did they not? A. As far as time is concerned; yes, sir.

Q. And no liquidated damages were imposed upon you under the terms of the contract for time which extended beyond the two hundred working days; were there? A. No, sir.

Q. Your chief grievance in that respect is as to
40 the deduction which they made for inspector's fees? A. Yes, sir.

Schenck S. Thompson—Cross

Q. You had no supplemental contract with the county for sheet piling for which you have made claim; had you? A. No, sir.

Q. And none—no one on behalf of the county authorized you to buy that sheet piling at the expense of the county; did they? A. I was authorized to construct the center wall by Mr. Nelson, and the contract sets forth if there is any extra sheet used, it will be at five cents a pound. 10

Q. You mean you were permitted by Mr. Nelson to construct that; don't you? A. Well, possibly so.

Q. He didn't authorize you to build it in two sections; did he? A. Yes, sir; he did. Him and I talked it over and he said, "Go ahead and build it," and he drew out a little sketch how we should do it in order that we should not have any center joint, carried this back here, over here, so that when we applied the seal coat, constructed that, one-third of this—when this was carried across here so there would be no extra joint. 20

Q. But you asked if you couldn't do that? A. Yes; we talked that over. In fact I suggested it.

Q. He told you you could go ahead and do it? A. Yes, sir. 30

Q. You didn't at that time ask him for any supplemental work order or any supplemental contract; did you? A. No, sir. I didn't think it was necessary, but it was mentioned in the contract.

Q. Witness is shown letter dated March 24th by Messrs. Thompson Company, Inc., addressed to A. H. Nelson, county engineer, and asked if you wrote that letter? A. Yes, sir. 40

(The paper referred to is marked for identification for the defendant, D-11.)

Schenck S. Thompson—Cross

Q. This is the first time that you had asked Mr. Nelson to certify payment for that extra sheathing; was it not? A. I presume it was.

10 Q. In this letter, among other things, you say: "We are enclosing memo of extra sheet steel piling used in the cross walls of the cofferdam. We believe this covered under item six of our contract." A. Yes, sir.

Q. "If you could arrange to include this item in our next estimate we would greatly appreciate it." A. Yes, sir.

Q. Will you refer to item six of your contract? Perhaps you mean item six of your specification.

20 Mr. Parsons: Instructions to bidders, I think.

The Court: It reads as follows: "Proposals to be entertained only from bidders—"

Mr. Parsons: It is on page 29, I think, or page 30; on the bidding blank.

Mr. Higbee: Page 30 you think he referred to?

Mr. Parsons: Yes.

30 Q. Well, will you point out what portion of the contract or specifications you think entitled you to pay for this extra sheathing? A. (The witness refers himself to the contract and specifications.)

The Court: It is filled in in the original proposal; is that what you mean?

The Witness: Yes.

40 The Court: Well, it is filled in for five cents, one dollar, twenty dollars, one hundred dollars.

William Curchin—Re-direct

The Witness: Well, the sheathing itself—pardon me. This other does not have that—five cents per pound additional.

The Court: He reads from item six on page 30.

Q. That is the item to which you think—by which you think you are entitled to compensation?

A. Yes, sir.

The Court: Well, was this used in the shore piers?

The Witness: Yes, sir; part of it.

Mr. Higbee: Well, we have what he was thinking of.

The Court: Yes.

Mr. Parsons: That is all.

Witness excused.

10

20

WILLIAM CURCHIN, recalled.

Re-direct examination by Mr. Parsons:

Q. Mr. Curchin, I asked you during Mr. Lewis' testimony to take a record of the rental value which he has placed upon the equipment, and also to figure out for us the amount of wages for the different workmen on the job during the 116½ days or 21½ weeks during which Mr. Thompson claimed the work was delayed. Have you done that? A. Yes, sir.

30

The Court: I thought you said 117½ days?

Mr. Parsons: 117½.

40

William Curchin—Re-direct

Q. Now, will you run down the list as testified by Mr. Lewis and just read off the total item for each, and then give us the complete total?

10 The Witness: Does the stenographer want to take this down?

The Court: Yes.

	A. Northwest crane, \$270 per week;	
	21½ weeks,	\$5,705.05
	Derrick, \$75 per week, at 21½ weeks,	\$1,612.50
	Number 2 Derrick, \$75 per week;	1,612.50
	Third derrick, \$75 per week;	1,612.50
	Lambert Hoist, 3 drum at \$50 a week	1,075.00
20	Pile drivers scow and engine at \$240 per week,	5,160.00
	Universal crane, \$270 per week	5,705.05
	Number 9-B-2 Steam hammer, \$75 a week	1,612.50
	Number 4 Derrick, \$75 a week	1,612.50
	Compressor at \$60 a week	1,290.00
	Gould electric pump at \$45 a week	962.50
	Lambert swinging engine, at \$15 per week	322.50
30	Foote Mixer at \$135 a week	2,902.50
	Two-drum electric hoist and swinger at \$40 a week	860.00
	Boiler, \$30 a week,	\$645.00
	Number 7 Steam hammer at \$40 a week	860.00
	Number 6 Hammer at \$30 a week	645.00
	2-stage centrifugal pump at \$50 a week	1,075.00
40	2-stage American well pump at \$50 per week	1,075.00

William Curchin—Re-direct

Gasoline saw, \$20 a week	430.00	
14-inch electric pump and hose, \$100 a week,	2,150.00	
Double diaphragm pump, \$30 a week	645.00	
American well 1-stage Budar pump, \$25 a week,	437.50	10
One G. M. C. 5-ton truck at \$120 a week	2,580.00	
One G. M. C. 5-ton truck at \$120 a week	2,580.00	
One Ford truck \$50 a week	1,075.00	
One Williams 3/4 yard bucket \$40 a week	1,033.00	
One Hughes one yard bucket \$54 a week	1,161.00	
One bucket \$75 a week	752.50	
One National 3-drum hoist and swinger \$50 per week	1,075.00	20
1 three-drum hoist at \$75 a week	1,612.50	
One National swinging engine, steam \$15 a week	322.50	
Pile driver and scow for a different period of time, five and two-sevenths weeks at \$240 a week	\$1,268.50	

Q. Now, Mr. Curchin, in reading that you have given all those except the last one from the start of the work; have you? A. From the start of the delayed time. 30

Q. Now, have you made deductions, or have you prepared deductions for the number of weeks that some of the equipment was not there? A. I have; yes, sir.

Q. Now, will you read the deductions? A. On the northwest crane there are 15 weeks deducted. That crane, I think, was taken from the job around the last of March. Do you want the amounts of the deductions? 40

William Curchin—Re-direct

- Q. Yes, I want the amounts of the deduction.
 A. \$3,150.00. One of the derricks arrived later than the other three and I have made three weeks deduction on that, \$270; and there is a deduction also on another derrick of four weeks \$360.
- 10 The Foote mixer, deduction of six and half weeks, or \$780; the swinging engine six and a half weeks, \$260; boiler six and a half weeks, \$325; number 7 hammer six and a half weeks, \$162.50; two-stage centrifugal pump, six and a half weeks, \$325; two-stage American Well pump six and a half weeks, \$130; double diaphragm pump, six and a half weeks, \$650; National three-drum hoisting machine, six and a half weeks \$325.
- 20 Q. Now, did you also receive a cash—or did you actually rent the hoisting engine out during a part of that delayed time? A. That was reported to me as being rented; yes, sir.
- Q. And how many weeks? A. Nine weeks.
- Q. And received what rental for it? A. \$315.
- Q. And have you added that also to the credits? A. To the credits; yes, sir.
- Q. Now, can you give us the total amount of credits, Mr. Curchin? A. \$7,412.50.
- 30 Q. Can you give us the total amount of the rental value of the machinery? A. Without credits?
- Q. With the credits? Then we will take the credit. A. \$51,828.50.
- Q. And should be credited upon that the \$7,412.50? A. Yes, sir.
- Q. Leaving a balance of the rental value of the machinery during that period of time of what?
- 40 A. I haven't the balance of that tabulated.

William Curchin—Re-direct

Q. Well, can you subtract it right there?

Mr. Higbee: Pardon me. Let me get the total.

Mr. Burling: \$51,828.50.

Mr. Higbee: And the other? 10

Mr. Burling: \$7,412.50, leaving a net of \$44,416.00.

The Witness: \$44,416.00.

Q. Now, did you also make a tabulation of the amount actually paid the superintendent during these weeks of delay? A. Yes, sir.

Q. And how it was paid—how much was paid to the superintendent? A. \$2,580.00.

Q. How much to the assistant superintendent? 20
A. I beg your pardon. That was the assistant superintendent that I read. The superintendent's is \$3,010.00; the assistant superintendent \$2,580.00.

Q. To the timekeeper? A. \$1,075.00.

Q. And to the watchman? A. \$602.00.

Q. Making a total of how much for labor? A. \$6,907.00.

Mr. Parsons: I think that is all. Cross 30
examine.

Mr. Higbee: No questions.

Witness excused.

Mr. Parsons: I would like to offer this letter in evidence. That was part of our case.

Mr. Higbee: We have no objection.

(The paper offered is received in evidence and marked as an exhibit for the plaintiff, P-16.) 40

Plaintiff rests.

Defendant's Motion for a Nonsuit

DEFENDANT'S MOTION FOR A NONSUIT

(In Chambers)

10 Mr. Higbee: If your Honor please, I realize at the outset that a nonsuit is not much favored by the Courts in these days.

The Court: I have granted them.

Mr. Higbee: But as I view this case practically the whole case is in. It seems to me the facts are practically undisputed, and as I sum up the situation the plaintiff claims some three or four items. If I miss anything I will be glad for the Court to call my attention to it, and I have no doubt my advisory will.

20 In the first place there is a claim for \$2,500 and some odd balance on the contract which our engineer has certified to and has requested the defendant to swear to the bill as the law requires. A resolution has been passed by the Board of Freeholders authorizing the county treasurer to pay him upon presentation of the bill. Your Honor well knows that that is the only legal method whereby bills can be paid.

30 The other item is an item of \$521.76 which is in the same category.

Now, as to those two bills, of course, the county admits that it owed him the money, they have given him the certificate, and have only asked him to perform the legal requirements which the law imposes—to swear to the bill and present to the county treasurer, and it will be paid. So therefore there is no necessity of bringing this
40 suit as to that.

Defendant's Motion for a Nonsuit

The sheet piling is another claim which they make. This contract provides, as your Honor already has noticed, that any changes or modifications in the plans and specifications as may be required by the county will be evidenced by an additional work contract. 10

There is another provision (I think your Honor is already familiar with it), that no one is authorized to make any verbal contracts or to in any way change this, and there is no claim on the part of the plaintiff that this extra work was ordered. His frank admission (which is true) is that he came and asked the county engineer if he might erect these structures; that is, these foundations, in two parts. The county engineer said: 20
"You may do that if you want to," and that is all there was to it. The doing of that necessitated the using of this additional sheet piling, but he was not compelled to do it. He was not requested to do it. The plans and specifications did not require him to do it. It was purely voluntary on his part, and which he, at that time, apparently, from his admission, considered as a favor. He understood the specifications to require their erection and completion in one solid 30
body. Evidently the county engineer considered the specifications, or construed the specifications differently, and permitted him to do it, but not under any alteration of the contract at all.

He cannot recover, because under the terms of his contract, he would have to have a supplemental order. Mr. Nelson was not authorized to give, and did not give him orders. That was his own admission. So much for that. 40

Defendant's Motion for a Nonsuit

Now, the next item, as I understand it, is the item which he claims—that he was put to additional expense by reason of the water mains in there. I think that is the last and only item.

10 The Court: Thirty-six and a half days that the bridge was opened, they claim for obstruction while they were working—36½ days while the bridge was open.

Mr. Higbee: I will argue that question first, then.

The Court: Yes.

Mr. Higbee: The testimony conclusively shows that this bridge was not opened by any orders of the Board of Freeholders. The contractor
20 himself has admitted that. He says that Enoch Johnson called him over the telephone and asked if he wanted to open that bridge; that people wanted to go over it, and he thought they would make satisfactory arrangements, or words to that effect. Your Honor knows what it is.

The Court: I have it written down here.

Mr. Higbee: Enoch Johnson, as your Honor well knows, nor anybody else, is not authorized to speak for the Board of Freeholders. Thomp-
30 son knew it. If he did not know it he ought to have known it. If any man can change a contract that the county solemnly enters into, then we are living in a dangerous state. I do not care what its provision is, or anything of the kind. A contract can only be changed by the contracting parties, or someone whom they have duly authorized to change it, and in the case of municipal corporations, I do not think that they
40 can delegate that power to anyone, to change a contract at will.

Defendant's Motion for a Nonsuit

So that there is nothing on the part of the county that authorized the opening of this bridge. He did it as his voluntary act, and as a matter of fact he was given credit for it as he says Mr. Johnson promised, and the additional time was given him. So much as to that. I say that the county cannot be charged with that. It would be preposterous to assume that someone could call up and request a contractor to do this, and he do it, on his say so, and then charge the county for his own act that he did without any legal authorization whatsoever. 10

That brings us down to the remaining problem as I recall, of his work being hindered by this water main. 20

Now, I think I state the truth, when I say that every one of his witnesses, his superintendent and all those who were interrogated touching the matter, who had visited the scene of this before bidding, saw it. Their estimator, if I remember correctly, tried to leave the impression with the Court and jury, in the first instance, that he did not know about it; he did not see it under water. But he finally acknowledged that he saw the pipes on either side. He knew that they went under the water and assumed that they were owned by Atlantic City. Mr. Thompson himself says that he visited the scene of the bridge before the estimate was given, before he had ever calculated, and he saw these water pipes, and these men removing them, and discussed it with them, and he says that he assumed that they belonged to Atlantic City, and that he afterwards found that they did. And there is no representation made 30 40

Defendant's Motion for a Nonsuit

in the complaint—or in the contract, plans and specifications, that shows there was any duty incumbent upon the county to remove the obstructions that then existed, and their attention was directly invited to the circumstances which they
10 might find. They were charged with the responsibility. I have already read it. I will read it again: “Prospective bidders are hereby directed to carefully read and consider the plans and specifications, to visit the site of the work so that they may thoroughly familiarize themselves with the conditions, particularly the difficulties exist-
20 ing at the site (seems to have been no other difficulty). No consideration will be given to any claim that a bid has been made without full comprehension of the conditions encountered.”

And there is still another provision on page four.

The Court: Under 18?

Mr. Higbee: Under 18, and it is this provision: “Any loss or damage arising from unforeseen obstructions or difficulties encountered in prosecuting the work must be sustained by the contractor.”

30 Then in the bidding blank, he says he has viewed the site and taken into consideration all these things, and bids accordingly.

There are letters in evidence which I could read to substantiate what has already been stated; to wit, that he knew the conditions there on the site. I think it is unnecessary for me to read those letters. They are in evidence, but they are there.

40 The Court: Well, he says he knew they were there.

Defendant's Motion for a Nonsuit

Mr. Higbee: He says he knew they were there, and my contention is that this is no case to go to the jury; that it is purely a question of law, and that if a contract of this kind can be set aside, then there is no use of drawing contracts.

The Court: It seems to me that under the terms 10
of this contract, the contractor was bound, before
he put in his bid, to go down to the site, inspect
it and ascertain the working conditions there.
That he did do so is evidenced by his testimony
in which he says that he made the inspection,
and that while there he saw workmen engaged in
removing the pipe, water pipe, or water main,
of which he complains; that with view of the fact
that that belonged to the City of Atlantic City, 20
and was being removed by its contractor, he saw
fit to put in a bid under the terms of a contract
which distinctly called his attention to any exist-
ing difficulties, and difficulties that might arise,
and in which he assumed the burden of those dif-
ficulties and obstructions; that under the terms
of the particular contract in question, the county
lived up to every obligation it owed to the con-
tractor. I recognize that there is an implied ob-
ligation on the part of the city as set forth in 30
the Farmers Supply case, but it seems to me,
that under the contract in this case, when the
city turned over this site to the contractor, en-
cumbered only by a pipe or main which was then
being removed by the city, and of which the con-
tractor had full knowledge, there was no implied
obligation on the part of the city that that pipe
would be removed at the time the work was
started; but that the contractor assumed the lia- 40

Defendant's Motion for a Nonsuit

bility or the possibility of the pipes not being removed, or of the pipes interfering with him during the time he was constructing his work.

It would seem, from the testimony, to me, that he himself so construed the contract as between
 10 himself and the county; because as he started his work he found that he was being interfered with and went to the engineer and suggested that he build it in halves, and the only thing he asked for at that time was that he be given an extension of time, and he proceeded with his work, up to the very finish of his work, without making any claim against the county for the damage which he now contends he suffered by reason of the
 20 county not having removed the pipe, or not having seen that it was removed.

So that it seems to me he is not entitled to recover under the theory of an implied obligation on the part of the county, and that he is bound under his contract to finish his work in accordance with the terms thereof.

But it does seem to me that he is entitled to recover the amount of the balance due on his contract of \$2,513.76 plus the \$521.32; that he is
 30 not entitled to recover for the extra sheathing work, because there is no authority given to him for basing a recovery, or by reason of the fact that he has not followed out the terms of the contract for an additional work certificate, or whatever is required by that contract when additional work is done.

That would dispose of all of the claims made by the plaintiff, I believe.

Court's Charge to the Jury

There is no other item that I have missed; is there?

So that it would seem to me, as the case now stands, unless the defendant is going to put in some testimony, that the plaintiff is entitled to a verdict for \$2,513.76 plus \$521.32. 10

Mr. Higbee: I suppose the proper procedure, this being a motion for a nonsuit, would be, unless we can consent that the jury render a verdict for that amount, to ask the Court to instruct the jury to render a verdict for that amount.

The Court: Yes, I will do it, and of course allow an exception to the allowance of the motion for a nonsuit.

Mr. Parsons: Thank you. 20

Mr. Higbee: In the event they want to take it up, I ask for an exception as to the items the Court refused to nonsuit on.

The Court: Yes.

COURT'S CHARGE TO THE JURY.

Sooy, J.: Members of the Jury: Arguments 30
have been made by counsel on both sides, and the result is that by direction of the Court, you may return a verdict in favor of the plaintiff, against the defendant, for the sum of \$3,035.08.

And the clerk may take the verdict.

Mr. Parsons: May I have an exception also to the direction to the jury to rendering a verdict of that amount? 40

The Court: Yes.

(The jury found as directed by the Court.)

EXHIBIT P-1.**SPECIFICATIONS AND FORMS**

Covering

RECONSTRUCTION OF ALBANY AVENUE HIGHWAY
 BRIDGE SPANNING INSIDE THOROFARE AT
 10 ATLANTIC CITY TERMINAL OF THE PLEASANTVILLE
 BOULEVARD
 ATLANTIC COUNTY, N. J.
 1926

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Exhibit P-1

1

A. BIDDING REQUIREMENTS

1. As publicly advertised, bids will be received for furnishing all materials and constructing an entirely new bridge, as shown by plans prepared by the Engineer of Atlantic County and in accordance with these specifications, spanning Inside Thorofare at the Atlantic City terminal of the Pleasantville Boulevard in Atlantic County; the work will include the removing of the present old bridge. These bids will be received at 12 o'clock noon, December 15, 1926, at the Freeholders' Assembly Room in the Guarantee Trust Building, Atlantic City, N. J., and they will be publicly opened there immediately thereafter. 10 20

2. The plans and these specifications may be seen at the office of the Atlantic County Board of Freeholders, Guarantee Trust Building, Atlantic City, N. J. They may also be seen at the office of the Engineer of Atlantic County, 741 Guarantee Trust Building, Atlantic City, N. J., where they may be secured by depositing Ten (\$10.00) Dollars, either in cash or satisfactory check, for each set of plans and specifications taken, as a guarantee for the return of the same; such a deposit will be refunded if the plans and specifications are returned in good condition by noon of the day on which bids are received, otherwise the deposit will be forfeited to the County. Submitting a bid on construction of the work will fulfill the requirements covering the returning of the specifications, but, in order to secure the refunding of the deposit made to secure the plans and 30 40

Exhibit P-1

specifications, a bidder must also return the plans as above set forth.

10 3. Prospective bidders are hereby directed to carefully read and consider the plans and specifications and to visit the site of the work so that they may thoroughly familiarize themselves with the conditions, particularly the difficulties, existing at the site; no consideration will be given to any claim that a bid was made without full comprehension of the conditions to be encountered.

20 4. Attention of Bidders is directed to the Bidding Form at the end of these specifications, every item of which must be filled in by a bidder in the manner indicated thereon. A bid will not be considered unless made out on the prescribed form and under no circumstances may the bidding, or any other, form be detached from the specifications—the requirements being that all papers attached to the specifications must be submitted by the Bidder. Attention is also directed to the Name and Certificate of Surety Form which must be filled in for corporate or individual surety as
30 the Bidder may elect; one or the other of these certificates must show the name, or names, of the proposed Surety and it must show the signatures of the Bidder and the proposed Surety in the spaces provided for such signatures. If individual surety is offered by the Bidder it must be distinctly understood that the bid will be rejected if the surety offered is not sufficient to satisfy the Board of Chosen Freeholders.

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5. Each bid must be accompanied by a certified check, in a sum equal to ten (10%) per cent. of the bid, except that the sum need not exceed the amount of Twenty Thousand (\$20,000.00) Dollars, as a guarantee that the successful Bidder will sign the contract within ten (10) days of formal notification of his bid having been accepted by the County. Such checks must be drawn, or endorsed, to the order of the County Treasurer of Atlantic County, N. J., and all checks will be returned within three (3) days of the receipt of bids except that the checks of the two lowest responsible Bidder may be retained. A successful bidder, as a condition of entering into contract with the County, must furnish a contract bond in the full amount of the contract price with surety that will meet the approval of the Board of Chosen Freeholders, and the Forms of Contract and Contract Bond are attached herewith. It is expected that a contract will be awarded, if awarded at all, within one (1) month of the receipt of the bids, whereupon the check of the next-to-low Bidder will be returned unless, for good and sufficient reason, the Board of Chosen Freeholders shall further delay such return; any such delay will not be longer than is necessary to insure that the successful Bidder complies with the requirements as to signing the contract and furnishing the required bond. When the contract and bond, as above provided, have been executed by the Contractor and are approved by the Board of Chosen Freeholders, the certified check filed with the Contractor's bid will be returned.

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6. Proposals will be entertained only from bidders who have at their command the necessary capital, plant and experience for properly doing the work and the County expressly reserves the right to satisfy itself in this particular, and a
10 bid may be rejected as being an irresponsible one if the Bidder does not command the necessary capital, plant and experience to successfully construct bascule bridge work.

7. Each bidder must state his full name and address, and each bid must be presented by the maker, or by a properly authorized representative, at the hour provided for receiving and opening of the bids. Bids may not be mailed to the
20 County or to any official of the County.

8. An envelope containing a proposal must have written thereon "Proposal for Construction of Albany Avenue Bridge," along with the name and address of the Bidder.

9. A bid will be accepted and a contract awarded with the distinct understanding that the award of contract shall be binding on the County only in case the successful Bidder exactly com-
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plies with the conditions and requirements stated above; his failure to so comply will work a forfeiture of his certified check.

10. Included in the bidding blank are all the items in which there is likely to be any change made, as elsewhere provided herein, by additional
40 contract work or elimination orders, in the pro-

Exhibit P-1

posed construction. The County particularly reserves the right to increase or decrease any of the items, on which unit prices are required, at the unit price submitted by the Bidder and to this condition he must subscribe in submitting his bid. The Lump Sum Bid, as required by the bidding blank, will not be changed except by additional contract work or elimination order or by supplemental contract, as later set forth. 10

11. The Board of Chosen Freeholders reserves the right to decide as to the responsibility of any bidder.

B. GENERAL INFORMATION 20

1. In these specifications, the following definitions will obtain:

(a) "Board of Chosen Freeholders" or "County," as used in these specifications, shall mean the County of Atlantic, New Jersey, whose representatives have signed this contract, and no official of the said County may be personally responsible for any liability arising under this contract. 30

(b) "Engineer," as used in these specifications, shall mean the Engineer of Atlantic County, New Jersey, in charge of the work for the County, acting either directly or through his properly authorized agent or agents.

