

New Jersey Court of Errors and Appeals

JAMES DEVLIN and WILLIAM T.

S. CRICHFIELD,

Prosecutors-Appellants,

vs.

THE MAYOR AND ALDERMEN OF

JERSEY CITY and CLINTON

CONTRACTING COMPANY,

Defendants-Respondents.

On Appeal

from

Supreme

Court.

Brief for Appellants.

1.

Statement of the Case.

A writ of certiorari was allowed on April 22, 1916, to review a resolution of the Board of Commissioners of Jersey City, passed April 18, 1916, awarding to the defendant Clinton Contracting Company a contract "for the resurfacing with bituminous concrete of macadam roadways and asphalt streets" (which are out of guarantee).

The Clinton Contracting Company was the lowest of three bidders for this work. The prosecutor Devlin is a property owner and tax payer in Jersey City. Prosecutor Crichfield was one of the bidders.

The writ was heard before the Supreme Court on June 19, 1916. It was contended for the prosecutors that there must be a "common standard" for competition for municipal work of this kind which must be let to the lowest responsible bidder, and that this principle was violated in several respects by the specifications

under review. On June 30, 1916, a *per curiam* opinion was filed as follows:

“We think the contract must be treated as a single contract for repairs to various streets. In such a contract much must necessarily be left to the judgment and direction of the city authorities, such as the streets to be paved. No doubt this opens the door to favoritism, but we have no right to assume that the selection of the streets to be repaired at any particular time will be governed by any consideration except the public need.

“The extent of the obligation under the maintenance bond will depend on the amount of work done and we see no valid objection on this score. All bidders seem to have had the same chance.

“In repair work of this kind it is probably impossible to state accurately all the work that may be required, such as the depth of binder on the asphalt pavements and the grade to which the bituminous concrete pavement is to be brought.

“We think the conditions on which bidders were required to bid were stated as definitely as was probably practicable and that there should be judgment for the defendants.”

It is from this decision that the present appeal is taken and the same reasons urged in the Supreme Court for reversal of the proceedings below are urged here.

2.

Grounds of Appeal.

The Supreme Court erred because it did not reverse the proceedings under review for one or more of the following reasons:

The contract and specifications under which the work described in the proceedings under review was to be performed did not establish a common standard for bidding and prevented fair and open competition by reason of:

(a) The said contract and specifications did not state what streets are to be resurfaced, but left that matter to the arbitrary determination of the Director of Streets and Public Improvements of the City of Jersey City, without affording to bidders an opportunity to examine or inspect these streets to be resurfaced or the location thereof or the condition of the pavement thereon or the amount of traffic using the same;

(b) The said contract and specifications required the contractor to enter into a contract and bond guaranteeing the pavement to be in good condition during and at the end of ten years from the date of its completion and acceptance, without stating the amount of such bond or giving any information whereby the amount of such bond might be determined;

(c) The said contract and specifications so far as they relate to the resurfacing of asphalt streets, did not state the amount or depth of such binder;

(d) The said contract and specifications so far as they relate to the resurfacing of asphalt streets required the asphalt wearing surface and binder to be brought to the proper grade, but they did not state what was the proper grade,

nor afford any means to bidders of determining the same.

(e) The said contract and specifications so far as they relate to the existing macadam or stone foundation, specified that old or new broken stone might be used in filling up depressions in the roadway, but they did not state the extent of the depressions nor afford any means whereby bidders might determine same, nor was any information given as to the quantity of broken stone required for the purpose of carrying out the contract.

(f) The contract and specifications so far as they relate to the existing macadam or stone foundation specified that old or new broken stone might be used in filling up depressions in the roadway, but they did not make any provision for determining the quantity of new stone that might be required or the price to be paid therefor, nor was any information given to bidders whereby such facts might be determined, nor was there any provision for making payment for such new stone as might be required.

We shall consider the points raised in the order stated.

3.

The prosecutors both have the right to attack the proceedings under review.

Before going into the law or the argument we shall dispose of this objection which was raised in the court below: The defendants in the Supreme Court sought to challenge the status of the prosecutors, that of one, because he bid on specifications he now attacks, and that of the other, because his attack was at the request and at the expense of his colleague. There is no

ground for this criticism. The circumstances were as follows:

When Mr. Crichfield was examining the specifications with a view to bidding he read them to Mr. Devlin, the lessor of property connected with the asphalt plant, and pointed out the serious defect that will be the main point of challenge. Mr. Devlin at once perceived that the specifications were not fair to bidders, and so expressed himself (p. 85). Crichfield having in mind to bid notwithstanding this unfairness, and fearing that his doing so might estop his challenge of an award to another bidder, asked Devlin if he would be willing to become prosecutor in such a contingency, to which Devlin consented. See Crichfield's full explanation (pp. 90, 91). Devlin became prosecutor and being a large taxpayer owning upwards of \$20,000 worth of real estate has undoubtedly a legal status as such. *Levy vs. Elizabeth*, 81 N. J. L. 643, and cases cited. Mr. Crichfield naturally bears the expense. His fear that having entered the competition he might be held to be estopped from attacking the award to another was unfounded (see 2 Dillon sec. 808, p. 1216), but it was prudential to enlist the aid of one having an unquestionable status and legally unembarrassed. The Supreme Court implicitly held that the prosecutors have legal status for it decided the case on the merits and passed this objection without even commenting thereon.

Legal status being established, the only question for the court is as to the legality of the proceeding attacked. The motive of the prosecutor is immaterial. Mr. Devlin's status is unassailable, and for that matter so is that of Mr. Crichfield. There can be no element of estoppel in such a case.

The Law.

The reasons set forth that the contract and specifications under which the work described in the proceedings under review was to be performed did not establish a common standard for bidding and prevented fair and open competition by reason of certain provisions therein, as stated in the reasons in detail.

Under Chapter 342, Laws of 1912, a contract of this kind must be awarded "to the lowest responsible bidder." Under such a statute it is settled that there must be a common or uniform plan of bidding in order that competing bidders may be possessed of the same data and be subject to the same conditions. Some of the more recent cases in this State are the following:

Browning v. Freeholders, 79 N. J. L. 494.

Johnson v. Atlantic City, 85 N. J. L. 145.

Armitage v. City of Newark, 86 N. J. L. 5.

In *Armitage v. City of Newark*, *supra*, this court speaking through Garrison, *J.*, said:

"There is another flaw in these proceedings that ought not to be passed over merely because no demonstrable harm has come of it in the present case. I refer to the requirement of the advertisement that each bidder must specify the number of days he will require to finish the work. According to all our cases, if this element of time is to enter into the competitive scheme, it should be the same for all, not left for each bidder to fix for himself and thereby estimate his bid upon a basis different from that of any other bidder. The general vice of this course is that no common standard for the competition is set up and, as was said by the Court

of Errors in *Browning v. Bergen*, 79 N. J. Law, 494, 76 Atl. 1054, 'Where no common standard is set up no competition is proposed.'

"'No contract,' said Mr. Justice Van Syckel, in *Van Reipen v. Jersey City*, 58 N. J. Law, 262, 33 Atl., 740, 'can be upheld under proposals which do not require competitive bids upon the same definite basis.'

"Of this definite basis time is as much an element as is the number of men to be employed or the wages to be paid, which if required to be specified by each bidder would destroy any semblance of competition as to price.

"In a recent case in this court we expressly held that unless the length of time was alike for all bidders there could be no such competition as the law requires. *Johnson v. Atlantic City*, 88 Atl. 951.

"The mischief to be apprehended is not that contracts will be awarded to the bidder who will take the least time rather than to him who will take the least money, *i. e.*, to the lowest bidder, but that owing to this multiple standard, it is impossible to tell who is, or rather would have been, the lowest bidder had there been a common standard of time alike for all; or, what amounts to the same thing, had the element of time been left out altogether.

"Experience in dealing with evasions of this law teaches that it is better to keep the door wide open than to try to close one that is, perhaps purposely, left a little ajar.

"At all events, upon both reason and authority a contract based upon such non-competitive bidding is not a valid one under the law we are now considering."