(c) "Consulting Engineer," as used in these specifications, shall mean the Strauss Bascule Bridge Company of Chicago, Ill. 40

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(d) "Contractor," as used in these specifications, shall mean the person or persons, co-partnership, corporation or association, which has entered into this contract with the County.

- 10 2. These specifications and the plans are intended to describe and to provide for a complete bridge and to be co-operative, so that what is called for by either is as binding as if called for by both. The work contemplated is to be complete in every detail, notwithstanding that every item involved may not be particularly mentioned or shown.
- 20 3. The contract price will be based only on the specifications and the plans, which will become a part of the contract.
4. In the event of any discrepancy between scale of the plans and figures written upon them, the figures are to be taken as correct; in case of any discrepancy between the plans and the specifications, a decision by the Engineer must be secured.
- 30 5. Any change or modification in the plans or specifications, as may be required by the County, will be evidenced by an Additional Contract Work or Elimination Order accompanied by the necessary plans to show the same, and, when any such change requires any material or work not an essential feature of the plans, and so constitutes extra work, by a Supplemental Contract between the Parties to the original contract fixing the cost of such extra material or work.
- 40 Additional contract work or elimination orders and supple-

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mental contracts will be authorized by the Board of Chosen Freeholders, and all such will be delivered in multiple copy to the Contractor, or his representative on the work; all copies must be properly and fully signed by the Contractor and all but one copy returned to the Engineer before the work is begun thereunder. The total cost of the materials and work will be given in each additional contract work or elimination order and in each supplemental contract; in the case of an additional contract work or elimination order, which increased or decreased the quantity of any item stated on the bidding blank, acceptance by the Contractor is compulsory; in the case of a supplemental contract, requiring extra work or materials, the unit prices and the amount of work to be done, or materials to be furnished, must be agreed upon by both Parties to the contract; otherwise such work will be paid for under Force Account. By this method the Contractor will be paid for all labor and materials, involved in the extra work or materials, at actual cost to him, as the Engineer may approve, to which will be added fifteen (15%) per cent. of said cost to cover profit, overhead expense and use of equipment and tools.

6. Any additional or decreased work or changes in plans or specifications, whether covered by additional contract work or elimination order or by supplemental contract, will not, in any way, affect the liability of the surety on the bond; a reasonable extension of time for completion of either increased or extra work will be allowed.

7. Neither the contract nor the specifications may in any way be affected by verbal agreement,

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or by inference on the part of either Party to the contract. Changes or alterations of any kind, as already provided, can be made only by written order and in the manner described.

- 10 8. The Lump Sum Bid must cover all labor and materials actually mentioned or essential to the work and no increases, unless specifically authorized in writing as already described, will be allowed.

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9. The public road, beyond the limits of the work as shown on the plans, may not be damaged by the Contractor without full repairs of any such damage; all settlement or damage to surface or shoulders and other injury to the road or its improvements, that may result from the Contractor's operations, must be made good, to the satisfaction of the Engineer.

10. The present superstructure of the bridge must be taken down and removed from the site in its entirety and all material, of every kind and description except the traffic tread plates, will become the property of the Contractor, as later described. The substructure will be treated in the following manner, all recovered materials becoming the property of the Contractor: No attention need be paid to the existing abutment at the ocean end of the bridge; the first pier out from the ocean end of the bridge must be cut off at low water elevation (-2.0); the second pier out from the ocean end of the bridge, the South-
erly rest pier of the draw span, must be cut off

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at the elevation of the bottom of the thorofare; the center pier that now supports the draw span must be cut off at the elevation of the bottom of the thorofare; the Northerly rest pier of the draw span must be entirely removed, including the supporting piles, unless the Contractor prefers to increase the width of the new pier foundation at that location so as to entirely enclose the present rest pier, as shown on the plan, and, in that event, the present pier must be cut off at the elevation of the bottom of the thorofare; the present abutment at the Northerly end of the bridge must be entirely removed, including all foundation work in place, to give place to the new abutment. The Contractor may use any of the materials in the old superstructure for construction or temporary purposes in connection with the new work, but none of the old materials may be permanently incorporated in the new bridge; except that any stone recovered from the present old substructure, insofar as it exactly complies with the requirements for stone in the new construction, may be incorporated in the work.

11. To prevent misunderstanding and litigation, the Contractor on the one hand and the County on the other agree that the Engineer shall be the referee between them and shall decide any and all questions which may arise as to the interpretation of the plans and of these specifications, and all questions as to the acceptable fulfillment of the contract on the part of the Contractor; he shall decide any and all questions which may arise as to the acceptability of materials furnished and work performed, as to the

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manner of performance and as to the rate of progress of said work; he shall determine the quantity of the work performed and of the materials furnished, which are to be paid for under the contract. Any such decision and his estimate
10 shall be final and conclusive and such estimate, in case any question shall arise, shall be a condition precedent to the right of the Contractor to receive any money due under the contract. Any doubt as to the meaning of, or any obscurity as to the wording of, the plans, specifications and contract will be explained by him, and all directions and explanations, requisite or necessary to complete, explain or make definite any of the
20 provisions of the plans, specifications and the contract and to give them due effect will be given by him, all of which shall be binding upon both parties to the contract.

12. The Engineer must have full and unlimited opportunity, at all times, to inspect any and all materials or operations covered by the specifications. He may inspect plain materials, materials in course of manufacture or manufactured materials, and these may be at the place of manufacture, at the bridge site or in place at the work.
30 Ordinarily it is expected that the materials will be inspected before being permanently placed, but any materials that have been placed without having been previously inspected and approved may be rejected in place; in any such case replacement by satisfactory materials must be made. From the Engineer's rejection of any material there may be no appeal.

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13. All materials must be of the best of their respective kinds, and any material that is condemned by the Engineer must be forthwith removed by the Contractor at his expense, otherwise such may be removed by the County and the cost of such removal will be charged to the Contractor and deducted from the final payment to him, or otherwise collected as the County may elect. 10

14. The Engineer will furnish all necessary lines, points and grades and the work must be constructed true to lines and grades shown upon the plans and as set forth by him. The Contractor must preserve all stakes and bench marks made and established by the Engineer until authorized by him to remove same. 20

15. The Engineer will be, at all times, represented on the work by at least one inspector whose duties will be to see that all requirements of the plans and all provisions of the specifications are faithfully carried out. An inspector shall have no authority to make or permit any change in plans or specifications but will be given such authority, ordinarily exercised by the Engineer, as may be necessary to accomplish proper results in the construction of the work. 30

16. The Engineer may stop any portion, or all, of the work if, in his judgment, the weather or tide conditions are such as will prevent work being properly done. No allowance of any kind will be made on account of such stopping of the work except that extension of time for the completion of the work may be allowed. 40

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17. In case all work is stopped by the Engineer and cannot, on account of winter weather conditions, be resumed for a considerable time, he may, at his discretion, issue to the Contractor a certificate for the full contract price less one hundred and twenty-five (125%) per cent. of the value of the uncompleted work.

18. The Contractor must assume all risks and responsibilities for accidents and damage of any kind whatsoever during construction of the work, and he must sufficiently barricade the work at all times, with proper lights at night, until final completion of it. Any loss or damage, arising from unforeseen obstructions or difficulties encountered in the prosecution of the work, must be sustained by the Contractor.

19. The Contractor must indemnify and save harmless the County from all suits or actions that may be brought against the County on account of any injury or damage received or sustained by any party, or parties, through himself, his employees or his agents in construction of the work; or in consequence of any neglect in guarding or protecting same; or through the use of any improper materials or on account of any act or omission by himself, his employees or agents.

20. Each bidder must include in his Lump Sum Bid, as required by the bidding blank, an amount equal to ten (10%) per cent. of the cost of furnishing the superstructure of the bascule span in place, this ten (10%) per cent. item to be paid to the Consulting Engineer for services rendered,

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and to be rendered, in connection with the design of the bascule superstructure, checking the working drawings of same, together with inspection and other items as previously agreed between the Board of Chosen Freeholders and the Consulting Engineer. The item in the bid, covering the furnishing of the superstructure of the bascule span in place, must comprehend all items involved in that part of the work including the floor of the bridge, the concrete counterweight, all metal materials, machinery and electrical equipment and construction above the supporting piers. The aforesaid payment to the Consulting Engineer will be made in two (2) instalments, as follows: Ninety (90%) per cent. of the total payment to the Consulting Engineer, that is nine (9%) per cent. of the item in the bid covering the furnishing in place of the bascule span, must be paid to the Consulting Engineer out of the Contractor's first construction estimate and the remaining ten (10%) per cent., or one (1%) per cent. of the item in the bid covering the furnishing in place of the bascule span, must be paid out of the Contractor's final construction estimate. Each of these instalments will be paid through a check drawn by the Board of Chosen Freeholders to the order of the Contractor in the appropriate amount, which check will be endorsed by the Contractor and made payable to the Consulting Engineer, the checks being forwarded to the Consulting Engineer by the Board of Chosen Freeholders.

21. The Contractor will not be relieved of personal charge and responsibility for the work but

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will be held liable for full completion of it according to the contract. No work may be sub-let by the Contractor without written approval of the Engineer.

10 22. If any employee of the Contractor or of a sub-contractor is incompetent or is carelessly performing his work, the Engineer may notify the Contractor and he must forthwith terminate the services of such an employee and not again engage him, or allow him to be engaged, on the work. No liability on the part of the County or the Engineer may be incurred by reason of such discharge of an employee.

20 23. All Federal, State and other laws, statutes or ordinances in force at the location of the bridge must be obeyed by the Contractor, and he must inform himself regarding same.

30 24. The Contract shall be signed by the Contractor, to whom the work has been awarded, within ten (10) days from the time of such award. The Contractor shall begin actual work within ten (10) days of the date of approval of the Contractor's bond, which date will be endorsed on the contract and from which date the time for completion of the work shall commence to run.

25. The Contractor shall complete all work under the contract on or before the expiration of two hundred (200) working days from the date of the approval of the contract bond, as already provided.

40 26. In case the Contractor shall fail to fully and entirely, and in conformity to all the provi-

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sions and conditions herein expressed, perform and complete the work, and each and every part of and appurtenance thereto, within the time limit set for performance and completion or within such further time as, in accordance with the provisions hereof, shall be permitted for such performance or completion, he shall pay to the County the sum of One Hundred (\$100.00) Dollars for each working day he shall be in default, which said sum is mutually agreed upon, fixed and determined by the Parties to the contract as liquidated damages, not a penalty. In addition to the aforesaid liquidated damages, the cost of all inspection work, which, in the judgment of the Engineer, is required after the time limit agreed to for completion of the entire work, will be charged to the Contractor and there will be deducted from each construction estimate, covering operations of the Contractor after the time limit agreed to for completion, the cost of such inspection charged against him during the period covered by the construction estimate.

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27. In recording the days used in completion of the work, the length of time, expressed in days, during which the prosecution of the work has been delayed or suspended in consequences of unsuitable weather conditions or by an act or omission on the part of the County or the Engineer and not by any fault of the Contractor, shall be allowed the Contractor and not be included in keeping the daily record, all of which shall be determined by the Engineer. Sundays and all legal

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holidays, during which no work has been performed, shall not be included in the record. If, in the construction under the contract, there must be furnished work not contemplated by the plans and specifications or in greater amount than re-
10 quired thereby, an order for such may increase the number of working days, allowed for final completion of the entire work, by the same ratio to the number of working days originally agreed to as any such additional work bears to the actual work required by the plans and specifications. No allowance will be made for delays or suspension of the work through fault of the Contractor.

20 28. The Board of Chosen Freeholders may recover liquidated damages, above provided for, by deducting the amount thereof out of any money which may be due, or which may become due, the Contractor under the contract, or may recover the same by an action at law against the Contractor, or his Surety, or by either or both of these methods.

30 29. It is not expected that any extension of the number of working days for completion of the work will be granted, but a recommendation of the Engineer that, because extraordinary difficulty has been encountered by the Contractor or because of other good and sufficient reason, the allowed number of working days for completion of the work should be increased will have favorable consideration by the Board of Chosen Freeholders; in case of any such extension of the number of working days, the Contractor will be liable
40 to the County for all salaries, wages and expense which the County incurs for inspection of work

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or materials, performed after expiration of the number of working days originally agreed to for completion of the entire work, and the Engineer will deduct from each subsequent construction estimate the total of such salaries, wages and expense that may have accrued since the preceding construction estimate and which have not already been withheld from the Contractor. 10

30. No extension of the number of working days will be recommended by the Engineer or permitted by the County unless the Contractor shall have previously notified the Engineer, in writing, of any proper reason for such extension and of his intention to claim any such extension, and such notice shall be filed with the Engineer within five (5) days of the occurrence on which such a claim is to be based; such a notice must give complete information concerning the nature, extent and cause of the occurrence. 20

31. It must be understood that the time for completion is of greatest importance and if the Contractor fails to make sufficient progress, from time to time and continuously during the period agreed to for completion, to satisfy the Engineer that he will entirely complete his work within the number of working days agreed to, or within any such extension of time as may be given in accordance with provisions herein stated, the County may declare the contract abandoned. 30

32. The Contractor agrees that if the contract is declared abandoned, as above provided, or if he wilfully abandons the work, assigns all or part of it otherwise than as herein provided, is not 40

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executing the contract in good faith or is violating any of its conditions, and the Engineer so certifies to the Board of Chosen Freeholders, then the County may notify the Contractor to
10 discontinue the work and the Engineer may arrange to complete it by agreement with another contractor, or contractors, or in any other manner that the County may direct, and he may take possession of all of the Contractor's materials, tools, appliances and machinery which may be found at the site of the work or in transit, using said materials, tools, appliances and machinery in completion of the work. Upon completion of the work, the Engineer will notify the Contractor of any unused materials and of any tools, appliances and machinery which survive the completion of the work. Such notification to the Contractor shall be considered as returning to him any such unused materials and surviving tools, appliances and machinery. Additional materials, and other tools, appliances and machinery, which the Engineer may deem necessary to properly complete the work, will be purchased at the direction of the County; of the materials, tools, appliances and machinery, purchased at the direction
20 of the County, such materials as are unused and such tools, appliances and machinery as survive completion of the work shall be sold at public sale, under direction of the County, and the net proceeds of such sale shall be credited to the Contractor. The entire cost of completing the work, including labor, superintendence, materials, tools, appliances, machinery, damages, insurance
30 and all other proper costs, will be charged to the
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Contractor and, if the total amounts to more than may be unpaid under the original contract plus the credit above described in connection with the sale of the materials, tools, etc., purchased by the County in the completion of the work, the deficiency must be made up by the Contractor or his Surety; if any balance remains to the credit of the Contractor it will be returned to him after such reasonable time as is required in the payment of all outstanding bills, accounting and final determination of the matter. 10

33. Neither extension of time for completion of the work, beyond that agreed upon, nor acceptance of any part of the work already completed will in any way interfere with the right 20

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of the Board of Chosen Freeholders to take charge of, and have completed, the work under the contract as above described.

34. An approximate, construction estimate, showing the amount of work done and the materials in place, will be made on or about the last day of each month and the Engineer will issue a certificate in favor of the Contractor to the amount of such a construction estimate less twenty (20%) per cent. of the amount of same, which will be retained until the final estimate, and less any previous payments to the Contractor made on such certificates of the Engineer. As elsewhere provided herein, ninety (90%) per cent. of the Consulting Engineer's fees, royalty, etc., will be paid from the Contractor's first con- 30 40

Exhibit P-1

struction estimate and the remaining ten (10%) per cent. of same will be paid from the Contractor's final construction estimate. All construction estimates will be based on the original bid of the Contractor but they will include only the value of materials completed in place and no allowance will be made for materials that are delivered but are unplaced or for materials that are partly in place and uncompleted, particularly when such are liable to be displaced or damaged by the elements or otherwise before they may be entirely completed in place. Payment on each of such certificates, with the Contractor's affidavit attached, will be made to the Contractor, in cash, by the County at the next subsequent meeting of the Board of Chosen Freeholders. Upon final completion of the work and its acceptance by the County, a final construction estimate will be prepared by the Engineer, covering the entire work as completed and taking into account such additional or eliminated work as may be ordered by provisions herein stated, and such final construction estimate, as certified by the Engineer, will be paid to the Contractor after deduction therefrom of all amounts previously paid on certified estimates, as above described, and any amounts that may be properly deducted on account of liquidated damages or cost of inspection. No such construction estimate, other than the final one, will be made when, in the judgment of the Engineer, the total value of work done and materials placed since the last previous construction estimate amounts to less than Five Thousand (\$5,000.00) Dollars, and it must be distinctly understood that

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the continuous prosecution of the work, in a manner that will guarantee its completion within the time agreed to, is an essential preliminary to the making of any construction estimate by the Engineer and he may require, before furnishing to the Contractor any construction estimate for payment of money on account of work or materials placed, particularly before furnishing the final construction estimate, satisfactory evidence that all persons who have furnished labor or materials on the work, or who have sustained damage or injury by reason of any act, omission or carelessness on the part of the Contractor or his agents in the prosecution of the same, have been duly paid or so secured that no liability of any character can attach to Atlantic County on account of any such claim. 10

35. Construction estimates, or payments of same, will not bind the County to final acceptance of any particular materials placed or work done if such should prove to be defective in advance of final acceptance of the completed work. 20

C. WORK INCLUDED IN THE CONTRACT 30

1. The plans and these specifications comprehend a bridge completed in every particular shown and entirely ready for travel, insofar as the plans show and not including any approaches or any construction, in connection with shore piers, other than is shown on the plans. The work may be detailed as follows:

(a) Removing superstructure in its entirety. 40
All materials, of every kind and description ex-

Exhibit P-1

cept the traffic tread plates, will become the property of the Contractor and must be promptly removed from the site. Traffic tread plates will remain the property of Atlantic County and the Contractor must detach them by turning out each
10 wood screw, and he must carefully remove the plates and pile them, in a neat and orderly way as directed by the Engineer, within a distance of two hundred fifty (250) feet beyond the Northerly end of the bridge. The wood screws that survive being removed must be similarly taken care of by the Contractor for the benefit of Atlantic County.

20 (b) Removing, by some method or process that will not endanger life or adjacent property, the substructure of the bridge as previously described in Section 10, Division B, of these specifications. It must be clearly understood that the Northerly rest pier of the present draw span, which is the first pier toward Pleasantville from the present center pier that supports the draw span, occupies part of the location of the new pier that will support one leaf of the new bascule span and one end of the new, Northerly approach span of the bridge; it must also be clearly
30 understood that the present masonry abutment at the Northerly end of the bridge occupies part of the location of the new stone pier that will support the other end of the new, Northerly approach span of the bridge. This condition will require that the old pier and the old abutment be entirely removed except that, in the case of the pier, the portion of it below the bottom of
40 the thorofare may be left in place if the Contract-

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tor prefers to increase the size of the new pier foundation sufficiently to entirely enclose the foundations of the present old pier; such exception cannot be made in the case of the old abutment, which must be entirely removed with all foundation materials and construction now in 10

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place under it. All recovered materials, of every kind and description, from the removing of all substructure will become the property of the Contractor and, as elsewhere provided, he may use, in the new work, any stone recovered from the old substructure that exactly complies with the requirements of these specifications covering stone for the new construction. 20

(c) Removing all piles, pile clusters, timbers and other parts of the fenders of the existing bridge. All of these materials will become the property of the Contractor and they must be disposed of with reasonable promptness and entirely removed from the site. All piles in fender work must be pulled out when such is possible in the opinion of the Engineer. When a pile cannot be pulled out, the Engineer will permit its being broken off at the elevation of the bottom of the thorofare, by shooting or otherwise. Materials recovered from the old fenders may be used for construction or temporary purposes in connection with the new work, but none of the old fender materials may be permanently incorporated in the new bridge construction. 30

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Exhibit P-1

(d) Constructing entirely new substructure and superstructure in exact accordance with the plans and these specifications, which comprehend a bridge complete in every particular, ready for public travel over it and navigation through it.
10 Every item and detail of the work must be first-class in all particulars, materials must be of the highest, standard quality, and workmanship must conform to the very best, present-day practice in such bridge construction.

(e) All piles and timber of every kind and description involved in the construction of the new bridge, except the piles in pier foundations, the sidewalk plank, the oak retaining timbers and the
20 lumber used in constructing and finishing the four (4) buildings, will be creosoted by open-cell process, as elsewhere described.

(f) Payment of the Consulting Engineer's fees and remuneration out of the first and last construction estimates, all of which is set forth in Section 20 of Division B of these specifications, is an obligation of the Contractor that must be
30 included in his Lump Sum Bid.

(g) Furnishing and providing sufficient and satisfactory equipment and labor to properly construct the work at all stages of its development, and accomplishing delivery of all required materials in such manner as to permit practically continuous construction of the work, and so satisfy the Engineer, from time to time, of the Contractor's ability and intention to entirely
40 complete the work within the time limit agreed to for completion of the entire work.

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(h) Responsibility of the Contractor, in connection with damage to person or property, is an important element in the requirements of the contract, and all items of labor, materials and expense that can reasonably be construed as required in accomplishing construction entirely completed in every detail or particular, as shown on the plans or required by these specifications, must be understood as being required in the contract. 10'

D. METHODS OF REMOVING OLD CONSTRUCTION

1. No restriction, as to methods to be employed, will be placed on the Contractor in connection with removal of present old construction except that he will not be permitted to adopt any method that, in the opinion of the Engineer, will endanger life or property at or near the site of the work; nor will he be permitted to adopt methods, in detaching and storing traffic tread plates, that will result in avoidable injury to them. Atlantic County assumes no responsibility of any kind in the situation and, in line therewith, it must be clearly understood that the Engineer will not approve any method that the Contractor may propose for removing present construction but he will prohibit the adoption of any method by the Contractor that will evidently be dangerous to life or property. 20' 30'

2. The requirements of the United States Government that the parts of the existing bridge, not utilized in the new structure, shall be entirely re- 40'

Exhibit P-1

10 moved down to the natural bottom of the waterway and the channel cleared to the satisfaction of the District Engineer, not later than sixty (60) days after the new bridge has been opened to traffic, must be met by the Contractor.

E. MATERIALS

As heretofore required, all materials must be of highest standard quality and skillful inspection will be continuously employed, by the County, in an effort to secure strict conformity to the following requirements for the various materials.

20 1. PILES

(a) All piles must be cut from young, sound, thrifty trees and, for the foundations of piers, local pine will be acceptable; for all fender lumber and piles sound, Southern, yellow pine will be required. No pile may show any defect that will reduce its full strength or usefulness at the location where it is intended to be used and, particularly, wind shakes, loose knots, decay and wormholes will cause rejection of piles. All piles, 30 for whatever purposes used, must show gradual taper from butt to tip and each pile must be so straight that a line joining the centers of butt and tip will at no point be outside the body of

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the pile; butt and tip must be cut square and all branches and knots must be neatly trimmed off.

40 (b) Piles for all pier foundations must be forty-five (45) feet in length, except that for the shore

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pier at the Northerly end of the bridge the piles may be forty (40) feet in length, measured from tip to cut-off, and they must show minimum, under-bark, diameters of twelve (12) inches at a point two (2) feet below cut-off and seven (7) inches at tip. Foundation piles must have the bark removed for a distance of not less than twelve (12) feet below the cut-off. 10

(c) Fender piles must be fifty-five (55) feet in length, measured from tip to cut-off, and they must show minimum diameters of sixteen (16) inches at a point two (2) feet below the cut-off and eight (8) inches at tip; they must have all bark carefully removed, through their entire length, in advance of creosoting treatment. 20

2. SHEET PILING

(a) Sheet piling will be manufactured from structural steel of such grade and quality as are required in the next succeeding section of these specifications. United States Steel Sheet Piling, Section M-104, will be required and such must show a web thickness of three-eighth ($\frac{3}{8}$) of an inch and must weigh approximately thirty-eight (38) pounds per foot. The required length of sheet piling is forty-five (45) feet for all piers except for the shore pier at the Northerly end of the bridge where the required length is thirty-five (35) feet, and the sheet piling must be delivered at the bridge site, ready for driving, free of all defects that will decrease its usefulness and of all injury that will interfere with its being properly driven. The sheet piling will form a permanent part of the pier construction. 30
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Exhibit P-1

3. STRUCTURAL STEEL

(a) All structural and rivet steel shall conform to the requirements of the Standard Specifications for Structural Steel for Bridges, Serial
10 Designation A7-21, of the American Society for Testing Materials, with subsequent amendments and additions thereto adopted by the Society, and supplemented by the following paragraphs:

(1) Test specimens of structural and rivet steel shall show fracture having a silky or fine granular structure throughout with a bluish gray or dove color, and shall be entirely free from granular, black and brilliant specks.

20 (2) Finished rolled material shall be free from cracks, flaws, injurious seams, laps, blisters, ragged or imperfect edges and other defects. It shall have a smooth, uniform finish and shall be straightened in the mill before shipment.

(3) Material shall be free from loose mill scale, rust pits or other defects affecting its strength and durability.

30 (4) When full-sized tests of built-up structural members are required, the Contractor shall prepare the specimens and supply, at his own proper cost, all required testing machines of the proper type and capacity, and shall provide all facilities and labor incidental to the making of tests. In all tests involving the determination of tensile and compressive strengths the ultimate strength, deformation and other pertinent data shall be re-
40 corded.

Exhibit P-1

(5) Any full-sized member tested to destruction shall be paid for by Atlantic County at a fair market price, less its scrap value, if the test proves the member to have been satisfactory. If the test proves the member to have been unsatisfactory, no cost of any kind will be paid by Atlantic County and the members represented by the specimen will be rejected. 10

4. REINFORCING RODS

(a) Steel for reinforcing rods, required by the plans, shall be medium, open-hearth steel, complying with the requirements for structural steel as specified above. 20

(b) All reinforcing rods must be kept clean and free from foreign material that will prevent proper bond with the surrounding concrete, and particular care must be exercised in preventing rust on the rods; the manner of storing and protecting reinforcing rods must be approved by the Engineer. Reinforcing rods will not be painted.

(c) The plans require deformed rods of a cross-section area equal to three-quarters ($\frac{3}{4}$) of an inch round, and any satisfactory design of deformed bar will be accepted provided it shows the required cross-sectional area. 30

5. CAST STEEL

(a) Cast steel for machinery parts shall be in accordance with the Standard Specifications for Steel Castings, adopted by the American Society for Testing Materials, Serial Designation A27-24, 40

Exhibit P-1

or subsequent revision. They shall be Class B, Medium Grade.

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- 10 (b) Maximum physical properties, determined from a standard test specimen, shall be not less than the following:

Tensile Strength.....70,000 lbs. per sq. in.

Elongation in 2 inches 20 per cent.

Area reduction..... 30 per cent.

All castings shall be annealed.

6. STEEL FORGINGS

- 20 (a) Steel for forgings shall be made by the open-hearth or the crucible process and shall have a minimum tensile strength of 75,000 pounds per square inch, with yield point at one-half the tensile strength.

- (b) The tension test shall be made on a standard turned test specimen, $\frac{1}{2}$ inch in diameter and 2 inches in gaged length. A specimen, 1 inch by $\frac{1}{2}$ inch, shall bend cold 180 degrees, around
30 a diameter of $\frac{1}{2}$ inch, without cracking on the outside of the bend. The bending may be effected by pressure or by blows.

(c) Forgings shall be free from cracks, flaws, seams and other injurious defects.

- (d) Forgings shall be annealed and, before annealing, they shall be allowed to become cold; they shall then be carefully reheated to the proper
40 temperature and allowed to cool uniformly.

Exhibit P-1

7. COLD ROLLED STEEL SHAFTING

(a) Cold rolled steel shafting shall be made by the open-hearth or the crucible process, free from pipes or surface defects; a test specimen, machined from any part of the shaft, shall have ultimate tensile strength between 75,000 pounds and 110,000 pounds per square inch, with elongation of not less than 20 per cent in a section originally 2 inches long. 10

(b) Shafting shall be exactly straight, true to collar gauge, well finished, and shall be made by turning, cold rolling and polishing; it shall be true to size ordered and finished square on ends. 20

8. PHOSPHOR BRONZE

(a) Phosphor bronze for trunnion bearings may contain nothing but new metals in its composition and shall be of such materials, and such proportions of them, as to produce metal suitable for trunnion bearing bushings that will be subject to high pressure at slow speed.

(b) Each casting shall have cast with it a coupon, from which a cube or cylinder can be cut and finished to 1 square inch cross-section, 1 inch high. This coupon shall not be surrounded with a chill to make it show higher strength than the body of the casting but shall be uniform with the body of the casting in every respect. It shall have the following physical qualities: 30

Elastic limit in compression, between 18,000 and 24,000 pounds per square inch. 40

Exhibit P-1

Permanent set for 100,000 pounds load, between $1/10$ of an inch and $2/10$ of an inch. It shall be a copper-tin alloy with maximum phosphorous content of 1 per cent.

- 10 (c) Phosphor bronze for shaft bearings, revolving at high speed and low pressure, shall have an elastic limit in compression between 15,000 and 20,000 pounds per square inch.

9. BABBITT

(a) Babbitt for bearing metal shall have approximately the following chemical composition:

- 20 Tin2 parts by weight.
Zinc.....1 part by weight.
Antimony.5 per cent. of weight of tin and zinc.

10. HAND RAILING

- (a) The plans show the design required for hand railings on superstructure and pier platforms, with full details and sizes, together with panel lengths and various other information.

- 30 (b) Pipe for hand railings, wherever located, shall be made from the best grade of galvanized wrought iron pipe, with even, smooth surface, of full weight and thickness, well threaded and free from rust and cracks. All fittings shall be galvanized and made from malleable iron, free from flaws, cracks and other defects. Any exposed threads must be fully covered with a satisfactory
40 grade of aluminum paint.

Exhibit P-1

11. HARDWARE

(a) All hardware required in any part of the work, including bolts, dock spikes, spikes, nails, washers, screws, etc., shall be standard galvanized.

(b) All hardware must be manufactured to Franklin Institute standards and projections must be cut from bolts when such extend beyond the nut further than the diameter of the bolt. 10

10

(c) All galvanized materials must stand the following test: After four, 1-minute immersions in a standard solution of copper sulphate, thoroughly wiped after each immersion, there may be no copper deposit observed. Lots, of which samples do not stand this test, may be rejected. 20

12. STONE

(a) Stone for piers and buildings will be either ferruginous or siliceous sandstone gotten from a quarry to be approved by the Engineer and from which the known production has always given satisfactory results in work similar to the proposed project. The stone must be dense, hard and uniform, with crushing strength not below eight thousand (8,000) pounds per square inch, and it must weigh approximately one hundred and seventy (170) pounds per cubic foot. Fracture must show bright, clean and sharp, without loose grains and free from dull or earthy appearance, "drys" and "crowfeet." The color shall preferably be buff or gray, and samples of the stone must be furnished to the Engineer for laboratory testing. 30 40

Exhibit P-1

13. LUMBER

(a) *Finishing Lumber*

10 All lumber specified for construction of houses shall be of the kind and grade required and must comply with standard specifications for such. Proper seasoning will be insisted upon and no defective or badly manufactured lumber will be accepted.

(b) *Oak*

20 Oak lumber shall be cut from live timber and shall conform strictly to the requirements of Structural Grade for oak lumber. It must be white oak and, when specified by the plans as having a cross-section in excess of fifty (50) square inches, it must be furnished in lengths of not less than sixteen (16) feet.

(c) *Yellow Pine*

30 Yellow pine for sidewalk floors shall be dense, Southern, yellow pine and must be regular, sound and commercial stock, well manufactured, full to size, saw-buttet and free from the following defects: Unsound, loose or hollow knots, wormholes, knotholes and through or round shakes that show on the surface. Yellow pine must be equal to Select Structural Grade, Standard Inspection Rules adopted by the Southern Pine Association, edition of January 1, 1917. Wood block may be manufactured from sound, Southern, yellow pine, as more fully described later.

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Exhibit P-1

14. CREOSOTING TREATMENT

(a) Fender piles and timbers, subfloor plank, spiking pieces, wheel-guard retaining pieces and raisers, and wood block must be treated, by standard open-cell process as later described, until they absorb twelve (12) pounds of creosote oil to the cubic foot for piles and sixteen (16) pounds of creosote oil to the cubic foot for all manufactured lumber and wood blocks. 10

(b) To obtain the removal of sap and water and to open the pores of the wood, the timber will be subjected to the direct action of live steam admitted to the treating cylinder under a pressure of not less than twenty (20) pounds, and not to exceed thirty (30) pounds, per square inch, as recorded by steam gauge attached to the treating cylinder. The pressure and time of steaming, which latter will range from three to seven hours, will be determined by the Engineer and the cylinder must be frequently drained by a valve located at its lowest point. 20

(c) When, in the opinion of the Engineer, a charge has undergone the steaming process for a sufficient length of time, a vacuum must be promptly created in the cylinder, the temperature being at all times maintained above the boiling point. A vacuum of from twenty-two (22) inches to twenty-six (26) inches must continue from four to six hours or until the charge has been thoroughly seasoned and no sap or moisture comes from, or collects in, the cylinder. While a vacuum is still maintained, the oil, as herein specified and with a temperature of about one 30 40

Exhibit P-1

10 hundred and ninety (190) degrees, must be admitted to the cylinder. The pressure pump must then be operated and be kept in operation until the charge has absorbed twelve (12) pounds of oil per cubic foot for piles and sixteen (16) pounds for all other items, the same to be determined by such system of measurement and tests as the Engineer may elect. An entire charge of piles must absorb the oil to a depth of not less than two (2) inches from all exposed surfaces; such piles as are found to not have the required penetration must be returned to the chamber, with a subsequent charge, for further treatment.

20 (d) The oil shall be a coal tar product of which at least sixty-five (65) per cent shall be a distillate of coal gas tar or coke oven tar, and the remainder, not over thirty-five (35) per cent, must be refined or filtered coal gas tar or coke oven tar. It shall comply with the following requirements:

(1) It may contain not more than three (3) per cent of water.

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(2) It may contain not more than three (3) per cent of matter insoluble in benzol. This test shall be performed by treating a two (2) gram sample in a beaker with twenty-five (25) c. c. of benzol and allowing it to stand for two (2) hours at twenty-five (25) degrees Centigrade, after which it shall be filtered through a Gooch crucible; 40 all the insoluble matter shall then be removed, washed fifteen (15) times with five (5) c. c. por-

Exhibit P-1

tions of benzol at twenty-five (25) degrees Centigrade, dried in an oven at one hundred ten (110) degrees Centigrade for two (2) hours, and weighed.

(3) The specific gravity of the oil at thirty-five (35) degrees Centigrade shall be not less than one and seven-hundredths (1.07) nor more than one and twelve-hundredths (1.12). 10

(4) The distillates based on water-free oil shall be within the following limits:

Up to two hundred and ten (210) degrees Centigrade, not more than five (5) per cent. 20

Up to two hundred and thirty-five (235) degrees Centigrade, not more than twenty-five (25) per cent.

The residue above three hundred and fifty-five (355) degrees Centigrade, if it exceeds thirty-five (35) per cent, shall have a float test of not more than eighty (80) sec. at seventy (70) degrees Centigrade.

(5) The specific gravity of the fraction between two hundred thirty-five (235) degrees and three hundred fifteen (315) degrees Centigrade shall be not less than one and two-hundredths (1.02) at thirty-eight (38) degrees Centigrade compared with water at fifteen and five-tenths (15.5) degrees Centigrade. The specific gravity of the fraction between three hundred fifteen (315) degrees and three hundred fifty-five (355) degrees Centigrade shall be not less than one and nine 40

Exhibit P-1

hundredths (1.09) at thirty-eight (38) degrees Centigrade compared with water at fifteen and five-tenths (15.5) degrees Centigrade.

(6) The oil shall not yield more than ten (10)
10 per cent coke residue.

(e) All pieces treated in any one cylinder load must be of uniform character and sectional dimensions. Both the outside and inside bark must be carefully removed from all piles before they are placed in the treating cylinder.

(f) The timber, before treatment, and the method of treatment will be subject to such inspection as the Engineer may arrange, and he must be afforded, without cost to the County, every facility for performing his work. The Contractor must, upon request of the Engineer, furnish samples of oil being used and must allow, at any time, taking samples of the oil, for testing, as the Engineer may require. The Contractor must grant to the Engineer, at all reasonable times, access to all records of the works pertaining to the treatment of materials under these
20 specifications. The Engineer may bore a 5/8-
30 inch hole in any timber to determine the depth of penetration of the oil. Inspection and acceptance by an inspector at the plant or lack of either or both will not bar subsequent rejection, for cause, by the Engineer at the site of the work.

(g) It will be particularly required of the Contractor that he provide for the creosoting and shipment of the wood block in such manner as
40 will reduce to a minimum the interval between

Exhibit P-1

the creosoting of the block and the placing of them in the floor construction, and every effort must be made by the Contractor to secure this result.

15. PORTLAND CEMENT

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(a) Portland cement shall comply with the requirements of the American Society for Testing Materials, Serial Designation C9-21, with all subsequent changes and corrections.

(b) Portland cement must be shipped in cloth bags, plainly stamped with the manufacturer's name and the brand of cement contained therein. Each bag shall contain ninety-four (94) pounds of cement, net weight, and it will be considered as containing one (1) cubic foot of cement. Bags of cement, which have become partially set or which contain lumps of cement, will be rejected. 20

(c) All cement must be stored in waterproof sheds at the bridge site, or must be otherwise protected in a manner satisfactory to the Engineer. Any cement that is rejected must be immediately removed from the bridge site. 30

(d) Water used in mixing concrete must be clean and free of oil, acid, alkali, sea salts or vegetable matter.

16. SAND

(a) Sand shall consist of grains or particles of quartz or other hard, durable rock, the surfaces of which grains or particles are not coated with any injurious foreign materials. The grains shall 40

Exhibit P-1

be moderately sharp, free from soft, decomposed or partly decomposed sand grains, lumps of clay or ferruginous cemented sand, mica, loam, sea salts, organic matter or other foreign materials.

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(b) Sand for concrete, mortar and grout shall conform to the following requirements when tested by means of standard laboratory screens and sieves:

	Passing	Retained on	Mini- mum	Maxi- mum
	1/2-inch Screen	1/4-inch Screen		5.0%
20	1/2-inch "	10-Mesh Sieve	5.0%	25.0%
	1/4-inch "	10 " "	5.0%	25.0%
	10-Mesh Sieve	30 " "	30.0%	60.0%
	30 " "	50 " "	20.0%	40.0%
	50 " "	200 " "	5.0%	15.0%
	200 " "			5.0%

(c) Sand may not contain more than four (4%) per cent. of material removable by elutriation test and it must produce mortar of quality at least equal to mortar made from standard Ot-
30 tawa sand, when mixed under the same conditions and with the same proportions of cement and water.

17. PEBBLES

(a) Washed pebbles may be composed partially or totally of crushed pebbles, but must be free from soft, thin, elongated pieces, organic matter,
40 loam, clay or pebbles coated therewith. The pebbles must be sound, hard, durable in character,

Exhibit P-1

uniform in composition and free of weathered, decomposed pebbles, pieces of coal or other foreign materials.

(b) Pebbles must be so washed that their surfaces are clean before they are loaded for shipment; no washing will be permitted after the pebbles have been loaded. The methods of washing and screening shall be satisfactory to the Engineer. 10

(c) When tested by means of laboratory screens and sieves, the pebbles shall all pass the $2\frac{1}{4}$ -inch screen, from 25 to 60 per cent. shall pass the $1\frac{1}{4}$ -inch screen, not more than 12 per cent. may pass the $\frac{1}{2}$ -inch screen and not more than 2 per cent. may pass the $\frac{1}{4}$ -inch screen. 20

F. SUBSTRUCTURE

1. PILES

(a) The plans show, and the specifications require, minimum diameters and lengths of piles for different parts of the work and the butt diameter must, in each case, be measured at a distance of two (2) feet from the butt of the pile. The tip diameter of a twelve (12) inch pile must be at least seven (7) inches and of a sixteen (16) inch pile at least eight (8) inches. 30

(b) Piles must be driven to the depths shown on plans unless, as elsewhere provided, a greater or less depth for foundation piles is required. All piles must be driven by jetting or hammering, or both, in a continuous operation, except that the last two (2) feet of driving may be done 40

Exhibit P-1

only by hammering. For the driving of sheet piling a steam hammer, to be approved by the Engineer, will be required and either a steam hammer or a satisfactory drop hammer may be used in driving the fender and pier piles. A highly
10 efficient driving outfit will be insisted upon.

(c) In general, piles are to be driven to full length and so minimize waste in sawing off after driving. Piles must be vertical and carefully spaced, transversely and longitudinally, as shown on the plans. Before driving, piles must be roughly pointed and it may be required that the head of each pile be bound by a substantial iron
20 band to prevent splitting and excess brooming in driving. Any pile inaccurately spaced or badly driven must be pulled out and be redriven and, if damaged by driving, pulling, redriving or otherwise, it must be replaced by a new pile.

(d) When a pile has been driven to correct depth, as previously determined, it must be cut off truly horizontal at the elevation to be furnished by the Engineer. The first pile in each pier foundation will be considered as a test pile
30 and the stated length of piles may be changed, by the Engineer, after observing the driving of the test pile. If any such change in the length of foundation piles from the requirements of the plans shall be ordered by the Engineer, the Contractor shall furnish and drive such changed length of piles and the lump sum contract price will be increased or decreased as elsewhere provided and at the unit price bid.

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Exhibit P-1

(e) In driving sheet piling there may be required a suitable device to prevent excess battering or deformation of the heads of sheet piles, and suitable guides must be constructed and used to accomplish straight-line driving in sheet piling. 10

(f) The heads of cluster piles must be neatly rounded and each cluster must be compactly drawn together and tightly bound with not less than five (5) laps of one (1) inch galvanized wire rope, fastened with suitable galvanized staples and with the ends of wire rope turned into the body of the cluster, and properly secured there.

(g) In the driving of foundation piles the Contractor may either use piles of excessive length, figuring on wasting such excess length, or he may use an efficiently designed follower, 20

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which must have the approval of the Engineer before being put into use. If the method of driving by follower is selected, the Engineer may require the continuous service of a diver, at the Contractor's expense, in determining that satisfactory results are being secured in the driving and spacing of the piles. 30

(h) The plans show the requirements in connection with finishing the pier at the heads of sheet piling, which must first be driven to Elev. +3.0 and, after the pier is above Elev. +4.0, it must be cut off to a true line, at Elev. -3.00, by some method of which the Engineer shall have approved. Particular care will be required in 40

Exhibit P-1

the placing of the filler between the steel sheet piling and the body of a pier, it being the intention to secure, as nearly as possible, a result that will be permanent.

- 10 (i) Sheet piling will be shop painted, on one face only, with Tochoolith, manufactured by Toch Brothers, 110 East Forty-second Street, New York City. Sufficiently before being driven to insure that the paint will entirely dry, a coat of Toch Brothers Paint, No. 137, Red, will be applied to the sheet piling, on the same face as before, and it is not the intention that the inner face of the sheet piling, against which the concrete in the pier will be placed, shall be painted.
- 20 Joints between adjacent sheet piling will be required to be properly filled with suitable dry wooden strips to minimize the leakage of water through the joints.

2. FENDERS

- (a) In connection with the driving of piles for fenders and clusters as already stated, it will be required that all details of fender construction
- 30 comply with the best present-day practice for such work. All fender work must be done by men especially qualified to undertake that class of carpenter work and all details of the plans must be strictly complied with.

- (b) At angles in fenders the caps and wales must show tight joints, accurately cut, securely attached to piles spliced with 16"x1"x48" galvanized bent plates, set in as shown by plans.
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Exhibit P-1

(c) Alignment of fenders must be correct and, in all respects, they must present a neat appearance when completed.

(d) Caps may be spliced only on piles and must be spiked to every pile; wales must break joints, except at angles of fenders, and both abutting ends of wales must be bolted to a pile; two wales may not abut except at a pile. 10

(e) The plans show the requirements as to sizes of bolts and dock spikes and all such bolts are to have button heads and plate washers, the heads of all bolts to be countersunk so that there is no projection of the head beyond the surface of the wale; washers under nuts must be fitted but need not be countersunk. 20

(f) Dock spikes are to be set in round holes of one-eighth ($1/8$) of an inch greater diameter than the size of the square dock spike; such holes are to be bored about eight (8) inches into the heads of piles and the dock spikes are to be driven flush with the surface of caps. Dock spikes are to be ragged, chisel-pointed and headed.

3. CONCRETE MASONRY

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(a) The foundation piles of any pier having been driven as required, all mud, sand or other material must be pumped out, or otherwise removed, down to the elevation stated on the plan for the bottom of the concrete masonry and about eight (8) feet of sealing concrete will then be deposited, on the prepared and level bottom of the excavation, by some method of depositing con-

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Exhibit P-1

crete under water that will be satisfactory to the Engineer. After this sealing concrete has had sufficient time to properly set up, the unwatering of the pier will be commenced and completed unless it is discovered that excess water comes
10 through the sealing concrete, in which case additional sealing concrete will be placed, as may be approved by the Engineer. When sufficient sealing concrete is in place to prevent the admission of excess water and the enclosure has been freed of water, the piles will be sawed off at the elevation required by the plan, after which all foreign materials will be removed; the results of all these operations must meet approval by the
20 Engineer.

(b) With sufficient pumps operating to keep the enclosure free of water, the remainder of the concrete for the body of the pier must be put in place by the usual methods, in regular layers of about twelve (12) inches, particular care being used in spading and tamping the concrete to prevent voids and honeycombing; the concrete must be finished to a level surface at the elevation as required by the plan.
30

(c) The plans show all dimensions and details of recesses to be built in the body of the channel pier and of the shore pier on the Southerly side of the channel; the forms for these will be substantially built of suitable, two (2) inch stock, braced, as required by the plans, and left permanently in position.

Exhibit P-1

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(d) The Contractor must assume responsibility as to the depth to which the sealing concrete will settle and he may use a mattress, as may be approved by the Engineer, for a floor on which the sealing concrete may be deposited. 10

(e) Concrete for the body of the piers will be composed of one (1) part portland cement, two (2) parts sand and four (4) parts pebbles, all of which materials must meet the requirements previously specified. If the Contractor elects to do so he may use a richer mixture for the sealing concrete.

(f) The concrete must be mixed by a standard batch mixer of fairly large capacity, and great care must be used in depositing the mixed concrete to prevent segregation of materials. 20

(g) In no case may salty, or sea, water be used in mixing and no concrete may be placed in rainy or freezing weather except under special permission of, or instructions by, the Engineer. Only sufficient water may be used, in mixing, to produce a reasonably workable concrete. 30

4. STONE MASONRY

(a) On the concrete foundation of each pier, after the surface has been made true and reasonably smooth, will be constructed the stone masonry, which will be rock-faced without drafts, ranged with parallel horizontal beds and square vertical joints. The heart of the wall, as shown on the plans, will be of 1-2-4 concrete, of the 40

Exhibit P-1

same materials and mixed and placed as is required in the construction of the pier foundation above the sealing concrete, except that the concrete will be deposited in depth equal with the course of which it becomes a part.

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(b) Face stone must be pitched to true lines and must have full edges and corners, without wants, when placed in the wall.

(c) No course may be less than sixteen (16) inches nor more than twenty-four (24) inches in thickness, regularly decreasing from bottom to top. Stone in the foundation courses must be carefully selected and no voids will be allowed
20 anywhere in the work.

(d) The Contractor must furnish the Engineer with full working plans and obtain approval of same before commencing work; such drawings must show all details of every course.

(e) Each course must be continuous and of uniform thickness, and must be laid up thoroughly bedded in concrete mortar; outside joints must be closed and the spaces between adjacent stone
30 thoroughly grouted until every crevice and opening is filled, and the concrete core of the course must be in place before preparation is made for laying the next course. No stone with hollow bed will be used in the work.

(f) All stone will be set with a derrick of approved pattern and no grabholes will be allowed in any face work. No hammering, rolling or turning of stone will be allowed on the wall. Stone
40 shall be clean and made wet with fresh water be-

Exhibit P-1

fore being laid up. No pinning up will, under any circumstances, be permitted and no necessary trimming or drilling will be allowed until cement has thoroughly set.