In *Johnson v. Atlantic City, supra*, this court said (*italics ours*):

“The rationale underlying these adjudications is that the legislative requirement, whereby fair competition between bidders as to price is made the goal to be attained, cannot be complied with, other things being equal, unless the price be left undetermined by the proposal to be fixed and determined only as the logical and necessary result of the competition between the bidders. Other details of the proposed work involving plans, materials, method of construction, length of time, etc., may, if desired, form the basis for competition preparatory to the formulation of the ultimate proposal to be submitted in compliance with the legislative requirement; the final end to be attained being that when such final proposals shall be made, involving as its sole consideration the *lowest price* at which a responsible bidder will agree to perform the required work, the assurance shall be definite and beyond the region of cavil that all who bid in response to the invitation shall be presented with the same data, comprehending plans, materials, methods of construction, length of time allowed, etc., *otherwise there can be no competition by which the lowest price, which is the very element of competition sought to be attained by this class of legislation, can be at all determined*, 28 Cyc., 659, and cases.”

In *Browning v. Freeholders of Bergen, supra*, the Court of Errors and Appeals speaking through Garrison, J., said:

“It is universally recognized that where there is no common standard there is no competition, and the same must be true

where the common standard to which a competition is invited is abandoned in declaring its result."

The principle that there must be a "common standard" for competition, we submit, is violated in several respects by the present specifications.

5.

Brief of the Argument.

I.

The specifications do not state what streets are to be re-surfaced but leave that matter to the arbitrary determination of the director of streets and public improvements of the city, without affording to bidders an opportunity to examine or inspect the streets to be re-surfaced or to ascertain the location thereof or the condition of the pavement thereon or the amount of traffic using the same.

The advertisement for bids (case, p. 3) calls for proposals "for resurfacing with bituminous concrete of macadam roadways and asphalt streets which are out of guarantee, in accordance with specifications on file in the office of the city clerk.

"Blank forms of bid, showing estimate of quantities and agreement of sureties, must be obtained at the office of the chief engineer, City Hall, Jersey City, N. J."

The specifications which were on file contained an estimate of the chief engineer, "and prices to be considered and taken as one hundred (100%) per cent. of the standard. Quantities to be more or less." (P. 26, l. 1). Then followed an estimate of the number of square yards for the resurfacing of macadam roadways (about 50,000);

the number of square yards for resurfacing of asphalt streets, including taking up and removal of present binder and asphalt (about 8,700); the number of manhole heads reset (about 50); the number of water gates reset (about 25); the number of lineal feet of curbstone set in concrete (about 500); the number of lineal feet of curbstone reset (without concrete)—about 100; the number of square yards of Belgian pavement in gutters upon macadam streets (about 200); also one receiving basin rebuilt and one receiving basin and connections.

Opposite each of these items was indicated the "standard" price. Thus, the standard for the resurfacing of macadam roadways was \$1.10 per square yard, the standard for resurfacing asphalt streets was \$1.25 per square yard. The engineer's estimate of the total cost of the work based on the standards was \$66,331.00 (p. 26). The blank form of bids called for bids on the basis of a certain per cent. of this standard. Thus, the bid of Clinton Contracting Company was 82% of the standard (p. 6); the bid of Crichfield was 92% (p. 11), the bid of Uvalde Asphalt Paving Company was 109% of the standard (p. 17).

Neither the advertisement nor the blank forms of bids, nor the specifications, gave the name or location of the streets to be resurfaced. The specifications have the following provision:

"The names of the streets to be resurfaced will be determined by the director of streets and public improvements. The selection of the streets, however, will not affect the quantity of work to be done under the contract" (p. 25, l. 30).

Prior to the date fixed for the receipt of bids Mr. Crichfield, as a prospective bidder, inquired

of the city engineer what streets were to be resurfaced under these specifications, and under date of March 14th received a letter from the chief engineer, which reads as follows:

“MR. W. T. S. CRICFIELD,
Hoboken, N. J.