(g) The angles shall have a margin draft pitched to a true line and without showing tool marks; no projection of face stone more than three (3) inches beyond this draft will be allowed. 10

(h) Joints in face work may be not less than three-eighths ($3/8$) of an inch nor more than five-eighths ($5/8$) of an inch in width. Vertical joints shall be worked square for a distance of twelve (12) inches back from the face and shall be raked out to a depth of one (1) inch, made wet and pointed with sunken joint. 20

(i) Headers shall have at least one-half ($1/2$) more bed than rise for three-quarters ($3/4$) of their length and may be not less than four (4) feet long. A header shall be laid, generally, in line with another header in the opposite face of the wall.

(j) Stretchers shall have at least one-quarter ($1/4$) more bed than rise and shall be from three and one-half ($3\frac{1}{2}$) feet to six (6) feet in length, according to thickness. There shall be two (2) stretchers to every header. 30

(k) As already provided, the interior, or heart, of a wall will consist of concrete, except that, under certain circumstances, the Engineer will permit including large, roughly dressed, clean stone in such concrete construction; but such may not be done without express permission, in writing, from the Engineer. 40

Exhibit P-1

(l) If it becomes necessary to reset any stone or course, all cement must be thoroughly removed from it and, when reset, entirely new mortar shall be used. All stone work, during its laying, shall be kept wet with fresh water.

10 (m) The bridge-seats for piers shall consist of large stone, carefully selected and worked to exact requirements.

(n) The bridge-seat course shall project six (6) inches beyond the next lower course and the stone must be roughly hammer-dressed. The stone upon which the shoes or other structural

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bearings rest shall be bush-hammered to exactly level surface and such stone must be sufficiently large to give an entirely firm support to the superstructure.

(o) The bridge seat course on shore piers shall be chamfered two (2) inches on face and six (6) inches on surface.

30 (p) Faces of shore pier backwalls and pedestals on all piers shall be checked out true to square and shall be hammer-dressed and brought to true planes.

(q) For mortar and grouting, the composition will be one (1) part cement and two (2) parts sand, which materials must have the quality and characteristics elsewhere required by these specifications.

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Exhibit P-1

(r) Particular attention must be given to the finishing of bridge-seats and to the setting of the anchor rods as required by details of channel piers. The details for construction of platforms and hand railings on channel piers are shown on the plans, all of which must be strictly adhered to. 10

(s) For particular requirements covering stone work involved in the operator's and storage houses, comfort stations and masking walls, see Division J, Section 2, Paragraphs (a), (b) and (f) of the specifications.

G. SUPERSTRUCTURE

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1. SPECIFICATIONS

(a) The entire superstructure, including all details shown on the plans, has been designed in accordance with "Standard Specifications for Steel Highway Bridges," adopted by the American Association of State Highway Officials, approved by the Secretary of Agriculture, and printed in U. S. Department of Agriculture Bulletin, No. 1259, dated October 9, 1924, and, except as otherwise required herein or indicated on plans, all requirements of the above specifications covering materials, design, details, fabrication, painting, erecting, inspecting and other features of the superstructure must be complied with. 30

2. CONTRACT PLANS AND SHOP DRAWINGS

(a) The contract plans, as furnished by Atlantic County, include general details of the struc- 40

Exhibit P-1

ture, the machinery parts, trunnions, bearings, etc., and they show the substructure, fenders and pile clusters in such full detail that no working plans will be required, in connection with the construction of the substructure, other than are
10 specified by Division F, Section 4, Paragraph (d) of these specifications. In connection with the superstructure, the Contractor must furnish complete shop plans and all other working or detail drawings required and they must be prepared in accordance with these specifications and must include sketches, catalogue cuts or descriptions of all accessories, such as wrenches, grease cups, grease gun, etc.

20 (b) All shop plans and other working or detail drawings will be subject to the approval of the Engineer and the contract plans shall be carefully checked by the Contractor, for clearances and dimensions, before commencing work on shop plans or other working or detail drawings. Should any errors or discrepancies be found, the attention of the Engineer must be called to such
30 so that the same may be corrected; the Contractor will be responsible for all discrepancies in his work that may result from errors or misunderstood features of the contract plans to which he did not direct the Engineer's attention in advance of making the shop plans or other working or detail drawings.

(c) Unless otherwise instructed, the Contractor shall submit three (3) prints of each shop plan or other superstructure working or detail
40 drawing to the Consulting Engineer, who, after checking same, will submit two (2) copies to the

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Engineer. After same have been examined by the Engineer one (1) print will be returned to the Contractor approved or with corrections and, after any indicated corrections have been made in the tracing, three (3) new prints shall be submitted in the same routine as just indicated. No work may be done by the Contractor until his shop plans and all other working or detail drawings have been approved by the Engineer, but such approval shall not relieve the Contractor from any responsibility that is placed upon him by the contract. After the bridge is completed the Contractor shall furnish to the Engineer and to the Consulting Engineer, each, a complete and bound set of prints of all shop plans and other working or detail drawings, including index, for permanent filing.

10

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(d) Shop plans and all other working or detail drawings shall be made in ink on tracing cloth, the sheets to be 24"x36" outside dimensions, having border line set back one (1) inch on top, bottom and right hand end of sheet and one and one-half (1½) inches on left hand end of sheet.

30

3. FLOOR SYSTEM

(a) The Contractor will give careful attention to the cross-section of spiking pieces, as designed, for the purpose of securing the required crown for wood block floor. These spiking pieces will

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be securely bolted to stringers with ½-inch bolts, staggered and spaced at not greater intervals than two (2) feet.

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(b) Plank for subfloor will be grooved for, and laid with, standard, tight-fitting splines of the thickness specified. Plank will be spiked with standard, countersunk-head, dock spikes, $\frac{1}{2}$ inch square and not less than nine (9) inches long, 10 with at least one spike to each bearing on stringer. Subfloor planking shall be sized to uniform thickness of five and one-half ($5\frac{1}{2}$) inches, preferably dressed on both sides.

(c) On top of the completed subfloor shall be placed a layer of three-ply roofing felt, laid in hot pitch and evenly swabbed with the same materials, upon which the wood-block pavement shall be laid in the usual manner, except that the Engineer will give definite instructions as the condition of the wood block may require. It is expected that the wood block will be laid before there has occurred any evaporation of creosoting oil with consequent shrinkage and, in this condition, the blocks will be laid tight with about every eighth row driven to an accurate alignment at right angles to the axis of the bridge. The completed floor will be covered over with clean, coarse sand to a depth of about one-quarter ($\frac{1}{4}$) 20 of an inch, which sand will be kept in place, by frequent and thorough brooming, until it has worked into all recesses left in the laying of the block. 30

(d) Retaining pieces, under the curbs and at the breaks in the floor, will be securely fastened to the subfloor, immediately on the pitched, three-ply, roofing felt. The plans show details for attaching these retaining pieces. 40

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(e) Along the edge of all retaining pieces there will be constructed an expansion joint, with filler to be approved by the Engineer, to the width of about three-quarters ($\frac{3}{4}$) of an inch.

(f) Wood block will be eight (8) inches long, three (3) inches wide and three (3) inches deep, dressed four (4) sides, without variation in the length or width and without greater variation than one-sixteenth ($\frac{1}{16}$) of an inch in the depth of the blocks. 10

(g) The curbs will be built up as required by the plans, with spillways between floor beams, and finished with curb protection of Carnegie Section T-71. Great care must be exercised in the construction of curb work to present the neatest possible appearance in the completed construction. 20

(h) Sidewalk will be constructed with two (2) inch yellow pine plank, dressed on one side, in accordance with the details shown on the plans. No plank in the sidewalk may show deficient edges or other defects, and the ends of plank must be accurately sawed to a straight line. Sidewalk plank will be laid with open joints of about one-quarter ($\frac{1}{4}$) of an inch and securely attached with galvanized wire nails of suitable length. 30

(i) At breaks in the floor, as shown on the plans, there will be required 20"x $\frac{3}{8}$ " standard checkered plate, Section M-52, all details of which are shown.

4. EXPANSION BEARINGS

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(a) Expansion bearings will be furnished as detailed on plans having sliding plates of Class

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“A” bronze, as set forth by the requirements in Division E, Section 8, Paragraph (a) and (b), of these specifications.

10 (b) Rocker bearings of cast steel must conform in all respects to the details shown on drawings and the requirements of Division E, Section 5 of these specifications.

5. HAND RAILING

(a) The plans show in detail the special design of hand rail required, which may be made with slip joint fittings of rails to posts. All materials involved in the making of the hand rail
20 will be standard galvanized and spot welding must be done in a manner to give the very best results. Fillers, between pipe and rail, must be fitted to the curve of the pipe. Floor flanges will be malleable iron attached with four (4) bolts, carrying suitable washers, to each flange.

(b) At each end of each run of hand railing, on the bascule span, there will be required terminal posts, as shown by the plans, and to these must be given entirely substantial anchorage
30 against lateral displacement. Anchorage to pedestals over shore piers, and at buildings will be furnished as shown by plans.

(c) The completed hand rail must show perfect alignment and be entirely true to grade, both of which features will be especially insisted upon. Hand rail will not be painted but must be cleaned after being erected.

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6. PAINT

(a) The general specifications, to which these specifications refer, set forth conditions and requirements touching the painting of the work and the particular paint required in the priming coat will be Tocholith, manufactured by Toch Brothers, 110 E. Forty-second St., New York City. 10

17

(b) The first field coat will be Toch Brothers' paint, No. 137, Red.

(c) After the first field coat has been thoroughly dried the second coat of Toch Brothers' paint, No. 4700, Battleship Gray, Light, will be applied. 20

7. NAMEPLATES

(a) The Contractor shall furnish two (2) bronze nameplates, about twenty-four (24) inches square, bearing such inscription as will be furnished by the Engineer. If he so elects, the Contractor may furnish two (2) additional nameplates bearing such inscription as he shall propose, subject to approval of the Engineer, setting forth his interest in the construction. 30

(b) The nameplates will be attached at such points in the bridge as the Engineer may direct, it being possible that such attachment of nameplates will be to the front of buildings, above the grade of the sidewalk.

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*Exhibit P-1*H. SPECIAL REQUIREMENTS—BASCULE
SPAN, ETC.

1. ASSEMBLING MACHINERY

10 (a) The bearings for all shafts shall be set to a true line, parallel, and with the proper distance between centers. Mating gears shall be exactly centered on each other, and machinery so constructed as to be readily removed and replaced with new parts.

(b) The machinery parts shall be assembled, as far as possible, in the shop and shall be properly aligned and fitted; all holes in the supports
20 shall be drilled with the parts in correct relative position and, before being taken apart, all members shall be carefully match-marked to the supports and to each other, and re-erected in the same relative position; if not so assembled in the shop all connecting holes in the supports shall be drilled in the field, unless otherwise noted on the plans, with the members in correct relative position.

30 2. TRUNNIONS, PINS AND BEARINGS

(a) The trunnions and pins shall be of the best forged steel and shall be given special care and attention. They must be turned perfectly true throughout and polished, and shall be accurately aligned and set. The trunnion and pin bearings shall be carefully fitted in place to secure full bearing, and shall be riveted or bolted to the supporting structural work with care. Accur-
40 ately fitted phosphor bronze bushings shall be

Exhibit P-1

provided for trunnion and pin bearings, these bearings to be so arranged as to allow of easy lubrication and cleaning. Grooves in the surfaces of the trunnions and bearings shall be machine cut, with small irregularities removed by chipping and filing; grooves shall be smooth, especially the rounded corners. 10

3. JOURNAL BEARINGS

(a) Pillow blocks and all other bearings shall be of steel castings; they shall be babbitted to good bearing on journal when in place, unless otherwise shown on the plans.

(b) All main bearings shall be fitted with screw compression grease cups, of special pattern and of size approved by the Engineer, that are directly connected to the bearings, which shall be properly grooved for lubrication. Every moving joint shall be provided with suitable means of oiling. 20

(c) All bolts for journal boxes shall be turned to exact size with close, but not driving fit, and all heads and nuts shall have full and accurate bearing on machined surfaces. Bevel, steel washers shall be provided under nuts for bearing on inclined surfaces. 30

(d) All caps for boxes, unless small, shall be tapped to receive an approved threaded eyebolt, and four (4) such eyebolts shall be furnished.

(e) All bearings at bevel gears shall have union castings.

Exhibit P-1

4. SHAFTING

(a) All shafts of over four (4) inches diameter must be forged steel of grade specified for steel forgings. They must be turned true to size over their entire length and finished to a smooth surface, care being taken to leave proper fillets where the diameter is reduced.

(b) Cold-rolled, steel shafting may be used for shafts four (4) inches and less in diameter.

(c) All shafts, when erected in place, must be at true right angles to the proper planes of rotation of gears, and in correct position for the proper meshing of the gears on their true pitch lines.

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5. GEARS

(a) All gear wheels shall be steel castings. They shall be so bored that the teeth run true and shall have a light driving fit on their shafts, to which they shall be properly keyed. All hubs shall be faced at both ends.

(b) Teeth of gears shall be cut, unless otherwise noted on the plans. All teeth shall be involute in pattern. The pitch lines shall be plainly marked on each side of all gears. The periphery and ends of teeth shall be turned.

(c) Uncut teeth shall be machine molded, and they shall be turned to template so that bearing marks extend over at least one-half ($\frac{1}{2}$) of the length of the teeth. Mating gears shall be so

Exhibit P-1

placed that the moulding draft of the teeth is reversed, and to insure this the letter "D" shall be cast on the draft side of each cast gear.

(d) The teeth of bevel gears shall be cut by a plane having a rectilinear motion in lines through the apex of a cone. Rotating milling cutters shall not be used for making bevel gears. 10

6. KEYS AND KEYWAYS

(a) Gib-head or hooked keys shall be used for keying machinery parts to the shafts. They shall be in number and size as shown on the plans, or according to best practice where not shown. Unless otherwise called for on the plans, keys shall have a taper of one-eighth ($\frac{1}{8}$) of an inch in one (1) foot. The finish of the keys and keyways shall be such as to give the key a driving fit on the sides. Tapered keys shall bear on the top, bottom and sides; parallel faced keys on the sides only. When wheel and key are firmly seated the distance between gib-head and hub shall be not less than one-half ($\frac{1}{2}$) the width of the key nor more than two (2) inches. All keys must be accurately made so that, when firmly seated, only sufficient space is left at the point to provide for future tightening. 20 30

7. PATTERNS

(a) Patterns for castings shall be made of thoroughly seasoned, first-class, pattern lumber, put together to stand repeated use and long time storage without damage. They shall be finished to give a neat appearance to the casting, and shall 40

Exhibit P-1

10 have proper designating letters. The outer finished edges of all ribs, bases, etc., shall be rounded off to a radius of one-quarter ($\frac{1}{4}$) the thickness of the rib, and inside corners shall be filled with wood fillers, well fastened and rounded out to a radius of one-half ($\frac{1}{2}$) the thickness of the thinnest rib forming the corner.

8. CASTINGS

20 (a) Castings shall be cleaned, and all fins and other irregularities removed so that they will have clean, smooth surfaces, suitable for this class of work. Castings that are to be attached to structural work or other castings shall have their contact surfaces finished. Unfinished edges of bases, ribs and similar parts shall be neatly cast with rounded corners. Inside angles shall have proper fillets. Bosses shall be finished to correct planes.

9. BOLTS AND NUTS

30 (a) Bolt heads and nuts shall bear on seats at right angles to the bolts. On castings, except where recessed, the bearing shall be on finished bosses or spot-faced seats. Bolt heads recessed in castings shall be square.

(b) Nuts subject to vibration and frequent changes of load shall be secured by effective locks. If double nuts are used, both nuts shall be of standard thickness.

10. BOLT HOLES AND TURNED BOLTS

40 (a) Holes for unfinished bolts shall be drilled or reamed not more than one-sixteenth ($\frac{1}{16}$)

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of an inch larger than the diameter of the bolt. The diameter of the shank of turned bolts shall be at least one-sixteenth ($1/16$) of an inch larger than the diameter of the threaded portion. The bolt shall have one sixty-fourth ($1/64$) of an inch less diameter than the bolt hole. 10

11. PROTECTION FOR SHIPPING

(a) All trunnions, pins and shafting shall be protected for shipping with burlap, securely wrapped with wire and suitably crated.

12. INSPECTION

(a) Provision for inspection of machinery shall 20
be the same as that specified for the structural steel work.

19

13. COUNTERWEIGHT AND CENTER OF GRAVITY CALCULATIONS

(a) The exact unit weight, the exact total weight and the final dimensions of the counterweight are to be determined from the center of gravity calculations, which are to be based on the actual weights of the movable parts of the structure as figured from the approved shop plans. These weights are to include the structural steel, machinery, flooring and everything attached to the movable part of the bridge. 30

(b) The total volume of the adjustment pockets is to equal about ten (10) per cent of the total volume of the concrete counterweight and, in 40

Exhibit P-1

making the center gravity calculations, the pockets should be figured as being two-thirds ($2/3$) filled with concrete adjustment blocks weighing approximately the same per cubic foot as the counterweight mass.

10

(c) The concrete is to be a mixture of one (1) part cement to not more than six (6) parts of fine and coarse aggregate. The coarse aggregate shall be a mixture of pebbles and steel punchings, or other suitable, approved material that will give the required average unit weight called for on the plans. The determination of the proper mixture for the counterweight, in order to give the right
20 unit weight, is especially important and a series of tests is to be made by the Contractor, well in advance of the time when the placing of the concrete is to begin, to determine the unit weight of concrete which can be obtained from the materials at hand. Test blocks, containing not less than one (1) cubic foot, shall be made and a record shall be kept showing the weight of the blocks when cast and when one (1), two (2), three (3) and seven (7) days old. This record of test
30 blocks must be submitted to the Engineer for approval before concreting is commenced and, if such is possible, these tests should be made by the Contractor in time to have this information available to the fabricator of the structural steel by the time the latter is ready to detail the counterweight.

(d) Steel punchings used in the counterweight shall be thoroughly cleaned by washing with lye
40 and shall be free from all grease, rust and scale.

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(e) During the pouring of the counterweight, test blocks shall be made representing the unit weight of concrete poured in each two (2) foot layer of the counterweight. A permanent record of these tests shall be kept as a guide for varying the mixture in order that the finished counterweight shall have the required total weight. 10

(f) The counterweight shall be built with proper forms, and all showing surfaces shall be reinforced by means of a welded fabric of cold drawn steel wire, equivalent to that manufactured by the National Steel Fabric Company of Pittsburgh, Pa. Transverse and longitudinal wires are to be of No. 10 gauge and spaced four (4) inches, center to center. This fabric shall be placed about three (3) inches from the face of the concrete. 20

(g) All reinforcing rods are to be deformed rods of medium, open-hearth steel from new billet stock, wired at intersections and having their ends bent six (6) inches around transverse rods. Steel embedded in the counterweight concrete is not to be painted. 30

(h) When the fabrication of the steel work and the erection of it are done by different parties, the center of gravity calculations and working drawings of the counterweight are to be made by the manufacturer of the steel work.

(i) The unit weight of material entering into the construction of the floor deck is an important factor in the determination of the volume of counterweight required, and the manufacturer of the 40

Exhibit P-1

steel work, before making the center of gravity calculations, must secure from the Contractor the unit weight of the materials to be used in the floor. This should be determined by actually weighing samples of similar materials treated exactly as required by these specifications.

10 (j) The Contractor shall assume full responsibility for the correctness of the center of gravity calculations, the detail drawings of the counterweight, and the construction of the counterweight of correct unit weight so that the bridge, when completed, will be in proper balance. The Contractor shall be fully responsible for the proper
20 balancing of the bridge and shall make, free of charge, all necessary adjustments and alterations that may be necessary to obtain a proper balance.

(k) When the Contractor sublets the fabrication it is understood that this does not relieve him of full responsibility for furnishing the manufacturer with correct information as to floor weights and all other matters relating to the superstructure, nor from full responsibility for the
30 correctness of the center of gravity calculations and all other work, whether performed by him or any of his subcontractors. This, however, does not relieve the subcontractor of any responsibility which he may have under his contract with the Contractor.

14. TRUNNION LUBRICATION

40 (a) All trunnions are to be provided with Alemite Industrial Fittings, as called for on the

Exhibit P-1

plans, and the Contractor shall furnish one (1) Alemite Grease Gun, size H-15, manufactured by the Bassick Manufacturing Company, 2650 North Crawford Avenue, Chicago, Illinois. The Con-

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tractor shall also furnish, as a part of his contract, not less than one hundred and fifty (150) pounds of Superla, No. 57, Trunnion Grease, manufactured by the Standard Oil Company.

15. WRENCHES

(a) Proper wrenches to fit the nuts of all bolts in the work shall be furnished by the Contractor. 20
Handles of wrenches shall be straight or of "S" pattern, as may be most suitable. Wherever practicable, the jaws shall be formed at an angle of fifteen (15) degrees to the handle and may not be thicker than three-quarters ($\frac{3}{4}$) of the thickness of a standard nut. The Contractor shall submit a list showing the number, kind, size, etc., of the various wrenches he proposes to furnish.

16. OILING SET

30

(a) The Contractor shall furnish one (1) complete Engineer's Oiling Set for the use of the bridge tender.

17. BUMPING BLOCKS

(a) The bridge shall be provided with ample and efficient bumping blocks of prime quality white oak, located as shown on the plans.

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18. TESTS

(a) The Contractor shall be responsible for the proper operation of the bridge. After the erection has been completed, the operating equipment
10 installed and the bridge is ready to be opened to traffic, the Contractor shall notify the Engineer that the bridge is ready for final inspection and tests. The Contractor shall perform whatever tests the Consulting Engineer may require, and these tests and final inspection shall show that the bridge, in every detail, fully meets all the requirements of the plans and these specifications.

(b) If the tests and inspection fail to show that
20 all parts of the work are built in accordance with the plans and specifications, the Contractor shall make, without extra charge, whatever changes are recommended by the Consulting Engineer before the bridge will be finally recommended for acceptance.

I. EQUIPMENT

30 1. ELECTRICAL—GENERAL

(a) The electrical equipment shall conform to the Standardization Rules of the American Institute of Electrical Engineers, as adopted June 28th, 1916, with all subsequent amendments and additions that have been adopted by said Society.

(b) The National Electric Code and local ordinances shall control the electrical material, construction and installation, except as provided
40 otherwise in these specifications.

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(c) The following specifications with reference to the operating equipment are merely a synopsis of what is needed, it being understood that the Contractor shall provide everything required to make the electrical equipment, as a whole, complete in every respect. Anything omitted in either the plans or specifications, or anything necessary to render the equipment complete in every respect for the purpose intended, shall be supplied by the Contractor at the lump sum contract price agreed to for furnishing the work entirely completed and ready for travel. 10

(d) The Contractor, before ordering equipment or beginning work, must submit, for approval, complete plans of all parts he proposes to install. 20

2. POWER

(a) Power for operating the bridge will be delivered by the County to the control room of the operator's house in the form of alternating current, 60-cycle, three-phase, 220-volts, at which point the Contractor will take it.

(b) Power for lighting the operator's house, storage house, comfort stations and machinery enclosures will be delivered by the County to the control room of the operator's house in the form of alternating current, 60-cycle, single-phase, 110-volts, at which point the Contractor will take it. 30

3. OPERATING MOTORS

(a) Each leaf of the bridge will be operated by two (2) motors of the type and size specified 40

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on the plans. The motors shall be capable of maintaining the specified normal rating for thirty (30) minutes with not more than fifty-five (55) degrees Centigrade rise in temperature, and capable of starting under, and carrying for two (2) minutes, without injurious heating or sparking, the maximum torque specified.

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4. LOCK MOTOR

(a) The center lock mechanism shall be operated by one (1) squirrel cage, elevator-type motor, of the design and size specified on the plans. This motor shall be so constructed, and its lubrication so arranged, that the motor will not be injured when the bridge is turned through an angle of approximately ninety (90) degrees in opening.

5. TESTS

(a) Heat tests, potential tests and temperature tests of the operating motors shall be made in accordance with the Standardization Rules of the American Institute of Electrical Engineers, and certified copies of such tests shall be submitted by the manufacturer for approval of the Engineer.