Dear Sir:

In the contract for RESURFACING MACADAM ROADWAYS, the letting of which takes place next Thursday at the City Hall, Jersey City, N. J., there is included in that specification, work to be performed by removing and resurfacing streets paved with asphalt.

In this class there is Mercer Street, from Henderson to Brunswick Street; and Grove Street, from Mercer to Montgomery Street. It is the intention to allow Bergen Avenue, and Newark Avenue, where terms of guarantee will expire next Fall, to remain until the year 1917.

If there are sufficient moneys left in the appropriation after the macadam streets which it is proposed to resurface have been completed, Eighth Street, East and West Hamilton Place will probably be included in the work to be performed.

THIS IS IN ADDITION TO MERCER STREET, and GROVE STREET.

Respectfully,

(Sgd.) C. A. VAN KEUREN,
CHIEF ENGINEER.”

(P. 43, l. 20.)

It will be observed that under these specifications bidders had nothing to guide them as to the particular streets or the location or the areas thereof to be resurfaced. The testimony shows that in Jersey City there are forty-two macadam

streets and one hundred and twelve asphalt streets out of guarantee (pp. 127-130). Any or all of these several streets would come within the specifications and the successful bidder might be required to resurface any or all of them, according to the arbitrary determination of the Director of Streets and Public Improvements—subject, of course, to the limitation of the estimate of quantities as stated in the specifications, although even this limitation was “more or less” arbitrary, as the quantities stated in the specifications were themselves “more or less.” It may be that under such an estimate the “quantities” would have to bear some reasonable relation to the estimate and would have to be a reasonable approximation of the estimated number of square yards of macadam and of asphalt, etc. For example, under the estimate of 50,000 square yards of macadam roadways to be resurfaced a successful bidder probably could not be required by the city to resurface, nor on the other hand could he claim the right to resurface, say 100,000 square yards. But he might be required to resurface say 51,000 square yards or he might not be in a position to complain if he was permitted to resurface only 49,000 square yards. However that may be, we submit that there is substantial objection to the specifications in that the names of the streets to be resurfaced are left entirely to the determination of the Director of Streets and Public Improvements without any information as to the particular streets. It is obvious that the location of the street is an important factor in the cost of paving or repaving, for the reason, among others, that consideration must be given by an intending bidder to the length of the haul from his plant. The municipality of Jersey City extends from West Hoboken and Hoboken on the north to the City of Bayonne on the south

and from the Hudson River on the east to the Hackensack River on the west, and comprises an area of about nineteen square miles, with a population of about 270,000. (P. 44, l. 30.) The plant of the prosecutor Crichfield, from which he would have to haul his material, is located on the corner of Greene street and the Morris Canal Basin (p. 45, l. 10). It makes a great difference as to the cost of the work whether the streets to be resurfaced are near the plant or a considerable distance therefrom. Many of the streets both of macadam and of asphalt are located several miles from the plant. Others are located near the plant. (See Map, Ex. P. 5.)

If we look at Ex. P. 5 we find that the plant of Mr. Crichfield, from which he would have to haul his material is located in the extreme southeast part of Jersey City; we find asphalt streets out of guarantee in the extreme northeast section of the city, such streets being Columbia Avenue, Sherman Place and Graham Street. We also find such streets in the extreme southwest section of Jersey City, such streets being Yale Avenue, Clarke Avenue and Ege Avenue. Likewise we find macadam streets out of guarantee in the extreme northeast, such as Manhattan Avenue, Tonnele Avenue and Webster Avenue. We also find such streets in the extreme southwest, such as McAdoo Avenue and Armstrong Avenue. We also find asphalt streets out of guarantee very near the plant of Mr. Crichfield, such as Henderson Street, Grove Street and Mercer Street (all of which are within 4 or 5 blocks). Also macadam streets, such as Florence Street, Magnolia Avenue and Henry street.

It is clear that if a street to be improved is only 3 or 4 blocks from the contractor's plant it will not cost him as much to haul material that goes into the pavement as it would if he

had to haul it two, three or four miles. This difficulty would have been obviated by simply naming the streets.