6. BRAKES

(a) The main operating motors and the lock motor shall be provided with approved post or block brakes, of the size and description given on the plans. These brakes shall be held in release

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by solenoids that shall have ample power and heat dissipating capacity, and shall be arranged to be set automatically whenever the current fails or is cut off from the motors. The solenoids must be moisture-proof. The brakes for the operating motors shall be so arranged that they will be held in release on the drift points of the controller although power is shut off from the motors. 10

(b) The motor brakes shall be set at the factory by the manufacturer to give the retarding torque specified on the plans, and satisfactory means shall be provided for holding this adjustment. Approved means shall be provided for releasing the brakes mechanically. 20

7. EMERGENCY BRAKES

(a) Four (4), floor-mounted, emergency brakes, of the size and description given on the plans, shall be provided and applied to the main operating machinery.

(b) These brakes shall be arranged to be released by solenoids, which shall hold the brakes in release as long as the current is applied. Cutting off the current or any failure of it shall result in instantaneous application of the brakes. The brakes normally shall be set, and shall be so arranged that they must be released by the operator before starting the bridge. They shall be held in release during the entire operation unless an emergency arises requiring brake power in excess of that offered by the motor brakes, in which case they may be applied instantly by 40

Exhibit P-1

the operator. This portion of the equipment shall be so designed that it will not be injured if left in release indefinitely, and the coils shall be thoroughly waterproofed.

- 10 (c) An approved means shall be provided for latching the emergency brakes in the released position while the bridge is being operated by emergency power. The latching device shall be so arranged, in conjunction with a spring opening switch, that it will be impossible to operate the bridge by electric power when the emergency brakes are latched in the released position.

- 20 (d) The emergency brakes shall be set at the factory by the manufacturer to give the holding torque specified on the plans, and satisfactory means shall be provided for holding this adjustment.

8. SPARE PARTS

(a) There shall be furnished for each size of motor, except the gate motors, spare parts as follows:

- 30 One (1) set of stator coils.
 One (1) set of brushes.
 One (1) set of bearing linings.
 One (1) brake coil.

(b) These parts shall be finished and fitted in such manner as to admit of being installed in their respective places without further fitting or adjustment.

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9. CONTROL

(a) Semi-magnetic control shall be used for the electrical operation of the bridge.

10. CONTROLLERS AND RESISTANCES

10

(a) The controllers for the leaf operating motors shall be placed in the operator's house and shall be of the duplex drum reversing type, having sufficient capacity and provided with suitable resistances to properly control the motors, without shock or jar to the machinery, when starting the motors and bringing them up to the speed. They shall also be capable of reducing the starting torque to thirty-five (35) per cent of the nominal rated torque. 20

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(b) The controllers shall have not less than six (6) power points forward and reverse, and shall be arranged to reset overload relays in the "off" position. They shall also have one (1) drift point in each direction, and notches shall be provided in the controller dial ring so as to make a positive stop for the controller handle on each drift point, as the handle is brought back toward the "off" position. 30

(c) The lock motor shall be controlled through a drum type switch having three (3) positions, namely: "open," "off" and "closed."

(d) The controllers for the leaf operating motors and the drum switches for controlling the lock motor, roadway gates, emergency brakes and warning bell shall be built into the control desk, as indicated on the plans. 40

Exhibit P-1

11. CONTROL DESK

(a) In addition to the main controllers there shall be mounted, on the control desk, one (1) drum switch for controlling the lock motor, four
10 (4) drum switches for controlling the four (4) roadway gates, one (1) drum switch for controlling the warning bell, two (2) drum switches for controlling the emergency brakes, four (4) tumbler switches for controlling the house lights, machinery enclosure lights, navigation lights and indicator lights, and two (2) seating buttons.

(b) In addition to the above, there shall also be mounted, on the top of the control desk, ten
20 (10) indicator lights as hereinafter described.

(c) There shall be mounted in a compartment, in the front of the control desk, four (4) indicating snap switches for the emergency release of the gate motors, lock motor and bridge motors from interlocking, each individual switch being covered with a sheet of mica. Fuses, associated with the various switches mounted on the control desk, shall be placed within a fuse compartment
30 located in the front of the control desk.

(d) There shall be provided within the control desk, in accessible places, terminal boards at which all connections shall be made. Lock washers shall be provided underneath all nuts on terminal posts.

(e) The control desk is to be built of a light structural steel frame, totally enclosed on all sides with sheet metal and on top with a slate panel one
40 (1) inch thick. The workmanship and finish

Exhibit P-1

throughout shall be first-class in every respect. All handles and levers for operating the controllers and switches shall be of uniform finish, consistent with the character of the work.

(f) The Contractor shall furnish, for approval, 10
complete detailed working plans of the control desk.

12. SWITCHES AND SWITCHBOARDS

(a) The switchboard shall be of dull black, marine-finished slate, and shall be installed in the operator's house as indicated on the plans. It shall be large enough to allow all necessary switches, circuit breakers, fuses, etc., to be installed thereon without crowding, so that each device can be safely and quickly reached and operated. All switches, contactors, cutouts and buttons shall be suitably named and labeled with neat, brass labels in accordance with their purpose and use. 20

(b) A safety-type, fused, service switch of approved design shall be furnished for both the power and lighting services. These switches will be located at their respective service entrances on the lower floor of the operator's house and adjacent to the bridge control cabinet. 30

(c) The control panel is to be enclosed in a steel cabinet, and shall be built up of sections not more than thirty (30) inches wide to facilitate handling in the field. This panel will have the following apparatus mounted upon it: 40

Exhibit P-1

- (1) A triple-pole, single-throw, fused, knife switch shall be provided for each bridge operating motor, gate motor and lock motor.
- (2) A triple-pole, magnetic contractor shall be
10 provided for the control panel service.
- (3) For reversing each pair of operating motors, two (2) double-pole, magnetic contractors, mechanically interlocked.
- (4) For reversing the lock motor, two (2) double-pole, magnetic contractors, mechanically interlocked.
- (5) For each pair of emergency brakes, one
20 (1) double-pole, magnetic contactor with interlocking contacts.
- (6) For each pair of motor brakes, one (1) double-pole contactor.
- (7) For each operating motor, one (1) double-coil, electrically reset, instantaneous, overload relay.
- (8) Fuse protection to be provided for emer-
30 gency and motor brakes.

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(9) A phase failure and reversal relay is to be provided for the protection of the bridge control panel.

13. INSTRUMENT PANEL

- (a) There shall be mounted on a separate
40 panel, over the control desk, one (1) voltmeter

Exhibit P-1

with eight (8) point, potential switch, and one (1) ammeter. These instruments shall be of the round, switchboard type, seven (7) inch size, equal to those manufactured by the Weston Electrical Instrument Company. The ammeter shall be placed in the circuit supplying power to all motors. 10

(b) There shall also be mounted on this panel one (1) meter light, one (1) small, bull's-eye, indicator light for power service, and one (1) indicating, snap switch, controlling lights in the comfort stations.

14. OVERLOAD RELAYS

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(a) Overload relays shall be set and sealed at the factory so that they will function instantly when the motors take a load in excess of that corresponding to the maximum torque specified on the plans.

15. INDICATORS

(a) The Contractor shall provide and install on the control desk, as hereinbefore stated, suitable electric light indicators for the purpose of showing the operator, day and night, the safe operating position and the fully closed, nearly open and nearly closed positions of the bridge leaf, and the fully closed and fully open positions of the center lock; these indicators to consist of the following: 30

Light No. 1, White—Lock set.

“ No. 2, Red —Lock open.

40

Exhibit P-1

- 10 “ No. 3, White—Leaf fully closed.
 “ No. 4, Red —Leaf nearly closed
 (angle of opening 0° to 7°).
 “ No. 5, Red —Leaf “free” (angle of
 opening 7° to 66°).
 “ No. 6, Green—Leaf nearly open
 (angle of opening over 66°).

(b) Each light shall be set behind a small circular prismatic lens. Two sets of lights No. 3, No. 4, No. 5 and No. 6 shall be required, one set for each leaf.

16. AUTOMATIC CUTOFFS AND INTERLOCKING

- 20 (a) A Norwood-Noonan, drum-type, limit switch, manufactured by the Norwood-Noonan Co., 450 West Superior Street, Chicago, Illinois, shall be geared to the operating machinery of each leaf to cut off the current from the operating motors and set their brakes when the leaves, in opening, reach the nearly-open position and, in closing, the nearly-closed position. Contacts shall be provided on these switches through which
 30 the bridge leaves will be lighted before power is cut off from the motors. Contacts shall be provided on these switches for the bridge-free indicator lamps and also for the red and green navigation lamps on the moving leaves. The latter contacts shall be arranged so that the red lamps will be lighted until the leaves are nearly open, when the red lamps will be extinguished and the green lamps lighted.
- 40 (b) A Norwood-Noonan, drum-type, limit switch shall be geared to the lock operating ma-

Exhibit P-1

chinery to cut off current from the lock motor at the end of travel in either direction, and cause the indicator lamps to be lighted to show the lock fully closed or fully open. Contacts shall also be provided on this switch for interlocking with the bridge operating motors so that power cannot be available to the latter unless the lock is fully open. 10

(c) A Norwood-Noonan, plunger-type, fully-closed switch shall be mounted on the fixed structure at the rear end of each leaf, to be operated by contact with the moving leaf as the latter reaches its fully-closed position. Contacts shall be provided on this switch to control the lighting of the fully-closed indicator lamps, and to interlock with the lock motor so that current cannot be available to the latter unless the bridge leaves are fully closed. 20

(d) Spring opening switches shall be provided which, if closed and held closed, will by-pass the cut-off on the leaf operating motors and provide only sufficient power to enable the operator to fully open or fully close the bridge leaves. 30

(e) Snap switches, in a sealed case, shall be provided on the Switchboard in the operator's house so that, in case of emergency, it will be possible to short-circuit the interlocking of the center-lock and the leaf-operating motors.

17. CONTACTS

(a) The contacts, or electrical devices for making and breaking the electric circuits to operate 40

Exhibit P-1

the electrical indicators, automatic cut-offs and similar connections, shall be substantial in construction, reliable in action, and completely protected from the weather.

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18. METAL COVERS

(a) Metal covers, for drum-type switches and similar parts, shall be of not less than No. 16, U. S. Standard gauge, galvanized iron. Junction boxes shall be made of malleable cast iron, not less than three-sixteenths (3/16) of an inch in thickness, which will allow the conduits to be
20 threaded into the boxes. The boxes must be weather-proof throughout, in particular at conduit connections, and shall be free from rough edges and rough surfaces.

19. CAST IRON IN ELECTRICAL PARTS

(a) Cast iron, unless malleable, shall not be used in switches and small electrical parts that are located on the movable parts of the bridge.

30

20. WIRING

(a) The Contractor shall furnish and install all wiring for the complete electrical equipment of the bascule bridge.

(b) All wires shall be kerite insulated wire, manufactured by the Kerite Insulated Wire & Cable Company, 30 Church Street, New York City, and shall be finished with tape and braid over all.
40

Exhibit P-1

~~The thickness of insulation wall for copper wires, sizes No. 12 to No. 9, shall be five sixty fourths ($5/64$) of an inch; for sizes No. 8 to No. 2, six sixty fourths ($6/64$) of an inch; for sizes No. 1 to No. 4/0, seven sixty fourths ($7/64$) of an inch.~~ 10

(c) Wires shall be drawn into place, free from mechanical injuries, in galvanized iron conduits.

(d) Flexible cables shall be provided for connections from the fixed to the movable portions of the bridge. All conductors in the flexible connections shall be stranded extra-flexible wire, protected by means of suitable wire-bound rubber hose, terminating in cast iron boxes where wires are to be spliced by means of standard, screw connectors. 20

(e) All wires shall be of sufficient capacity to carry safely the current required, with overload specified, without injurious heating or a loss in potential of over five (5) per cent at either of the motor terminals.

(f) All wires on the moving leaf shall be stranded. At all terminals and in junction boxes, wires are to be permanently tagged with fibre identification tags, which bear the same identification marks as appear on the wiring diagram. 30

(g) Splices shall be neatly and carefully made; they shall be made mechanically and electrically secure before soldering, wrapped with rubber tape and friction tape, and painted with water-proof insulating varnish. Splices shall not be inside of a conduit. 40

Exhibit P-1

21. CONDUITS

(a) Wires shall be placed in galvanized iron conduits. The total area of wires, including insulation, in any conduit shall not exceed forty-
10 two (42) per cent of the area of the conduit.

(b) Conduits shall be galvanized on the inside and outside. Galvanized condulets, pull-out boxes, ells and other fittings shall be used with conduits. Bends shall be used sparingly. The total angle of bending between junction boxes or condulets shall not exceed one hundred twenty (120) degrees. If the conduit is bent, the radius of the bend, to the center of the conduit, shall be
20 not less than twelve (12) times the inside diameter of the conduit; this requirement does not apply to factory ells. Junction boxes may be used where other fittings are not suitable. Conduits and boxes shall have suitably located drain holes. The length of conduit between junction boxes or condulets shall not exceed seventy (70) feet.

(c) Conduits shall be so placed that dirt will
30 not accumulate around them; there shall be at least one-half ($\frac{1}{2}$) inch clearance between them. If on a horizontal surface they shall clear the surface at least three (3) inches.

(d) Wherever conduit is threaded into boxes or fittings, the threaded surfaces shall be painted with white lead, when fitting up, so there will be no unprotected surfaces exposed.

Exhibit P-1

22. LIGHTING

(a) The Contractor shall furnish and install a complete lighting system for the operator's house, storage house, comfort stations and machinery enclosures. The system shall be designed in proportion to the electric lighting system herein described, and all wires in conduits shall be in accordance with these specifications for such parts. 10

(b) In the operator's house, storage house, comfort stations and machinery enclosures, there shall be ceiling lights, complete with suitable fixtures and shades.

(c) This part of the contract includes the furnishing and placing of such conduits and outlets in the four (4) houses as are required to properly serve the eight (8) lamps located on the outside 20

25

of each house, also a 20-ampere switch and cut-out box in each house from which these can be controlled. These particular lamps and brackets are not included in this part of the contract.

(d) No conduit for lighting and heating purposes shall be exposed to view in the comfort stations, operator's room or storage room except as indicated on the plans and adjacent to the downspouts; stone work must be drilled and cut to provide for the conduit being concealed. The Contractor shall furnish, at an early date, complete information as to the exact location of such conduit. 30 40

Exhibit P-1

(e) The Contractor shall furnish and install one (1) complete set of lamps, and shall be responsible for them until the acceptance of the work by the County.

10 23. CIRCUITS

(a) There shall be an independent circuit for each motor, for each group of lamps, and for the interlocking. The use of a common return wire will not be allowed. Each circuit shall be protected and controlled by its own fuses and switches.

20 24. SUBMARINE CABLE

(a) Armoured, submarine cables shall be furnished and installed by the Contractor for transmitting electric current across the channel to supply power for operating and controlling the power equipment, signals and pier lights on the side of the channel opposite the operator's house.

30 (b) These cables shall consist of the proper number and size of conductors, each insulated in accordance with the wiring specifications given herein. The spaces between conductors shall be filled in and packed round with cable filler, after which there shall be applied a layer of dry jute. They shall then be covered with two (2) layers of tarred jute, laid in opposite directions, and finally covered with closely laid galvanized wire.

40 (c) The cables shall be laid across the channel at sufficient depth that they will not encroach upon the clear channel depth of twenty-five (25)

Exhibit P-1

feet measured from elevation 0.0. They shall be securely anchored at the piers where they shall terminate in cast iron boxes with hinged doors, in which all splices shall be made.

25. NAVIGATION SIGNALS

10

(a) Lights meeting the requirements of the Government for bridges over navigable streams shall be provided on the moving leaves, on the pier fenders and pile-clusters on both sides of the channel. These lamps shall be of cast iron construction, equivalent to those manufactured by the Norwood-Noonan Company. Location of navigation lights are shown on the plans.

20

26. ROADWAY SIGNALS

(a) The Contractor shall furnish and install, at each end of the bridge, a motor-operated bell, twelve (12) inches in diameter, suitable for outdoor use; the Engineer will determine the exact location for bells.

27. ROADWAY GATES

30

(a) The Contractor shall furnish, and install on proper supports, electrically-operated, counterbalanced, railway-type, crossing gates at each end of the bascule span, as indicated on the plans. These gates shall be equivalent to those manufactured by the Buda Company, 80 East Jackson Boulevard, Chicago, Illinois.

(b) Satisfactory means shall be provided for operating the gates by hand in case of emergency. 40

Exhibit P-1

(c) On the arm of each gate shall be placed three (3) electrical lamps, each lamp having a twenty-five (25) watt, incandescent bulb enclosed in a marine-type fitting, with a ruby glass outer globe and guard. The lights shall be controlled
10 from the same switch on the control desk as controls the warning bells specified hereinbefore.

28. ELECTRIC HEATER

(a) The Contractor shall furnish and install, in each of the four (4) houses, an electric heater equivalent to the Westinghouse Type D, 2000-watt size. These heaters shall be connected with the
20 110-volt, lighting service.

29. WORKING PLANS

(a) The contract plans include a schematic wiring diagram, in accordance with which the installation is to be made.

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(b) The Contractor shall furnish, for approval,
30 detail plans of the switchboard and all equipment which he is to install. Certified dimension sheets of all motors, brakes, limit switches, gates, etc., shall be submitted, for approval, as soon as practicable after award of the contract, so that the Engineer and manufacturers may have the information necessary to determine the details of associated parts.

(c) At an early date the Contractor shall make
40 a layout, to scale, of the operator's house, show-

Exhibit P-1

ing thereon the location of all electrical apparatus in the house.

(d) After the work is installed, corrected diagram shall be furnished by the Contractor showing any deviations which have been made from the original plans, and no such deviations shall be made except after approval of the Engineer. 10

30. INSTRUCTORS AND INSTRUCTIONS FOR OPERATORS

(a) Upon completion of all work and as soon as the bridge is placed in operation, the Contractor shall furnish a competent man, experienced in the operation of electrical machinery of this character, for a period of thirty (30) days to instruct the bridge operator in the operation of the bridge. 20

J. OPERATOR'S HOUSE, STORAGE HOUSE, COMFORT STATIONS

1. GENERAL

(a) On the channel piers there shall be built one operator's house, one storage house, two comfort stations, platforms and railings, as shown on the contract plans. These buildings shall have stone walls, concrete floors and slate roofs. 30

2. STONE WORK

(a) The stone shall be the same kind and quality as is specified for piers, except as otherwise required, laid up in even ashlar courses, as shown on the plans, free of all carving except the frames 40

Exhibit P-1

around the upper windows and bands around houses over windows.

(b) The stone courses are to be twelve (12) inches thick, forming both the inside and outside
 10 faces of walls. All joints, inside and outside of the walls, shall be "V" cut, as indicated on contract plans. Outside face of walls shall be given an eight-point tooled finish; the inside face of the walls shall be so tooled as to give a stippled effect. The exposed surfaces of the masking projections on the shore piers and of the surmounting pedestals will be finished to harmonize with the outside finish of the buildings on the channel piers.

20 (c) All window sills shall be grooved for water bar and a wash.

(d) The stone, at the vertical sides of windows and doors, shall be cut out so as to receive a wood brick, two (2) inches by four (4) inches, for securing the window and door frames.

(e) All stone shall be cut true and straight. The first course above the street floor level shall be doweled to concrete floor with five-eighths ($\frac{5}{8}$)
 30 inch by eight (8) inch round dowels.

(f) The mortar used for this work shall be composed of one (1) part cement to two (2) parts sand—materials of quality, etc., previously specified.

3. CARPENTRY

(a) All lumber used throughout shall be thor-
 40 oughly seasoned, free from checks, large knots, and other defects.

Exhibit P-1

(b) The rafters and roof framing shall be of No. 1 Common Yellow Pine, of sizes and spacing as shown on the contract plans. Wall plate, having lapped joints at corners and bolted to walls, shall be of No. 1 Common Yellow Pine. The roof shall be covered with one (1) inch by six (6) inch shiplap of No. 1 Common Yellow Pine, well nailed to rafters. The roof boards shall be covered with heavy tar paper. 10

(c) The window and door frames shall be of No. 1 Common Yellow Pine. Sash and doors shall be of No. 1 Common Yellow Pine.

(d) The Contractor shall provide screens of copper wire cloth and yellow pine frames, held in place with standard screen holders, for all windows. 20

4. HARDWARE

(a) The Contractor shall provide suitable bronze hardware for the proper operation of windows and doors, and as noted on the plans.

27

30

5. ROOF

(a) The roofs of all houses shall be covered with No. 1, clear, gray slate, fully one-quarter ($\frac{1}{4}$) of an inch thick, bored and counter-bored, and shake laid.

(b) All metal flashing shall be of sixteen (16) ounce copper, neat, and set in a workmanlike manner. All metal work, except as noted, to be 40

Exhibit P-1

of sixteen (16) ounce copper and as shown on the plans.

(c) Downspouts shall be of size and located as shown on the plans. The top of downspouts shall be provided with copper wire basket.

6. CEILINGS

(a) The ceilings shall be of cement plaster on galvanized copper-bearing metal lath, suspended from rafters by galvanized metal straps.

7. FLOORS

(a) The floors shall be constructed as shown on the contract plans. The Terrazzo floor in the comfort stations shall be of six (6) inch hexagonal tile, laid smooth and straight and in cement mortar of 1:2 mix. Under partitions, there shall be laid two (2) inch, Terrazzo, cove base, with groove for marble. Terrazzo shoe and four (4) inch base shall be provided at walls.

8. MARBLE PARTITIONS

(a) The marble for partitions in the comfort stations shall be gray, of uniform color and texture, free from cracks, chips and other imperfections. Partitions shall be securely fastened in place with nickel-plated fittings and screws, braced with one and one-half (1½) inch nickel-plated, brass pipes. The Contractor erecting the stalls shall furnish in place the following nickel-plated hardware: Door bolt, clothes hooks, bumpers, paper holders and hinges. Spring hinges shall

Exhibit P-1

be used so that the doors will be open when stalls are not in use.

(b) The doors for stalls shall be of yellow pine, flush veneered, of size as shown on the plans.

10

9. PAINTING

(a) All window, screen and door frames shall be painted with white lead and linseed oil all around before being delivered to the building.

(b) All woodwork shall be given two (2) coats of white lead and linseed oil paint, of color to match stone work, after the buildings are completed.

20

10. GLAZING

(a) All window and door glass shall be A. A. D. S. It is to be set in sash, back puttied, fastened with points set not over six (6) inches apart and face puttied.

(b) The windows and doors in the operator's house shall be of clear glass. All other windows and doors shall be of opaque glass of French design, as selected by the Engineer.

30

11. PLUMBING

(a) The County will bring the water supply up to the floor of comfort stations. The Contractor shall place a one and one-quarter ($1\frac{1}{4}$) inch, heavy-pattern, brass, stop-and-waste cock at this point, and carry water to all fixtures, using galvanized, genuine wrought-iron pipe. All piping

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Exhibit P-1

to be properly graded to drain to stop and waste. Branches supplying water-closets shall be large enough to insure proper operation of positive flush valves.

10 (b) All fixtures shall be equal to those listed below, which are manufactured by the Standard Sanitary Manufacturing Company:

1. WATER CLOSET: No. F—2600 with siphon jet, split seat and supply from floor. Complete as described in catalogue.
- 20 2. URINALS No. F—8610, 18" wide, with straight front, elbow to floor for water supply. To be set on floor. Complete as described in catalogue.
3. LAVATORIES: No. 4207, 18" x 21", with one, K—1050, self-closing faucet and one, K—860, drinking fountain. Lavatories to have nickel-plated "S" trap and nickel-plated supply from floor.

30 (c) Soil vent and revent pipes shall be of extra heavy, cast iron pipes of proper sizes. Joints shall be packed with picked oakum and melted lead. Vents above ceilings shall be such that only one (1) increaser will project above roof. Wastes and soils shall be brought under the floor to points required by fixtures.

40 (d) The Contractor shall connect sanitary sewers with City sewer at each end of bridge, furnishing all required pipe and materials in place.

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(e) All water-closets, urinals and lavatories shall have separate valves to control each fixture separately, to facilitate repairs.

(f) All sewerage and plumbing shall comply with the rules and ordinances governing plumbing and sewerage now in force in Atlantic City, New Jersey. 10

(g) The Contractor shall provide comfort stations with universal public comfort station marks, designating women's entrance and men's entrance.

12. CHAIR AND LOCKER

(a) The Contractor shall provide a chair and steel locker in the operator's house, subject to the approval of the Engineer. 20

K. CLEANING UP

1. The specifications provide for sorting and storing salvaged materials, under instructions of the Engineer, and this work must be done with neatness and orderly arrangement.

2. All refuse and waste materials, resulting from the Contractor's operations, must be removed from the site of the work by the Contractor, to the satisfaction of the Engineer. 30

L. NOTICE TO BIDDERS

1. The specified time for completion is an important element of the contract and Bidders are hereby definitely advised that the completion of the work within the specified time must, at all 40

Exhibit P-1

times, be a primary consideration to the Contractor.

2. Bids on alternate methods of construction or materials will not be considered.

10 3. A Bidder must use the blank Form of Bid and the Surety Certificate hereto attached, and these may not be separated from the Specifications.

4. The Bid and Surety Certificate, together with all papers bound therewith, must be enclosed in a sealed envelope, addressed to the Board of Chosen Freeholders of Atlantic County, N. J.; the envelope must have plainly written on it the
20 name and address of the Bidder, together with the name of the operation; it must be accompanied by a properly drawn, or endorsed, and certified check in an amount not less than ten (10) per cent. of the Lump Sum Bid, except that the amount need not exceed Twenty Thousand (\$20,000.00) Dollars, and must be delivered to the Board of Chosen Freeholders at the time and place stated in Division A, Section 1 of these specifications.

30 5. An award of contract will not be made on a bid which is irregular in any of the following ways:

(a) In case of elimination of competition.

(b) When the bid fails to give Lump Sum Bid for the work entirely completed, together with all of the Unit Prices required by the Bidding Blank.

40 (c) When the bid is not accompanied by Name and Certificate of Surety.

Exhibit P-1

(d) When any condition, limitation or proviso is attached to the bid.

(e) When a bid is not properly enclosed in a sealed envelope, with the Bidder's name and address and the name of the operation written on the outside of the envelope. 10

(f) When the bid is received after the hour named for opening bids.

(g) When the bid is not accompanied by a properly drawn, or endorsed, and certified check in the amount required.

6. Bids of irresponsible parties, insofar as is possible, will be returned unopened. 20

7. The right is reserved to reject any or all bids.

29

M. BIDDING BLANK

Atlantic City, N. J., Dec. 15, 1926

TO THE HONORABLE BOARD OF CHOSEN FREEHOLDERS, 30

Atlantic County, N. J.

Gentlemen:

1. Having carefully examined the specifications and all plans covering the proposed reconstruction of the bridge spanning Inside Thorofare in Atlantic City, known as the Albany Avenue Bridge, upon which bids have been invited by advertisement to be submitted to you on Dec. 15, 40

Exhibit P-1

1926, and having carefully studied the site of the work to ascertain the conditions, particularly the difficulties, existing there, the undersigned will provide all necessary machinery, tools, apparatus and other means of construction, will do all the
10 work and furnish all materials required by the plans and specifications and in the manner shown by the plans and in accordance with the instructions of your Engineer.

2. Accompanying this bid is a certified check in the sum of Twenty Thousand Dollars (\$20,000.00), made payable to the Treasurer of Atlantic County, N. J., which the undersigned agrees
20 is to be declared forfeited by you as liquidated damages, and not as a penalty, if, in case this proposal is accepted, we fail or neglect to execute the contract under the conditions of this proposal and within ten (10) days of the formal notification of your acceptance of this proposal, otherwise the certified check is to be returned to the undersigned.

(a) We hereby propose to take down the entire superstructure of the present
30 bridge; entirely remove the present center pier, the two rest piers and the present pier which supports adjacent ends of two fixed spans South of the channel; take down the entire masonry abutment at the Northerly end of the bridge; remove all the fender work of the existing bridge and put the entire site in condition for commencing the new work, all as required
40 by the specifications, for the sum of ..\$ 11,500.00

Exhibit P-1

(b) We herewith agree to furnish and complete in place all substructure required for the proposed new bridge, including two channel piers and two shore piers, as shown by the plans and in strict accordance with the specifications, for the sum of\$189,380.00 10

(c) We herewith agree to furnish in place, as shown by the plans and required by the specifications, all fender work for the sum of\$ 13,480.00

(d) We herewith agree to furnish in place, entirely completed and ready for travel and with all details and parts included, the two fixed spans for the sum of\$ 77,465.00 20

(e) We herewith agree to furnish and complete in place, including all materials shown by the plans from Elevation +3.5 up, excepting the electrical apparatus in the operating house to control the operation of the bridge, the four buildings entirely complete for the sum of\$ 44,610.00 30

(f) We herewith agree to furnish in place the double-leaf bascule span, including all structural and electrical work of every kind and description, counterweights complete, safety gates, traffic signals and all other parts of the same as shown by the plans above the Elevation +2.0 for the total sum of\$132,500.00 40

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	Ten (10) per cent. of Item M. 2. f, as required by Division B, Section 20 and Division C, Section 1, Paragraph (f) of the specifications	\$ 13,250.00
10	Total Lump Sum Bid	<u>\$482,185.00</u>

30

3. In case the length of any foundation piles under piers is increased or decreased, as provided in the specifications, we submit herewith the price of \$1.00 for each foot of pile by which unit price the above bid for substructure, Item M. 2. b, is to be changed, depending upon whether the length of piles is increased or decreased.

4. In case the length of fender or cluster piles, or the number of such piles, be increased or decreased, we submit herewith the price of \$2.00 for each foot of pile by which unit price the above bid for fenders, Item M. 2. c, is to be changed, depending upon whether the length or number of piles is increased or decreased.

5. In case the length of fenders be increased or decreased, we submit herewith a price of 30 cents per foot, Board Measure, and including the cost of all hardware and incidental labor and materials except piles, by which unit price the above bid for fenders, Item M. 2. c, is to be changed, depending upon whether the length of fenders is increased or decreased.

6. In case the shore piers, or either of them, must be built to greater or less extent than, or under changes to the design, shown on the con-

Exhibit P-1

tract plans, we submit herewith a price of 5 cents per pound for additional or less steel sheet piling in place; a price of \$1.00 per lineal foot for additional or less foundation piles, of the sizes now required, in place; a price of \$20.00 per cubic yard for additional or less sealing concrete in place; a price of \$18.50 per cubic yard for additional or less concrete in place in the body of the pier and a price of \$100.00 per cubic yard for additional or less ashlar masonry, as required by specifications, except that it will not include any bush hammered surfaces. 10

7. We herewith submit that the length of any pier foundation piles, fender piles and cluster piles; the length of any fender; the quantities of piles, sheet piling, sealing concrete, concrete in the body of either or both shore piers and the quantity of ashlar masonry in either or both may be increased or decreased, at the option of the County, without affecting the Lump Sum Bid otherwise than by increasing or decreasing it in the actual amount of additional or decreased materials, in place, at the unit prices above stated, and we herewith agree to furnish all labor and materials not covered by plans and specifications or by above unit prices, but which may be required in the full completion of the work to your satisfaction, all such labor and materials to be ordered by Supplemental Contract and to be paid for as provided in the specifications. 20 30

8. We herewith agree to complete the entire work, ready for your inspection, on or before the expiration of two hundred (200) working days 40

Exhibit P-1

after the date of approval of contract and bond as provided in the specifications.

Respectfully submitted,

10 S. S. THOMPSON & CO., INC.
S. S. Thompson
President
Red Bank, N. J.

(If bid is by a partnership, all partners should sign; if by a corporation, the properly authorized officers must sign.)

31

20 N. NAME AND CERTIFICATE OF SURETY
CORPORATE SURETY

We herewith submit the name of the Surety Company, authorized to do business in the State of New Jersey, which will become Surety on the Bond called for by the attached Notice to Bidders and Specifications, in the event the Contract is awarded to....., and its certificate setting forth its authority and its consent to be-
30 come Surety on the Bond.

Name of Surety Company Liberty Surety Bond Insurance Company

S. S. THOMPSON & CO., INC.
by S. S. Thompson—President
Signature of Bidder.

I hereby certify that Liberty Surety Bond Insurance Company is a Surety Company author-
40 ized to do business in the State of New Jersey,

Exhibit P-1

and authorized to become Surety on the Bond called for by the attached Notice to Bidders and Specifications, and that it will become Surety on the Bond of S. S. Thompson & Co., Inc., as called for by the attached Notice to Bidders and Specifications, in the event that the Contract shall be awarded to them. 10

LIBERTY SURETY BOND INSURANCE COMPANY

by Robert M. Johnston
Vice President (L. S.)

(This certificate must be signed by an officer of the corporation authorized to execute the bond for the corporation making this certificate.) 20

INDIVIDUAL SURETY

.....do hereby submit the names and addresses of Freeholders of the State of New Jersey who will become Surety on the Bond as called for by the attached Notice to Bidders and Specifications, in the event the Contract is awarded to....., and their signed consent to become Surety on the Bond. 30

NAME

ADDRESS

.....
.....
.....

40

.....
Signature of Bidder.

Exhibit P-1

We, the undersigned, being persons above named, do hereby agree to become Surety on the Bond of as called for by the attached notice to Bidders and Specifications, in the event that the Contract is awarded to.....

10

NAME

ADDRESS

.....
.....
.....

20

O. CONTRACT

I. THIS AGREEMENT, made this 30th day of December in the year of our Lord one thousand nine hundred and twenty six

30

BETWEEN the COUNTY OF ATLANTIC, by its Board of Chosen Freeholders, a body politic and corporate in law under the laws of the State of New Jersey, party of the first part, and S. S. THOMPSON & COMPANY, INC., a corporation of the State of New Jersey, party of the second part.

40

2. WITNESSETH, That the said party of the second part, for and in consideration of the payments hereinafter specified and agreed to be made by the party of the first part, hereby covenants and agrees to furnish and deliver all the materi-

Exhibit P-1

als, to do and perform all the work and labor required to be furnished and delivered, done and performed in and about a certain bridge on a public highway in the County of Atlantic, viz., on the public road in the City of Atlantic City, known as Pleasantville Boulevard, leading from Atlantic City to Pleasantville and over what is commonly known as Inside Thorofare, and entirely complete said work on or before the expiration of Two Hundred (200) working days from the date of approval of the contract bond, all in strict and entire conformity with the plans on file in the Engineer's office and with specifications hereto annexed, duly approved by resolution of said Board of Chosen Freeholders adopted the fourteenth day of July in the year of our Lord one thousand nine hundred and twenty-six, which said plans and specifications are hereby made part of this agreement as fully and with the same effect as if the same had been set forth at length in the body of this agreement.

3. This contract will not be effective until the party of the second part shall have furnished a bond, according to specifications, in amount equal to the contract price later herein stated, which bond is to be approved by the Counsel of the said party of the first part, as a guaranty that the said party of the second part will well and faithfully do and perform the things agreed by it to be done and performed according to the terms of this contract, and will pay all lawful claims of sub-contractors, laborers and materialmen for labor performed and materials furnished

Exhibit P-1

in the carrying forward, performing or completing of said contract, agreeing and assenting that this undertaking shall be for the benefit of any materialman or laborer having a just claim as well as for the party of the first part, and also
10 to indemnify and save harmless the party of the first part to this contract, its officers, agents and servants, and each and every one of them, against and from all suits and costs of every name and description, including royalty fees or claims for the use of patented materials, and from all damages to which the said party of the first part or any of its officers, agents or servants may be put by reason of injury to the person or property of
20 others resulting from carelessness in the performance of said work, or from the negligence of said party of the second part, or from any improper or defective machinery, implements or appliances used by the party of the second part in the aforesaid work, or from any act or omission on the part of the said party of the second part, or its servants or agents.

33

30 4. In consideration of the premises the party of the first part hereby agrees to pay to the said party of the second part for said work, when completed in accordance with the said plans and specifications, the Lump Sum Contract Price of Four Hundred Eighty Two Thousand One Hundred and Eighty Five Dollars (\$482,185.00) Dollars, payments to be made as provided in said
40 specifications, with addition or deduction as described, upon presentation of certified construc-

Exhibit P-1

tion estimates of the Engineer duly sworn to, as provided by law and rules of said Board of Chosen Freeholders.

5. This contract is to be binding upon the party of the first part, its successors, and assigns, **10**
and upon the party of the second part, its successors and assigns.

6. IN WITNESS WHEREOF, the said party of the first part has caused these presents to be signed by the Director of its Board of Chosen Freeholders, attested by its Clerk and sealed with its corporate seal, pursuant to a resolution of said Board of Chosen Freeholders passed for that purpose, and the said party of the second part has **20**
caused these presents to be executed by its proper and first duly authorized officers, and its corporate seal to be hereto affixed as of the day and year first above written.

COUNTY OF ATLANTIC.

(Seal)

By:

F. Fraley Doughty
Director of the Board of Chosen **30**
Freeholders

Attest:

F. W. Willetts
Clerk

S. S. THOMPSON & COMPANY, INC.
S. S. Thompson, President

J. M. Hogan
Asst. Secy.

40

P. SURETY CORPORATION BOND

10 KNOW ALL MEN BY THESE PRESENTS, That We,
S. S. Thompson & Co., Inc., a corporation of the
State of New Jersey, as principal, and Liberty
Surety Bond Insurance Company, a corporation
organized and existing under and by virtue of
the laws of the State of New Jersey, and duly
authorized to execute bonds of indemnity and
surety in the State of New Jersey, surety, are
held and firmly bound unto the County of Atlan-
tic, a body politic and corporate in law under
20 the laws of the State of New Jersey, in the penal
sum of Four Hundred Eighty Two Thousand One
Hundred and Eighty Five Dollars, lawful money
of the United States, for the payment of which
well and truly to be made we hereby jointly and
severally bind ourselves, our heirs, executors, ad-
ministrators, successors and assigns.

SEALED with our seals and dated this 30th day
of December, A. D. 1926.

30 THE CONDITION of the above obligation is such
that whereas, the above named principal did en-
ter into a contract with the County of Atlantic,
bearing date the 30th day of December, A. D.
1926, for the construction of a certain bridge over
Inside Thorofare on the Pleasantville Boulevard,
leading from Atlantic City to Pleasantville, N. J.

Now, if the said S. S. Thompson & Company,
Inc., shall well and faithfully do and perform the
40 things agreed by it to be done and performed ac-

Exhibit P-1

ording to the terms of said contract, shall pay all lawful claims of sub-contractors, laborers and materialmen for labor performed and materials furnished in the carrying forward, performing or completing of said contract, we agreeing and assenting that this undertaking shall be for the benefit of any laborer or materialman having a just claim as well as for the obligee herein, and indemnify and save harmless the party of the first part to said contract, its officers, agents and servants, and each and every one of them, against and from all suits and costs of every name and description, including royalty fees or claims for the use of patented materials, and from all damages to which the said party of first part or any of its officers, agents or servants may be put, by reason of injury to the person or property of

35

others resulting from carelessness in the performance of said work, or from the negligence of said party of the second part, or from any improper or defective machinery, implements or appliances used by the party of the second part in the aforesaid work, or from any act or omission on the part of the said party of the second part or its servants, or agents, then this obligation shall be void; otherwise the same shall remain in full force and effect, it being expressly understood and agreed that the liability of the surety, for any and all claims hereunder, shall in no event exceed the penal amount of this obligation as herein stated.

Exhibit P-1

The said surety hereby stipulates and agrees that no modifications, omissions or additions in, or to, the terms of the said contract or in, or to, the plans and specifications therefor shall in any-wise affect the obligation of said surety on its
 10 bond.

IN WITNESS WHEREOF, the said principal and surety have caused these presents to be executed by their respective proper and first duly authorized officers, and their corporate seals to be hereto affixed as of the day and year first above mentioned.

S. S. THOMPSON & COMPANY, INC.
 S. S. Thompson, President

20 Attest

J. M. Hogan
 Asst. Secy.

LIBERTY SURETY BOND INSUR-
 ANCE COMPANY

By Robert M. Johnston
 Attorney in fact

The foregoing bond is approved this 12th day of January, A. D. 1927.

30

EDWIN C. GASKILL
 Atlantic County Solicitor

F. FRALEY DOUGHTY
 Director.

IMPORTANT

If this bond is executed by anyone other than the President and Secretary, then there must be a certificate attached showing that the persons
 40 who executed the same were legally authorized

Exhibit P-1

to do so at the time of execution and, in addition to the above, if the bond is executed by a surety company that is not incorporated under the laws of the State of New Jersey, then there must be attached a certificate from the Commissioner of Banking and Insurance showing that the Surety Company is authorized to do business in New Jersey at the time of executing the bond. 10

Q. INDIVIDUAL BOND

KNOW ALL MEN BY THESE PRESENTS, That We 20

.....
.....
.....

principal, and

..... 30
.....

.....
and State of New Jersey, sureties, are held and firmly bound unto the COUNTY OF ATLANTIC, a body politic and corporate in law under the laws of the State of New Jersey, in the penal sum of

..... 40
..... Dollars

Exhibit P-1

lawful money of the United States, for the payment of which well and truly to be made we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

10 SEALED with our seals and dated this.....
day of, A. D. 19.....

THE CONDITION of the above obligation is such that whereas, the above named principal did enter into a contract with the County of Atlantic, bearing date the.....day of, A. D. 192....., for

20 Now, if the said
shall well and faithfully do and perform the things agreed by.....to be done and performed according to the terms of said contract, shall pay all lawful claims of sub-contractors, laborers and materialmen for labor performed and materials furnished in the carrying forward, performing or completing of said contract, we agreeing and assenting that this undertaking shall be for the benefit of any laborer or materialman having a just claim, as well as for the obligee herein,
30 and indemnify and save harmless the party of the first part to said contract, its officers, agents, and servants, and each and every one of them, against and from all suits and costs of every name and description, including royalty fees or claims for the use of patented materials, and from all damages to which the said party of the first part or any of its officers, agents or servants may be
40 put, by reason of injury to the person or property

Exhibit P-1

of others resulting from carelessness in the performance of said work, or from the negligence of said party of the second part, or from any improper or defective machinery, implements or appliances used by the party of the second part in the aforesaid work or from any act or omission on the part of the said party of the second part or its servants or agents, then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety, for any and all claims hereunder, shall in no event exceed the penal amount of this obligation as herein stated. 10 20

The said sureties hereby stipulate and agree that no modifications, omissions or additions in, or to, the terms of the said contract or in, or to, the plans or specifications therefor shall in anywise affect the obligation of said sureties on their bond.

IN WITNESS WHEREOF, the said
 SIGNED, SEALED AND DELIVERED 30
 IN THE PRESENCE OF

..... (Seal)
 (Seal)
 (Seal)

The foregoing bond is approved this..... 40
 day of....., A. D. 192.....

.....
 Director. County Counsel.

R. JUSTIFICATION OF SURETY

State of New Jersey,
County of.....ss:

10 being duly sworn, on his oath declares that he is one of the sureties on the within bond and is a resident of the County of....., in the State of New Jersey, that he is a freeholder in said County, and that he owns real estate in said County, in his own right, to the amount of

.....
20

.....
over and above all his indebtedness, after all his debts are paid over any contingent liability by reason of being bail, surety, endorser or guarantor.

.....
30 Subscribed and sworn to before me this.....
day of, A. D. 192.....

.....
State of New Jersey,
County of.....ss:

.....
40 being duly sworn, on his oath declares that he is one of the sureties on the within bond and is a resident of the County of....., in

Exhibit P-1

the State of New Jersey; that he is a freeholder in said County, and that he owns real estate in said County, in his own right, to the amount of

..... 10

.....

.....

.....
over and above all his indebtedness, after all his debts are paid and over any contingent liability by reason of being bail, surety, endorser or guarantor. 20

.....
Subscribed and sworn to before me this.....
day of, A. D. 192.....

.....

EXHIBIT P-3.

COUNTY OF ATLANTIC
 DEPARTMENT OF ENGINEERING
 GUARANTEE TRUST BUILDING

Atlantic City, N. J.

10

Alexander H. Nelson
 County Engineer
 Frederick S. Steelman
 Asst. Co. Engineer

Chas. T. Trimble
 Secretary

Subject:

January 14, 1927.

20

S. S. Thompson & Co., Inc.,
 Red Bank, N. J.

Gentlemen:

Herewith I am enclosing a copy of the executed contract, with all papers attached, covering the reconstruction of the Albany Avenue Bridge in accordance with award made to you by the Board of Chosen Freeholders on the 29th ult.

30

You will note that the date of approval of the bond is stated on the cover page and the time for completion, as provided in the specifications, commences to run from that date except that you are entitled to extensions of time under certain conditions.

40

Your superintendent, who was here recently, outlined a method which he thought likely you would adopt in doing the work and I wish you would write me as to what general plan you pro-

Exhibit P-3

pose to adopt in the reconstruction and please bear in mind that, in constructing the *approaches*, the Contractor will be under the necessity of immediately removing at least one of the end spans in order that he may commence operations. I understand that you are a prospective bidder on the contract and that the bids for the construction of the approaches will be received on the 27th inst. It would simplify matters very much if it would happen that you were the low bidder on the City's work and, to that end, I shall be glad to give you, without consideration, the advantage of any information that I may have that will help you in accurately estimating the cost of the work.

10

20

Kindly acknowledge receipt of the contract papers.

Yours truly,

A. H. NELSON,
County Engineer.

AHN-B

EXHIBIT P-4.

COUNTY OF ATLANTIC
DEPARTMENT OF ENGINEERING

GUARANTEE TRUST BUILDING

Atlantic City, N. J.

10

Alexander H. Nelson

County Engineer

Frederick S. Steelman

Asst. Co. Engineer

Subject:

Chas. T. Trimble

Secretary

January 25, 1927.

S. S. Thompson & Co., Inc.,

Red Bank, N. J.

20

Gentlemen:

Yours of the 24th received and noted and I am familiar with the delays at the Albany Avenue Bridge due to uncompleted supports for water and gas mains. Your superintendent has closed off the traffic over the bridge this morning in making an actual start of the work. The electric light company's high tension line somewhat interferes with him but this situation is supposed to be

30

straightened out promptly.

Regarding the steel sheet piling, it would not be interesting to substitute Lackawanna Section SP-15 for the U. S. Section M-104 specified because I believe the latter has certain advantages; if you want to suggest substituting Lackawanna AP-14 at the same cost I shall be glad to consider it.

40

Yours truly,

A. H. NELSON,

County Engineer.

Ahn-b

EXHIBIT P-5.

COUNTY OF ATLANTIC
DEPARTMENT OF ENGINEERING

GUARANTEE TRUST BUILDING

Atlantic City, N. J.

10

Alexander H. Nelson
County Engineer

Edgar L. Benson
Secretary

Frederick S. Steelman
Asst. Co. Engineer

Subject:

March 14, 1927.

S. S. Thompson & Co., Inc.,
Red Bank, N. J.

20

Gentlemen:

The pontoon bridge, which is designed to take care of the traffic over the Pleasantville Boulevard during the reconstruction of the Albany Avenue Bridge under contract to you, was completed on the 12th inst. and is now taking the traffic, so that your superintendent was in position, at the commencement of the work this morning, to tear up the floor of the old bridge and proceed with his work under the contract. I will be glad to bring this situation to the attention of the Board of Chosen Freeholders and I suggest that, in accordance with the facts in the case, you file with me a letter addressed to the Board of Chosen Freeholders requesting that the time for completion of the work under the

30

40

Exhibit P-5

10 contract shall start to run on this date, to wit, March 14, 1927. This will give you some advantage on the time situation because you have been able to do some preliminary work that otherwise would have consumed some of the ten months time allowed for completion of the work under the contract but, in view of other conditions and developments, I believe that the Board of Chosen Freeholders will recognize that the request on your part is justifiable and will grant it.

The Bridge Committee and the writer will be glad to do anything we can to help out in getting the work under "full steam ahead."

20

Yours truly,

A. H. NELSON,
County Engineer.AHN-B
CC-E. W. Downs, Supt.

New Jersey Court of Errors and Appeals

S. S. THOMPSON & Co., body
corporate,

Plaintiff-Appellant,

vs.

THE COUNTY OF ATLANTIC,

Defendant-Respondent.