Mr. Murphy, General Superintendent of Clinton Contracting Company, the successful bidder, was asked on direct examination whether he took into consideration the question of haul of material and he testified that he did, and that he allowed ten miles each way, or twenty miles to the round trip from his plant on the Hudson River, opposite 31st Street, Woodcliffe, N. J. (p. 108, l. 40 to p. 109, l. 15). This estimate of haul is, in fact, no estimate, but a mere arbitrary allowance without taking into consideration the actual haul. Mr. Murphy testified that his plant is $4\frac{1}{2}$ miles from the north boundary line of Jersey City. If this estimate is correct his haul in some cases might only be 10 miles or half the distance estimated, all depending on what streets he would be working on. For instance, the testimony shows that the extreme southeast part of Jersey City is about 6 miles from the northern boundary line (p. 51, l. 40, to p. 52, l. 10). If Henderson Street, which is in the extreme easterly part of Jersey City, was to be improved the Clinton Contracting Company would have a haul from its plant of $10\frac{1}{2}$ to 11 miles each way, while if Graham Street or North Street, both of which are in the extreme northern part of Jersey City, were to be improved there would be only a haul of about 4 or 5 miles each way for that company. In other words, the cost of the haul would be only one-half in the latter instance.

Any other bidder would have the same difficulty in determining how to make his bid, because in some cases the streets to be resurfaced might be near his plant and others a very considerable distance therefrom.

It is true that so far as the prosecutor Crichfield is concerned he took the precaution to inquire of the Chief Engineer what streets were to be resurfaced under these specifications. He received no information as to macadam streets, but was informed that two of the asphalt streets to be resurfaced were Mercer Street and Grove Street, between certain points; and he was further informed that *if* there was enough money left certain other streets would probably be included. Of course, this letter is binding on no one, as under the specifications the streets to be resurfaced were to be determined by the Director of Streets and Public Improvements, and not by the Chief Engineer, and in any event the Chief Engineer had no power to change the specifications, so far as concerns the particular streets to be resurfaced. But the letter of the Engineer illustrates the difficulty met with by a prospective bidder; and the uncertainty, and, indeed, the impossibility (according to the letter) of determining what streets were to be resurfaced.

Moreover, even if the expression "out of guarantee" in the specifications is limited to *asphalt* streets (which is perhaps doubtful, according to the grammatical construction), there are numerous other asphalt streets besides those mentioned in the letter from the Chief Engineer that are now out of guarantee and would have to be resurfaced if so determined by the Director of Streets and Public Improvements. There are one hundred and twelve asphalt streets out of guarantee, a number of which are more than a block long. (See Map, Ex. P. 5.)

On the other hand, if the expression "out of guarantee" is construed as referring to macadam streets as well as to asphalt streets, then it appears that there are forty-two macadam streets which are also out of guarantee and which might

be included in the list of those required to be resurfaced if so determined by the Director. (P. 130; see also Map, Exhibit P. 5.)

A further very important factor in determining the amount of a bid is the amount of traffic on the streets to be resurfaced. Under the specifications, the contractor is required to enter into a contract and bond guaranteeing the pavement to be in good condition during and at the end of ten years from the date of its completion and acceptance. It is obvious that under such a contract and bond a prudent bidder would necessarily have to consider the amount of traffic on the streets, the condition of which he guarantees during and at the end of ten years. There is a great variety in the density of traffic on the several streets that a contractor might be required to resurface under the specifications.

For instance, the traffic on Newark Avenue and Bergen Avenue is very heavy (p. 77, ll. 1-10). Both of these streets are referred to in the letter received by Mr. Crichfield from the City Engineer, but it is stated in that letter that "it is the intention" to allow these streets to remain until the year 1917 as they are (p. 32, l. 20). However, under the terms of the contract there is nothing to prevent Mr. Byrne, the Director of Streets and Public Improvements, from including them in the contract if he so desires. If they should be included then there is no doubt that the cost to maintain such a street for 10 years would be much greater than a street with light traffic (p. 77, l. 15). It will be noted that the City Engineer in his letter also refers to Eighth Street, East Hamilton Place and West Hamilton Place, and says that those streets "will probably be included in the work to be performed." Those streets have very light traffic compared to Newark Avenue or Mercer Street and therefore the

cost to maintain them for 10 years would be much less.

The testimony of Mr. Murphy (the General Superintendent of the Clinton Contracting Company, the successful bidder, who prepared and signed the bid for that company) shows that nobody, *not even Mr. Byrne, the Director of Streets and Public Improvements, knew* at the time the bids were received or before that time what streets were to be improved under the proceedings in question. Mr. Murphy testified that before he made up his bid he inquired of the City Engineer as to what streets were to be improved and that he was informed by the City Engineer that he did not know and was referred to Mr. Byrne. He then inquired of Mr. Byrne and he was informed: "I have so much money to spend and there are so many more streets to be repaired than I have money for that I am going to do the worst of them." After Mr. Murphy had received a letter from the City Engineer similar to that received by Mr. Crichfield, he again inquired of Mr. Byrne as to what streets were to be improved and Mr. Byrne then stated that he would repair those streets first against which there were the most complaints, but he did not inform Mr. Murphy what streets were in this category, and what streets would be repaired might depend, for all it appears, upon the complaints that might be received in the future (p. 116, l. 1, to p. 117, l. 30). The specific question was asked Mr. Murphy, "In other words, Mr. Murphy, you were not able to tell by inquiry of Mr. Byrne just what streets were to be done?" He answered: "No, sir, I was not; he told me he didn't know."

We desire here to call the Court's attention to the testimony of Mr. Murphy in regard to the sale of his residence to Henry Byrne, the Direc-

tor of Streets and Public Improvements of Jersey City, who as shown has the absolute and exclusive right under the contract brought up for review to name what streets should be repaired and therefore has control of the amount of work that should be done. Mr. Murphy testified that on May 1, 1912, he deeded to Mr. Byrne his residence and other real estate in the town of West Hoboken (p. 93, ll. 15-30; p. 95, ll. 10-20). The deed for this property was offered in evidence and is printed in State of Case (p. 92, ll. 5-20; Exhibit P. 1, p. 122). The deed conveys in fee nine separate and distinct lots of land, and states the consideration of \$1.00. Mr. Murphy was asked what the actual consideration was and he refused to answer the question (p. 93, ll. 30-40). Mr. Murphy has known Mr. Byrne for 25 years and Mr. Byrne has gone on a bond for Mr. Murphy and his son (p. 94, ll. 30-40). As stated, part of the property conveyed is Mr. Murphy's residence where he lives with his family, but he refused to state how much rent he paid to Mr. Byrne. When he was asked whether he lived in the house rent free he refused to answer.

It may be that the transaction whereby Mr. Murphy conveyed to Mr. Byrne all of these lots in West Hoboken, including the lot upon which his residence stands, is a perfectly honest one, but when Mr. Murphy refuses to answer questions as to the real consideration paid therefor, as to whether he pays rent and the amount thereof, and whether he occupies the premises rent free, the transaction begins to look suspicious. Mr. Murphy is an intelligent man and must have had a good reason for refusing to answer these questions. The only reason he gives when asked for a reason is that it is his "private business," which is no reason at all (p. 94, l. 10). Mr. Byrne was not called as a witness.

We therefore submit that in examining the specifications brought up for review the court should scrutinize with great care the wide discretionary power given to Mr. Byrne.

Another street referred to in the letter of the Engineer is Mercer Street. Mercer Street sustains heavy traffic, heavily loaded trucks which on an insecure foundation such as it has at present is liable to cause the pavement in cold weather to give and break, which naturally would increase the cost of maintenance for a long period of years, such as 10 years (p. 77, l. 1-10). If Mercer Street is to be included within the present contract a contractor would necessarily bid higher in order to protect himself in maintaining this street for 10 years. If it is not to be included, and, instead, East Hamilton Place is to be improved then a contractor could have bid lower (p. 77, l. 15). The estimate of quantities by the City Engineer cannot possibly cure the defect resulting from the failure to inform a contractor in advance what streets were to be improved. In the first place the estimate is only "more or less;" secondly, the cost of maintaining a street for 10 years has two elements entering into it; first, the traffic which a pavement would sustain when it is completed, and second, the condition of the foundation, most of which in Jersey City is Belgian block foundation, which has passed out of use, generally speaking, throughout the country (p. 76, ll. 30-40). If the streets to be improved had been ascertained before bids were received a contractor could have personally inspected the streets and from his personal examination could have ascertained the present condition. It is customary in contracts for street paving work to require prospective bidders to examine the location of all the work proposed to be done and have them make