On Appeal
from Supreme
Court

BRIEF OF THE APPELLANT.

STATEMENT.

The plaintiff appeals in this case from a judgment of nonsuit rendered against it in favor of the defendant upon two counts of the complaint, which two counts contain the substantial damages of the suit.

After due advertisement and submission of bids, the plaintiff entered into a contract with the County of Atlantic to construct a bridge, which contract was executed on December 30, 1926. This contract provided that the plaintiff, who will hereinafter be called the Contractor, should start work ten days after the date of the approval of the Contractor's bond, and should complete his work within two hundred working days from the same date. The bond was approved on January 12, 1927.

On January 18th, the Contractor began moving equipment onto the site to start work. At this time, however, at the location where the bridge was to be constructed, certain water mains crossed under the channel and rendered impossible the construction of the bridge. These water mains were not completely removed until August 30th.

The Contractor brought this suit to recover damages for the additional cost of the completion of the contract caused by the failure of the County to deliver the site for the bridge, ready for the prosecution of the work.

The County claimed that the Contractor's action was barred upon the ground that the contract recited that the Contractor had examined the site and the conditions there and therefore must have bid with knowledge that the water main encumbered the site; upon the ground that the Contractor, by proceeding with the work, had waived any rights under the contract; and upon the further ground that there was no obligation upon the part of the County to remove the water main when it turned the site over. The Trial Court granted a motion for nonsuit on these grounds. The Contractor insists that the definite obligation of the County to deliver the site was not altered by these reasons.

REVIEW OF EVIDENCE.

The contract between the Contractor and the County was approved on January 12, 1927 (p. 24, l. 15). The work was accepted on October 10, 1928 (p. 24, l. 25), by a resolution that the work was completely and satisfactorily performed (p. 25). The contract and specifications contained several clauses which are pertinent to the issue. At page 160 appears the following clause:

“Prospective bidders are hereby directed to carefully read and consider the plans and specifications and to visit the site of the work so that they may thoroughly familiarize themselves with the conditions, particularly the difficulties existing at the site; no consideration will be given to any claim that a bid was made without full comprehension of the conditions to be encountered.”

At page 170 appears another paragraph:

“The Contractor must assume all risks and responsibilities for accidents and damage of any kind whatsoever during construction of the work, and he must sufficiently barricade the work at all times, with proper lights at night, until final completion of it. *Any loss or damage arising from unforeseen obstructions or difficulties encountered in the prosecution of the work, must be sustained by the Contractor.*”

Page 172, Section 24, provides as to the commencement of the work and the completion and time for completion of the work.

“24. The contract shall be signed by the Contractor, to whom the work has been awarded, within ten (10) days from the time of such award. The Contractor shall begin work within ten (10) days of the date

of the approval of the Contractor's bond, which date will be endorsed on the contract and from which date the time for completion of the work shall commence to run.

25. The Contractor shall complete all work under the contract on or before the expiration of two hundred (200) working days from the date of the approval of the contract bond, as already provided."

Page 175, Paragraph 31, makes time the essence of the work.

Section 32, at page 175, then sets forth the usual provisions about defective prosecution of the contract or abandonment, and the right of the County to take over the contract and complete it.

In the bidding blank, page 253, the following statement appears:

"Having carefully examined the specifications and all plans covering the proposed reconstruction of the bridge spanning Inside Thorofare in Atlantic City, known as the Albany Avenue Bridge, upon which bids have been invited by advertisement to be submitted to you on Dec. 15, 1926, and having carefully studied the site of the work to ascertain the conditions, particularly the difficulties, existing there, the undersigned will provide all necessary machinery, tools, apparatus and other means of construction, will do all the work and furnish all materials required by the plans and specifications and in the manner shown by the plans and in accordance with the instructions of your Engineer."

The agreement for the completion of the work is repeated in this bidding blank:

"We herewith agree to complete the entire work, ready for your inspection, on or

before the expiration of two hundred (200) working days after the date of approval of contract and bond as provided in the specifications.”

This provision again appears in the contract at page 261.

Mr. Nelson, the County Engineer, testified that upon the approval of the bond he had written a letter to S. S. Thompson & Co., which is Exhibit P-3 (p. 272). This letter notified the Contractor that the time would start to run. On March 14th he wrote another letter wherein he stated that he was “familiar with the delays at the Albany Avenue Bridge due to incomplete supports for water and gas mains” (p. 274). At the site where the bridge was to be located, a 48-inch water main ran up to the bank where it separated into four syphons which crossed the channel (p. 33, l. 25). The position of the water main and the syphons coincided with the location where the easterly half of the substructure of the bridge was to be erected (p. 35, l. 30).

Henry Crawford, a freeholder of the County of Atlantic, testified that he worked as time-keeper on the job (p. 36). At the time that work was started a water main was located on the site and repeatedly men were sent home because of this water main and the inability to work (p. 41). On January 18th the Contractor began work. This was delayed by the water main until August 27th (p. 42, l. 8).

Edward W. Downs, the superintendent of the Contractor, testified that he moved to the site on January 12 (p. 51). He began work upon the bridge on January 22nd. The bridge was not turned over until March 14th (p. 53). When the

bridge was turned over, there was a 48-inch water main on the site of the bridge which passed under the channel, dividing into four iron pipes. This obstruction was on the site of the bridge (p. 55). The obstruction continued until August 30 (p. 60), and the Contractor, by reason of the obstruction, was unable to work upon the bridge at this point (p. 62). When the mains had been removed, there were still walls and cribbing in the channel which the Contractor pulled out under instructions from the County Engineer (p. 63), and under the supervision of the County Inspectors (p. 64).

On cross-examination Downs stated that the County Engineer told him that the water main would be out of the way in six weeks' time (p. 76, ll. 29-34). The old structure was kept open to traffic until the pontoon bridge had been erected. The Contractor had nothing to do with the erection of this pontoon bridge (p. 103, ll. 1-14).

John F. Hoagland was the Chief Engineer for the Contractor and made the estimate upon the job (p. 110). On cross-examination he stated that he had read the specifications and that he assumed that the water main crossed the site where the bridge was to be erected (p. 115, ll. 10-19).

S. S. Thompson, the president of the Contractor-Company, testified that before his company submitted the bid, he looked over the site of the bridge and saw men working on the removal of the pipe line (p. 121, ll. 15-25). He was informed at that time that the pipe line would be out in a month (p. 121, l. 36). After the work was started Mr. Thompson had many conversations with the

County Engineer, Mr. Nelson, and objected to the existence of the water main at the site (p. 124, ll. 28-37). By reason of the existence of the water main Thompson devised a method of building the bridge in sections and submitted this to Nelson, who approved it (p. 125). On cross-examination Thompson stated that he and Nelson talked over the matter of the water main and Nelson permitted him to build the bridge in two sections (p. 130). Before submitting his bid he examined the site and saw the men removing the water pipe (p. 131, ll. 8-14). He assumed that it belonged to Atlantic City (p. 131, l. 24). The bridge was turned over to S. S. Thompson by a letter from the County Engineer during January (p. 134, l. 40). An extension of time for the completion of the job was granted Thompson (p. 140, l. 30).

William Curchin, Harry C. Lewis and Lionel W. Lancaster, and all of the foregoing witnesses, testified at length concerning the method of construction, the delay and the additional expense. The disputed right of the appellant to recover damages under the contract for the existence of the water main renders relevant only the evidence reviewed.

A review of the State of Case presents briefly the following situation. The Contractor, before submitting his bid, examined the site, saw water mains on the site and was informed that these mains would be removed in four weeks' time. He submitted his bid with the statement that he had inspected the work and was familiar with the conditions at the site, and agreed to start work ten days after the approval of the bond. The contract was awarded to him and contained the

usual stipulations that he had inspected the site; that he was acquainted with the existing conditions; that he would start work ten days after the approval of the bond; that he would finish the work in two hundred working days; that time was of the strict essence of the contract; and that he should assume all loss or damage arising from unforeseen obstructions or difficulties encountered in the progress of the work. The Contractor complied with every condition and within ten days after the approval of the bond prepared to begin work. For nearly eight months he was delayed in his work because the site was still encumbered by the water mains. This delay entailed a great additional expense in the completion of the contract, necessitating employment of equipment and supervisors for a time of equal duration to the delay.

ARGUMENT.

I.

Upon the execution of the contract and the approval of the bond, the County was obligated to furnish the contractor the site for the bridge within ten days.

The contract under review in this case is full and complete. The conditions and terms are explicit and definite. As would be expected, with the bridge connecting the resort city with the mainland, one of the features of the contract was the requirement that the work should be completed within two hundred working days, and that the Contractor should begin work within ten days after the execution of the contract and the approval of the bond.

The County also reserved the right to cancel the contract and take over the work, if, in its opinion, the Contractor was not prosecuting the work energetically and efficiently. These were specific provisions of the contract. The entire purport of the contract, so far as it bore upon the relations of the County and the Contractor, tended to compel an immediate and efficient performance of the contract. If the contract were taken away from the Contractor, the County could then proceed to complete the work and hold the Contractor responsible for any excess costs. The tenor of all these provisions was to minimize and decrease time, and to insure the prompt inception and continuous prosecution of the work.

The Contractor was compelled by the terms of this contract to begin work ten days after the bond had been approved. To protect himself from a forfeiture of the contract and allow for increased costs, it was necessary for him then to make all preparations to undertake the work forthwith. This the Contractor in the instant case did. Immediately he began moving his machinery on the job; he rented office headquarters; he installed a telephone; he sent down a superintendent and an assistant superintendent; he employed a time-keeper. When he had done all this and had started work, the site was not ready for him. It is true that nowhere in the contract does it provide that the site should be turned over to the Contractor ready for him to begin his work. There is no written obligation expressed in this contract that requires the County to furnish the site to the Contractor at any time; while he, the Contractor, was bound in every respect by stipulation and provisions covering his duty.

After the approval of the bond the County Engineer notified the Contractor of the approval of the bond and called his attention to the fact that his time had started to run (Exhibit P-3, p. 272). When the Contractor entered upon the job he found the site encumbered by a water main. He was unable to prosecute his work efficiently. Nearly double the time was required to construct the foundations and piers of the bridge than would have been required had the water main been removed.

The Appellant rests upon the proposition that *it was the reciprocal duty of the County to furnish an unencumbered site to the Contractor at the time that the Contractor had obligated himself to begin the work.*

No case in this jurisdiction is reported which bears upon this identical proposition. However, this Court, in *Atlantic City v. Farmers etc. Co.* 96 Law, 507, propounded the rule which governs such a situation. Atlantic City had contracted with the Company for garbage removal and specified the type of garbage to be removed should be free from rubbish. The City then sued for a breach of the contract, and the Company in defense offered proof that the garbage was intermingled with rubbish. The City urged that there was nothing in the contract which bound it to offer garbage free from rubbish. This Court said:

“The next point made is that it was improper to admit evidence of the various complaints to the plaintiff made by the defendant because of the intermingling of garbage with rubbish. There was no error in the admission of this testimony, *because by the terms of the contract defendant was*

entitled to have all garbage offered, free from rubbish, which the contract expressly excluded, and although the contract did not expressly require the city to offer the garbage in the conditions contracted for, the law will imply a covenant that the city will perform a correlative duty, if it is the manifest intention of the parties, and cannot by its own act prevent the contractor from performing the contract according to its terms. * * * Where a contract obliges one party to perform it, and its performance, within the intention of the parties, requires the performance of a correlative obligation by the other party, such obligation will be implied. As stated in *Lewis v. Atlas Mutual Life Ins. Co.*, 61 Mo. 538: 'It very frequently happens that contracts, on their face, and by their express terms, appear to be obligatory on one party only; but in such cases, if it be manifest that it was the intention of the parties, and the consideration upon which one party assumes an express obligation, that there should be a corresponding and correlative obligation on the other party, such corresponding and correlative obligation will be implied, as, if the act to be done by the party binding himself can only be done upon the corresponding act being done, or allowed, by the other party, an obligation by the latter to do, or allow to be done the act or things necessary for the completion of the contract will be necessarily implied.' This statement of the legal rule was approved in *Hine v. Hinchman-Renton Fireproofing Co.*, 91 C. C. A. 325."

This rule enunciated by this Court has been applied in other jurisdictions to construction contracts. In *Mansfield v. N. Y. C. R. R. Co.* (6 N. E. 386) (N. Y.), the plaintiff contracted to erect an elevator within five months, and to com-

mence work within five days after notice by defendant's engineer of the completion of a foundation. The plaintiff was notified by the engineer, but, upon preparing to begin its contract, found that the foundations were not complete and thereupon brought suit for damages suffered by reason of the delay.

The Appellant has examined not only the reported case, but also the record, which contained the contract. The contract was in most phases similar to the contract in the present case. In both contracts there was no agreement by the owner of the site that the site would be ready for the contractor. The foundations were under contract for erection by an independent contractor. The Court said:

“Notice of readiness to perform implies readiness on the part of the party giving such notice and if he was not in fact ready, neglect on the part of the other party constitutes no default. *It is a well-settled principle of law in the construction of contracts, that when the obligation of performance by one party presupposes the doing of some act on the part of the other, prior thereto, that the neglect or refusal to perform such act, not only dispenses with the obligation of performance by the other, but also entitled him to rescind, or, when rescission will not afford him an adequate remedy, to continue work, and recover such damages as the delinquency has occasioned against the defaulting party.*” (*Cross v. Beard*, 26 N. Y. 88.)

“Looking at this contract in the light of decisions referred to, it would seem that the plainest principles of justice require the implication of a covenant on the part of the defendant to prepare the founda-

tions in question so as to have them in a condition to enable the contractors to prosecute their work to the utmost advantage and economy before giving the notice. *Any other construction would destroy the mutuality of the agreement, and put it practically in the power of one party to defeat performance by the other.*"

A similar state of facts presented itself in *Hine v. Hinchman Fire Proofing Co.*, 165 Fed. 339, where the plaintiff contracted to erect a building for the defendant who was to prepare the foundation. The contract provided that the plaintiff was to have his outfit on the grounds two weeks after notification. The foundation was not ready and the plaintiff sued for damages. The Court said:

*"The obligatory promises to have the Company's outfit on the ground ready for work in two weeks after notice and to complete the work within a given time thereafter carried with it the implied agreement of the other party to be ready for the working outfit when it came after such notification. This mutuality of obligation carried with it accountability on the part of the plaintiff in error for the loss of time necessarily occasioned by the detention of the workmen from entering upon the construction work, after having been brought on the ground on notice from him that the preparatory excavation work was ready for the superstructure. The rule of law, aptly stated by Wagner, J., in *Lewis v. Atlas Mutual Life Insurance Company*, 61 Mo. 538, as follows:*

"It very frequently happens that contracts on their face and by their express terms appear to be obligatory on one party only; but in such cases, if it be manifest

that it was the intention of the parties, and the consideration upon which one party assumes an express obligation, that there should be a corresponding and correlative obligation on the other party, such corresponding and correlative obligation will be implied, as, if the act to be done by the party binding himself can only be done upon a corresponding act being done or allowed by the other party, an obligation by the latter to do or allow to be done the act or things necessary for the completion of the contract, will be necessarily implied. *Pordage v. Cole*, 1 Wm. Saund. 318; *Churchward v. The Queen*, 6 B & S. 807; *Black v. Woodrow*, 39 Md. 194.' "

In *Weeks v. Trinity Church*, 67 N. Y. S. 670, the plaintiff entered into a contract to furnish mason work in the building which the defendant was about to erect. The defendant failed to obtain a building permit and by reason of the delay the plaintiff brought suit for damages. In setting aside the nonsuit the Court said:

"The defendant had not in terms assumed in the contract the obligation which the plaintiff insisted it had incurred and the first question presented is whether any such obligation was to be implied. It is quite evident that the obligation upon the plaintiff to proceed promptly and diligently with his work gave to him the right to enter upon the premises and involved necessarily an obligation on the part of the defendant that he should not be interfered with while he was engaged in completing his contract, and also an obligation on the part of the defendant that if the law required any act to be done by it before the work could be commenced under the contract, it would perform that obligation. The rule of law is that when the obligation

of performance by one party to a contract presupposes the doing of another act prior thereto, there arises an implied obligation of the second party to do the act which the performance of the contract necessarily involves."

In *Beskin v. State*, 195 N. Y. S. 951, the plaintiff entered into a contract with the State of New York to surface a highway. The State was to provide a certain base. Beskin's contract provided that he should start work within ten days after the execution of it. He prepared to do so and was forced to maintain his equipment until the State turned over the site to him ready to proceed. He brought suit for the resulting damages. In affirming a judgment in his favor, the Court said:

"Where the failure of a contractor to complete the work by the time set is due to a default of the owner, the contractor may, without notice, complete the work and recover the additional expenses made necessary to the delay. * * * When the contractor in the spring of 1918 was ready with his plant to proceed with the contract, the State, because of its omission to have a short base or make provisions for it, prevented the contractor from going on with the work, so that he could complete it in that season but compelled the contractor to wait until a short base was placed upon this highway. This compelled the contractor to carry his original contract before the completion thereof from that season until the following season."

On all fours with the present case is that of *Bates & Rogers Const. Co. v. Cuyahoga County*, 274 Fed. 659. Though it nowhere appeared in the proof in the present case that the water main

which prevented the contractor from proceeding with his work was owned by Atlantic City, the cross-examination tended to indicate that such was the case. In the *Bates* case, the facts were identical. Bates & Rogers had entered into a contract with the County to construct approaches to a bridge. This contract provided that he should begin work ten days after the execution of the contract, and should complete it within a certain specified number of days. Appellant has caused an examination to be made of the contract in the *Bates* case. The contract contained all the provisions that the contract under review contained. It contained general provisions as to inspection of the site by the contractor before bidding; that the Contractor should be responsible for any damage caused by unforeseen obstructions or delays met in the progress of the work; and that the Contractor was well acquainted with the difficulties at the site. At the time of the execution of the contract, the City of Cleveland was working upon gas, sewer and water mains at the site where the approaches were to be constructed. It is to be remembered that the contract was with the County. The City owned these different mains. The delay of the City in completing the work upon these various mains in turn rendered the site encumbered. The contract itself nowhere stated that the County was to furnish a cleared site to the contractor for his work. It did, however, require the Contractor to begin his work at a time certain and to complete it within a definite time.

Upon a suit brought by the contractor for the damage resulting, the County moved to dismiss upon the ground that there was no obligation up-

on the County to furnish a clear site. The Court held otherwise:

*“An implied, if not expressed, covenant is contained in this contract requiring defendant to furnish and deliver the site in a condition to permit work to be done and failure so to do is a wrongful breach of the contract for which the contractor may recover damages. * * * Assuming, without deciding as contended by the defendant, that the assurance given as to the date when possession of the site would be delivered cannot be proved because even though the written contract was silent with respect thereto, it must, nevertheless, control, then the law implies either that the site should be ready for delivery upon execution of the contract or at least within a reasonable time thereafter.”*

This case would seem dispositive of the Contractor's right to bring suit, and his right to such damages as may have been caused by the failure of the County to deliver to him an unobstructed site for his work at the time when he was obligated to begin work. In the words of the Courts, there was a reciprocal obligation upon Atlantic County to furnish the site to the Contractor unencumbered at the time, when the contract was obligated explicitly and expressly to begin work. This duty of the County is a duty implied from the contract. Failure to furnish the site was as real a breach of the contract by the County as a failure by the Contractor to begin work would have been.

To the same effect are the following cases:

Owen v. U. S., 44 Court of Claims 440.
Atlantic Coast Line R. Co. v. Walkup Co., 132 Va. 386.

Blanchard v. Inhabitants of Blackstone, 132 Mass. 343.

Black v. Woodrow, 39 Md. 194.

Grace Cont. Co. v. C. & O. R. Co., 282 Fed. 904.

Olson v. City of Viroqua, 121 Wis. 571.

Brown v. Langner, 25 Ind. Appeals, 538.

U. S. v. Muller, 113 U. S. 153.

Belmar Cont. Co. v. State, 185 N. Y. S., reversed on other grounds, where it is stated:

“It is a settled law that a contractor who is delayed in commencing work may, nevertheless, undertake it; that he may complete it within the period determined by the contract, plus the time of delay; that he may then sue for damages caused by the original delay.”

Of all the cases cited, perhaps *Beskin v. State* and *Bates & Rogers v. Cuyahoga County*, more nearly present the facts of the case *sub judice* than any of the others.

The *Bates* case is particularly in point, involving all the issues of the present case, and the attention of this Court is most respectfully directed to it. The contract, which is not set forth in the report, but which appellant has examined, contained provisions practically identical with the provisions of the Atlantic County contract. The encumbered site was a visible condition at the time of the letting of bids and work was being done upon the site as was being done in Atlantic County. There was no agreement in the contract that the County would furnish the site ready for the Contractor to prosecute his work.

On the contrary, the contract, as in the instant case, provided that any unforeseen obstructions or delays met in the progress of the work were to be borne by the Contractor. Notwithstanding these provisions the Court held, and rightly and justly, that the Contractor was entitled to receive the site clear and unencumbered of obstructions at the time when he was obligated to begin work.

So, in the instant case, notwithstanding the fact that the contract with Atlantic County contained no provision obligating the County to furnish the site to the Contractor ready for construction, and the fact that the contract did contain a clause requiring inspection of the site before bidding, and the additional fact that work was being done upon the water main at the time of making the bid, does not in any way exculpate the County from its failure to deliver the site to the Contractor clear and unencumbered at the time when the contract required that he should begin work there. If the County failed to do this, and admittedly it did so fail, then it was liable to the Contractor for all damages naturally and proximately resulting from the breach of its implied contract.

II.

Though the act of a third party may have caused the default of the County in its obligation to furnish the site to the contractor, this does not release the County.

The decision of the Court in granting the motion for nonsuit (see page 153) does not expressly give this as a reason for granting the nonsuit. A careful reading, however, of the Court's opinion, together with the Court's statement that the water main belonged to the City of Atlantic City, and was being removed by its Contractor, and that notwithstanding this fact and this knowledge, the Contractor submitted his bid and entered into the contract in the case, supports the inference that the Trial Court presumed that any delay caused by the City of Atlantic City, a third party, or by its Contractor, would excuse the County.

Of course, there was no contractual relationship between the Contractor and Atlantic City, or Atlantic City's contractor. This suit throughout was based upon the contractual relationship existing between the County of Atlantic and S. S. Thompson & Company. It is immaterial, so far as the rights of the Contractor are concerned, whether the site was encumbered by Atlantic City, Atlantic County, or the Pennsylvania Railroad. The only party with whom the Contractor had any dealings, or to whom the Contractor was responsible, or owed any obligation, was Atlantic County. As has been pointed out, there was a definite obligation on the part of the County to turn the site over to the Contractor, who, in turn,

was obligated to begin work. Failure by the County to do this, no matter who caused the failure, no more relieved the County from its liability than failure of the steel people to deliver the ironwork to Thompson would have relieved him of liability. There was a definite and distinct duty owing from one to the other of these contracting parties, and a breach of this duty by one or the other entitled the injured party to damages. So, Atlantic County, in the present case, cannot be heard to excuse itself on the ground that its breach was caused by a third party.

In *Stehlin-Miller Henes Co. v. Bridgeport*, 117 Atl. 811 (Conn.), the plaintiff contracted to complete the installation of a heating system in a school building at a certain definite time. The plaintiff was ready to install the plant but was delayed because of the failure of other independent contractors to complete their work. The plaintiff was awarded a judgment for damages caused by this delay. The City urged that it was not liable for the default of the other contractors. The Court said:

“The rule is undoubted in circumstances such as were present in this case that an implied contract arose on the part of the defendant to keep the work on the building, whether done by itself or other contractors, in such a state of forwardness as would enable the plaintiff to complete its contracts within the time limited.”

9 C. J. 790:

“The owner is liable in damages to the builder for a delay in performance of his part or caused by some act of his or his representatives * * * In case of a de-

lay caused by the owner, the builder is not obliged to abandon the work and sue for damages, but he may proceed to complete the work and then claim damages.”

In *Perrine v. Stanfield*, 107 Mich. 553, the plaintiff recovered a judgment for delay against the defendant, a contractor to whom the owner had agreed to furnish materials. Plaintiff was a sub-contractor. The owner failed to furnish the materials to the contractor. Plaintiff had knowingly entered into his sub-contract while acquainted with this provision of the main contract. The contractor urged that the delay was caused by the owner and that the sub-contractor had entered into his contract with knowledge of the conditions. The Court held that the plaintiff was relying on his contract and if he was delayed through the failure of the defendant to have the work ready he could recover against the defendant, who, in turn, might have a right of action against the owner. The fact that the owner had caused the defendant to breach his contract with the plaintiff was no defense to the plaintiff's action against the defendant.

In *Fisher Electric Co. v. Bath Iron Works*, 115 Mich. 293, plaintiff entered into a contract with the defendant to equip boats being built for the Government by the defendant. The Government failed to furnish the defendant with the specifications and the defendant was therefore obliged to delay the plaintiff. Plaintiff thereupon brought suit for damages. The defendant urged that the plaintiff, when he entered into the contract, took it subject to the risk of delay by the Government. The Court held otherwise, and said:

“The agreement to furnish these drawings was made by the defendant and the plaintiff could look to it and no one else for the failure to furnish them * * * The Court was, therefore, correct in holding the defendant liable for any damages which resulted from delay in furnishing the drawings.”

In *Nelson v. Pickwick*, 30 Ill. 333, the plaintiff entered into a contract with the defendant to finish certain work in a building within a definite time. If he was delayed by other contractors, the contract gave him an extension of time. He received this extension, but, nevertheless, brought suit because the building was not ready and he had suffered damage by the delay. A judgment in favor of the plaintiff was affirmed by the Court on the ground that there is a reciprocal duty and the fact that the delay was caused by other contractors did not relieve the defendant of his obligation to furnish the site to the plaintiff.

III.

The delay caused the contractor is not contemplated by any provisions in the contract.

In the argument on the nonsuit the Court's attention was called to Section 18 of the contract which reads as follows:

“Any loss or damage arising from unforeseen obstructions or difficulties encountered in the prosecution of the work must be sustained by the contractor” (p. 170, ll. 20-24).

Attention was also called to the following section prospective bidders were directed to visit

the site and familiarize themselves with the conditions, particularly the difficulties existing at the site (p. 160, ll. 8-16); reference was made to the bidding blank, wherein it is stated, "And having carefully studied the site of the work to ascertain the conditions, particularly the difficulties, existing there" (p. 254, ll. 1-7).

The Trial Court then, apparently, among its other reasons for granting a nonsuit, held that the existence of this water main upon the site was an obstruction or difficulty within the various provisions of the contract.

It is respectfully submitted that in this the Trial Court erred. A clear reading of the contract can lead to the sole conclusion that the obstructions or difficulties existing there are to be those met in the progress of the work. In other words, had the contractor, in sinking the piers, encountered a sunken barge or wreck, this would have been, within the terms of the contract, an unforeseen obstruction or difficulty. Had the Contractor, within the terms of the contract, run into quick sand or rock ledges, within the terms of the instant contract, this also would have been an unforeseen obstruction or difficulty met in the progress of the work. On the other hand, this water main was neither unforeseen *nor* unknown, but was visible. It was in an actual state of removal. It barred any work within the strict performance of the plans, and therefore, *could not have been encountered in the* PROGRESS of the work, and so cannot be considered within the contemplation of the terms of the contract.

Had the Contractor, after the site had been turned over to him free from obstructions so that

he could begin work, found sunken piling, tree stumps or obstructions of which he did not know, but which he encountered as the work went along, this loss and delay would have been upon his shoulders alone. Furthermore, had a vessel run into or drifted into the piers and substructure of the work during the course of construction, this also would have been an unforeseen difficulty met in the course of the work. But to term this water main, which occupied the site of the work, which was within the control of the County, which the County knew was there, which the County realized absolutely barred the prosecution of the contract, an obstruction or difficulty encountered in the progress of the work, is a strained and unnatural meaning to force upon the instrument. The contract must be read as a whole to determine this meaning.

It has already been pointed out that there was an obligation on the part of the County to turn over the site ready for work. *If this obligation existed, then the Contractor was freed from any duty to consider or take into account any encumbrances upon the site of the work.* In other words, once it is admitted, as the Trial Court admitted, that the County owed an implied duty to deliver the site to the Contractor, then, logically, if the Contractor was entitled to receive this site ready for work he was freed from any responsibility for encumbrances upon the site which were to be removed.

The County itself, by its own acts, realized that such was the fact.

When the water main had been removed, there still remained the piling which had supported the

water main. The County agreed to pay Thompson for the removal of this piling. The piling was an integral part of the water main. If no duty was owed to the Contractor because of the existence of the water main, then assuredly no duty was owed to the Contractor because of the existence of the piling. However, the County recognized its duty in that behalf and authorized the removal, and the payment of the cost of removal.

In *Horgan v. City of New York*, 160 N. Y. 516, the plaintiff contracted to construct a concrete bottom on a pond, after having completed the excavation. The water was let off from the pond and then it was discovered that it would be necessary to pump out what would not flow out through the outlet. The contract contained this clause:

“All loss or damage arising out of the nature of the work to be done under this agreement or from any unforeseen obstructions or difficulties, which may be encountered in the prosecution of the same or from the action of the elements, or from encumbrances on the line of the work, or from any act or omission on the part of the contractor, or any person or agent employed by him, not authorized by this agreement, shall be sustained by said contractor.”

Notwithstanding the existence of this clause, the Contractor brought suit upon the ground that the obstruction which was encountered by the contractor was not contemplated within the terms of the contract. In other words, it was not met within the prosecution of the work. The Court agreed and said:

“When this provision is reasonably construed, it does not operate against the plaintiff as contended. *It must be held to apply to the work to be done, and the unforeseen obstructions or difficulties which may be encountered under the agreement. The unforeseen obstruction that was encountered and that subjected this plaintiff to a large amount of extra work, was entirely outside of the contract and stands unaffected by this provision.*”

In *Johnson Construction Co. v. State of New York*, 211 N. Y. (A. D. 512), a contract had been made with the State to build a highway in the City of Jamestown. The City was laying sewer, gas and water mains in the street. This work was going on when the plaintiff signed the contract. The contract, which has been examined by the appellant, contained clauses similar to the instant contract and provided that the bidders should inspect the site, particularly the difficulties existing there, and “that any loss or damage arising out of the nature of the work to be done or from unforeseen obstructions or difficulties” shall be borne by the contractor. The State claimed that the contract was made at the time when mains were actually being laid in the street; that the contractor was aware of this and that he had signed the contract. As a result of the delay the contractor was forced to wait a whole season before he proceeded with his contract. The State further urged that not it, but that the City of Jamestown had caused the delay. The Court held that the State was responsible, and said:

“Since the claimant was not permitted by the defendant to proceed under this contract until July 1, 1917, *the State is re-*

sponsible for the delay to the extent, not only of damages fairly within the contemplation of the parties, but of all damages which naturally flow from the breach."

In *Bates & Rogers Const. Co. v. Cuyahoga Co.*, *supra*, the contract contained the same provisions with reference to unforeseen obstructions and difficulties. Furthermore, both the bidding blank, the notice to bidders, and the contract, provided for obstructions and difficulties in the progress of the work. Bids were called for and submitted while work was being done on the water and gas mains, and the contract was made during this time. Notwithstanding such a situation, the contractor was permitted to recover and the Court said:

"No construction of isolated paragraphs can be indulged or permitted which would destroy the essence of the contract and deprive it of its mutuality."

IV.

The contractor, by proceeding with the work, did not waive the breach by the County of its implied obligation.

The Trial Court, in granting the nonsuit, held that the Contractor suggested that the bridge be built in halves and only asked for an extension of time, and, thereupon proceeded with his work to the very finish, without making any claim against the County for the damage.

It is submitted that the act of the Contractor was no waiver of the breach. This contract placed the Contractor in an extremely precarious situation. He was compelled by the contract to

begin work within a certain definite time, and to prosecute it energetically. In the event that he did not do so the County could abrogate the contract, finish the work and hold him responsible for damages. He might very well have refused to proceed until the site had been delivered to him. This may have, however, caused greater damages. In his judgment, it was best to mitigate these damages and do what work he could. Furthermore, he exercised one of two options, he could have either cancelled his contract outright, or proceeded with the contract under the existing conditions and then claimed the damages which he suffered. He chose the latter course and did what work he could until the site had been delivered to him in an endeavor to mitigate the damages.

In *Allamon v. City of Albany*, 43 Bar. (N. Y.) 33, the plaintiff entered into a contract with the City to do the carpenter work on a schoolhouse and sued for damages because the defendant failed to have the building ready. The City urged that the plaintiff, by proceeding with the work, in spite of the delay, had waived the breach, and that it was the duty of the plaintiff to object and complain. The Court said:

“The plaintiff agreed to commence the work and proceed with it without delay. It necessarily follows that the defendants were to furnish an opportunity to carry out the contract and impliedly agreed to do so. There being obligation on the part of the defendant which was not performed by them and the plaintiff having sustained damages by reason of such performance, it follows that the action was properly brought. It is said that the plaintiff waived

the alleged breach of the contract, by going on without complaint or objection and completing the work, some three months after the execution of the contract. I think *there was no waiver by proceeding with the contract*; the failure of the defendant to have the building ready for him prevented his going on with it at an earlier day. *He had the right to proceed with it afterward and compel the defendants to pay the increased expenses incurred by reason of the delay.* Where a party was prevented from the performance of a contract within the stipulated time by the omission of the other, and subsequently performed the work agreed upon at a higher price, it was held that he was not obligated to bring his action on the contract, but might resort to the *quantum meruit* to obtain his indemnity. (*Dubois v. The Delaware and Hudson Canal Co.*, 4 Wend. 285.) The Court also held in that case that if the work was more expensive, the additional expenses thus incurred should be added to the contract price. The loss may have been far greater to abandon the contract entirely, than to proceed with its execution so far as practicable; and under the authority cited, the actual damages would not be confined to the actual loss at that time. Nor do I understand that the authorities referred to by the defendant's counsel hold any such doctrine, under circumstances similar to the present case. (See 17 John. 357; 7 Hill 61.) The plaintiff had, I think, a perfect right to proceed to fulfill the contract and the defendants, as they had failed to perform it, were liable for all damages incurred by reason of his doing so."

In *Mansfield v. N. Y. C. R. Co.*, *supra*, the same argument was urged that the contractor, in proceeding with the work in spite of the delay and

without making objections, had waived the breach. The Court held otherwise and said:

“It is also claimed by the respondent that the act of the contractor in commencing the work within five days after receipt of the notice in question constituted a waiver of the breach complained of * * *
When the breach occurred, the contractors undoubtedly had the option offered them of refusing to commence their work until the foundations were actually ready, or to commence and prosecute it, relying upon the covenants of their contract to recover such damages as the breach occasioned them.”

In *Tobey v. Price*, Ill. 645, the plaintiff had entered into a contract with the defendant to erect a building, except that the iron and stone work was to be done by other contractors. Plaintiff was delayed and recovered damages. The owner appealed and argued that the plaintiff should have abandoned his job rather than complete it. The Court held otherwise and affirmed the judgment, saying:

“The performance of the contract by appellee (builder) was dependent on performance by appellant (owner) and if he neglected or failed to perform in due season his part of the contract by which appellee was delayed in the completion of the work to his damage, common reason suggests he should be compensated therefor.”

So, in the instant case, there was no waiver by the Contractor of the breach by the County of its obligation to deliver the site ready for work. Not only was there a definite contract to begin work on a certain day, but also certain penalties were set up. Furthermore, it may have been

cheaper, for the Contractor having ordered all the material, including the steel work, cement, and other work, all of which was peculiar for a special type of bridge, to have proceeded and completed the job as best he could, rather than rescind the contract and sue for the resultant damages. The Contractor exercised a definite right given to him by law to complete his contract as best he might and then sue for damages caused by the delay.

V.

CONCLUSION.

The contract in the present case imposed a definite obligation on the Contractor to begin work on January 22, 1927. This in turn imposed an implied obligation on the part of the County to furnish the site to the Contractor clear of obstructions and ready for the work. An obstruction existing upon the site through the failure or neglect of a third party did not free the County of its implied contract to deliver the site to the Contractor. The Contractor can look alone to the County for the damages suffered by him by reason of the delay in the furnishing of the site free and clear of this obstruction. The water main which did exist on the site is not, within the terms of the contract, an unforeseen obstruction or difficulty, nor within the terms of the bidding blank or the notice to bidders, an existing difficulty, for, upon the execution of the contract there arose an obligation on the part of the County to furnish the site free of obstructions. There was no waiver on the part of the Contract-

tor proceeding with the work, for this was his right under the contract, and the County is liable for any damages caused by reason of its breach.

It is therefore respectfully submitted that the nonsuit of the learned Trial Court was erroneous, should be set aside and for nothing holden, and that a new trial may be had.

Respectfully submitted,

QUINN, PARSONS & DOREMUS,
Attorneys for Plaintiff-Appellant.

THEODORE D. PARSONS,
Of Counsel.

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NEW JERSEY

Court of Errors and Appeals

S. S. THOMPSON & COMPANY, <i>Plaintiff-Appellant,</i>	} Action at Law on Appeal from New Jersey Supreme Court
<i>vs.</i>	
THE COUNTY OF ATLANTIC, <i>Defendant-Respondent</i>	

BRIEF OF ENOCH A. HIGBEE,

Attorney for Defendant-Respondent

The State of Case in this cause is full of errors. I have not chosen to take advantage of that, and only call the court's attention to it from the fact that in reading the testimony and State of Case it may not correspond with the statement of facts made in the Brief of the plaintiff-appellant. In the Brief of the plaintiff-appellant I think the facts are correctly stated, with one exception. There is a statement therein made that it was the duty of the County to deliver the site to the contractor within ten days after awarding the contract, but that statement evidently is made upon the assumption that it was a legal obligation and not a written one, for later on in their Brief they say, "It is true that nowhere in the contract does it provide that the site should be turned over to the contractor ready for him to begin his work. There is no written obligation expressed in this contract that requires the County to furnish the site to the contractor at any time, while he, the contractor, was bound in every respect by stipulations and provisions covering his duty."

I cannot cite the pages in their Brief as I have not yet been served with a printed copy thereof.

The reasons set forth for the appeal in the notice served were, first, "that the Trial Court erred in granting a non-suit to the defendant as to the second and fourth counts of the complaint," and second, "the Trial Court erred in directing a verdict in favor of the plaintiff in the sum of \$3,035.08, whereas said verdict should have been for a greater sum."

In the plaintiff-appellant's Brief they do not argue Reason No. 2. The only question which they urge for reversal is that the Trial Court erred in granting a non-suit to the defendant as to the second and fourth counts of the complaint. Therefore I shall only attempt to argue such matters as pertain to those exceptions.

The court's attention is directed to the second and fourth counts of the complaint found in State of Case, pgs. 6 and 7. The third count is not printed in the State of Case, but inasmuch as that was stricken out and no exceptions were taken, it is immaterial. When the trial of this cause first started I moved to strike out both these counts on several reasons assigned and argued before the Trial Court, chief among which was that neither of these counts sufficiently disclosed a cause of action to inform the defendant what he was called upon to meet, and I confess that I cannot, from reading them now, determine any cause of action alleged in the second count, with the exception of the allegations in paragraphs 6 and 7, the sixth paragraph alleging that "it became the duty of the defendant to furnish a place to perform said contract in accordance with plans and specifications, on or before January 22, 1927," and in the seventh paragraph the statement that "notwithstanding the obligation of the defendant to so furnish such place, the defendant refused and failed to furnish such place, contrary to the plans and specifications, and did neglect and refuse to furnish such place."

The evidence in the case shows clearly that the defendant furnished the site on which the bridge was to be

built, but that the same was encumbered by a water pipe owned by Atlantic City which was being removed under the authority of Atlantic City, and because of that encumbrance the plaintiff-appellant claims he is entitled to damages.

The fourth count seems to set forth as the right of recovery that the defendant permitted other contractors to enter upon the premises and approaches to said bridge and obstructed the plaintiff in its work.

See par. 3, p. 8, State of Case.

No testimony was produced to show that other contractors entered upon the premises and approaches to the bridge and obstructed plaintiff's work. In fact that claim was abandoned at the trial.

The court's attention is directed to the fact that neither of these counts sets forth any claim for damages, that is, sets forth any amount in which they were damaged, and therefore the plaintiff was not entitled to recover under said counts at any rate. The rules of pleading require that every count must be complete within itself and must conclude by statement of the damages claimed, and failure to so state damages makes the count incomplete, and no verdict could be given in damages under such count.

Burrel's Practice, Vol. 1, pgs. 127-133.

The whole gist of the argument of plaintiff-appellant for the right to a reversal is based upon the fact that the site on which the bridge was built, before and at the time of the contract being entered into was encumbered by a water main owned by Atlantic City, and that notwithstanding the plaintiff knew of the existence of this water main and knew of its existence at the time that he submitted his bid, and entered into the contract and knew that it was a water main of Atlantic City which was being removed by Atlantic City, and that the County did not oblige itself to remove the same, that he is entitled to recover for any delay that was caused by the

water pipe not being removed at the time he entered upon the performance of his work. I think the Brief of the appellant fully and clearly states the facts in relation to this matter and I do not care to rehearse them except to state that the contractor knew before ever he submitted his bid that this water pipe was an encumbrance upon the site on which he was to erect the bridge in question. He knew that it belonged to Atlantic City, and he knew that the authorities of Atlantic City were having it removed. He spoke with the persons who were removing the water pipe, asking how long it would be before the pipe line would be out of there, and he knew that the County was not intending to remove it, and with full knowledge of those facts he submitted his bid and entered upon the performance of his contract.

I refer to State of Case, p. 120, below line 10. These questions were asked Mr. Thompson; who was the contractor:

Q. When you made the examination before this bid, will you tell us what you found? A. Well, practically two or three weeks before we made the bid, before the time for the bids to be received, I visited the site, went over the bridge, and looked around; went down and saw what is known as the east side; saw some men with two machines, operating divers, etc., removing the pipe line; saw the rest of the bridge in toto, as was; asked some questions. Q. Did you obtain information as to what those men were doing? A. Yes, sir. Q. And as the result of the information that you obtained, what did you find out about this pipe line? A. Well, I asked them how long they would be before the pipe line would be out of there. I asked—the man I saw was the foreman on one of the scows. Q. And what information did you receive as to the length of time the pipe line would be out? A. He said about a month.

On cross-examination, p. 131, State of Case, this testimony appears:

Q. You visited the *locus in quo*, or the scene of this bridge, before preparing your bid; did you not? A.

Yes, sir. Q. And you saw men there removing the water pipe? A. Yes. Q. You therefore knew that the water pipe was there; didn't you? A. Yes, sir. Q. You knew at that time that the men removing that water pipe were employees of Atlantic City; didn't you? A. I didn't ask them that. (The question as printed in State of Case is incorrectly set forth; the question there says "were not employees of Atlantic City," whereas the question should have been "were employees of Atlantic City.") Q. Did you make any inquiry as to who they were or who the water pipe belonged to, or anything of that kind? A. No, sir. I assumed that the water pipe belonged to Atlantic City. Q. And you afterwards found that that was correct; did you not? A. Yes, sir; as far as I know; I assumed—I assume it is yet.

There is considerable other testimony to show that the employees of Mr. Thompson knew of the existence of this water pipe before and at the time they entered upon the erection of this bridge, but I deem that immaterial, and it seems to me the whole question in this case resolves itself around the testimony of Mr. Thompson above quoted and the various conditions set forth in the specifications, recited in the plaintiff-appellant's Brief, among which is the following: "Prospective bidders are hereby directed to carefully read and consider the plans and specifications and to visit the site of the work so that they may thoroughly familiarize themselves with the conditions, *particularly the difficulties, existing at the site.* No consideration will be given to any claim that a bid was made without full comprehension of the conditions to be encountered."

State of Case, p. 160.

Again, in the contract or specifications are these words: "Any loss or damage arising from unforeseen obstructions or *difficulties encountered in the prosecution of the work,* must be sustained by the Contractor."

State of Case, p. 170.

Also, on the bidding blank on which the bid was submitted, is the following statement: "Having carefully examined the specifications and all plans covering the proposed reconstruction of the bridge spanning Inside Thorofare in Atlantic City, known as the Albany Avenue Bridge, upon which bids have been invited by advertisement to be submitted to you on Dec. 15, 1926, and having carefully studied the site of the work to ascertain the conditions, *particularly the difficulties, existing there*, the undersigned will provide all necessary machinery, tools, apparatus and other means of construction, will do all the work and furnish all materials required by the plans and specifications and in the manner shown by the plans and in accordance with the instructions of your Engineer."

State of Case, p. 253.

A careful examination of the evidence in this case clearly shows that the plaintiff entered upon this contract with full knowledge that this water pipe was an encumbrance and was being removed by a third party; that the County had made no provision for its removal; that the removal was by the authorities of Atlantic City and they did remove the water pipe in its entirety but left some piling that was still an encumbrance, and which the plaintiff himself removed and for which the County paid the price which he asked. He submitted his bid and entered upon the performance of his contract with full knowledge of these facts, and made no claim against the County until after the work had been completed, when, under advice of his counsel, he failed to submit for payment the estimates which the Engineer had given him and which he acknowledged was a correct estimate under the terms of the contract, unless he was entitled to damages by reason of the delay caused by the water pipe. The learned Trial Court concisely and accurately stated the facts in this case when he said: "It seems to me that under the terms of this contract, the contractor was bound, before he put in his bid, to go down to the site, inspect it and ascertain the working conditions

there. That he did do so is evidenced by his testimony in which he says that he made the inspection, and that while there he saw workmen engaged in removing the pipe, water pipe, or water main, of which he complains; that with view of the fact that that belonged to the City of Atlantic City, and was being removed by its contractor, he saw fit to put in a bid under the terms of a contract which distinctly called his attention to any existing difficulties, and difficulties that might arise, and in which he assumed the burden of those difficulties and obstructions; that under the terms of the particular contract in question, the County lived up to every obligation it owed to the contractor. I recognize that there is an implied obligation on the part of the City as set forth in the Farmers Supply case, but it seems to me, that under the contract in this case, when the County turned over this site to the contractor, encumbered only by a pipe or main which was then being removed by the City, and of which the contractor had full knowledge, there was no implied obligation on the part of the County that that pipe would be removed at the time the work was started; but that the contractor assumed the liability or the possibility of the pipes not being removed, or of the pipes interfering with him during the time he was constructing his work.

It would seem, from the testimony, to me, that he himself so construed the contract as between himself and the county; because as he started his work he found that he was being interfered with and went to the engineer and suggested that he build it in halves, and the only thing he asked for at that time was that he be given an extension of time, and he proceeded with his work, up to the very finish of his work, without making any claim against the county for the damage which he now contends he suffered by reason of the County not having removed the pipe, or not having seen that it was removed.

So that it seems to me he is not entitled to recover under the theory of an implied obligation on the part of the County, and that he is bound under his contract to finish his work in accordance with the terms thereof."

State of Case, pgs. 153-154.

I have read with a great deal of interest the elaborate and able Brief of counsel for the plaintiff-appellant, and while I have not had an opportunity to examine all of the cases therein cited, I do not believe that any one of the cases cited had involved the principles that are involved in this case. Surely the case of Farmers Supply Company, reported in 96 N. J. Law, p. 507, has no application to the facts in this case. I respectfully submit that the following cases are applicable to the facts in this case:

School Trustees of Trenton vs. Bennett, 27 N. J. L., p. 513

Middlesex Water Co. vs. Knappmann Whiting Co., 64 N. J. L., p. 240

Kuppersmith vs. Delaware Ins. Co., 84 N. J. L., p. 271

Waterworks Equipment Co. vs. McGovern, 96 N. J. Eq., p. 520

Mansfield vs. Cape May County, 143 At. Rep., p. 379

All these cases I believe are Court of Errors and Appeals cases excepting the case reported in 96 N. J. Eq. which was affirmed by the Court of Errors and Appeals and reported in 98 N. J. Eq., p. 701.

I respectfully submit that the Trial Court committed no error in granting a non-suit on the counts complained of, and ask that the appeal be dismissed, with costs.

Respectfully submitted,

ENOCH A. HIGBEE,

Attorney for Defendant-Respondent.