their own estimate of quantities, and the extent of the work proposed and the conditions to be met. This, of course, is impossible in the case at bar. Through not knowing the conditions of the present foundations of the streets that might be improved, or the location of the present grade of any of the streets, or whether they are to be rebuilt by the addition of large quantities of new materials to such grades as might be established by the City Engineer, or whether the macadam pavement should be cut down, or the possibility of striking telford under the macadam, which would have to be removed, a bidder would necessarily have to make a guess bid. This hazardous undertaking would mean either that the bidder would charge too much and thus the city would pay more for the work in question than it ought to pay, or the bidder would bid too low, with the result that he might suffer financial ruin. Either result would be unfair and unjust (p. 77, ll. 15-40). There is no certainty in the present case that Mercer Street, Newark Avenue or Bergen Avenue, three streets with very heavy traffic, will be improved. The letter from the City Engineer is the only data which furnished this information and the City Engineer has no authority. The Director of Streets and Public Improvements, to whom the power of naming the streets is delegated, stated that he did not know. There was no other information, outside of this letter from the City Engineer, which would inform any prospective bidder what streets were to be improved (p. 78, ll. 15-20).

The specifications provide that the entire work must be completed to the satisfaction of the city, and in strict accordance with the specifications by November 30, 1916 (p. 32, ll. 10-15).

Bids were received for the work in question on March 16, 1916, and the contract was awarded

on April 18, 1916 (p. 3, ll. 1-10; p. 5, ll. 30-40). The contractor, under the specifications, is required to commence work within five days from the date of notification by the Director of the Department of Streets and Public Improvements (p. 34, ll. 15-20). In other words, the contract period was about nine months, although the contractor could not start work until after he was notified by the Director of Street and Public Improvements. If we keep in mind that there are 112 asphalt streets and 42 macadam streets out of guarantee it is clear that it would be impossible for any contractor to pave that number of streets within the contract period. Mr. Murphy, General Superintendent of the Clinton Contracting Company, who was called as a witness on behalf of the prosecutors, testified that he had no idea how many streets, asphalt or macadam, were out of guarantee. He said that he would do them all if the city would let him, but that he could not do them all by November 30th. The city would have to give him further time (p. 112, ll. 20-30). Mr. Murphy was then asked that if he was informed that there were over 100 asphalt streets out of guarantee would he be able to pave them all by November 30th, and he replied that the specifications would not require him to do them all, and that in that event he expected to secure an extension of time (p. 113, ll. 25-35).

It is clear that the defendant municipality did not take the necessary steps to determine in advance the nature of the improvement or ascertain all those facts which are necessary to enable an intending bidder to comprehend the scope of the improvement and the nature of the supposed contract, and bid accordingly. The failure to definitely set forth the streets to be improved, and the leaving of that matter to the arbitrary determination of the Director of Streets and

Public Improvements clearly violates the principles and rules of law laid down in the cases cited *supra*.

It is clear as a matter of logic that this flaw is as great if not greater than the flaw which Garrison, *J.*, condemne so severely in the Armitage case *supra*, viz., failure to specify the number of days that would be allowed to complete the work, leaving each bidder decide for himself.

II.

The specifications do not state the amount of the maintenance bond or give any information whereby the amount thereof may be determined.

The advertisement for proposals stated "The bonds required to be furnished on proposals (and a possible subsequent contract) are those of some surety company authorized to do business in the State of New Jersey, or of two responsible real estate owners of Hudson County, or a certified check will be accepted in lieu of bond." The specifications have the following provision as to bonds (p. 33):

"The contractor will be required to enter into a contract and bond guaranteeing the bituminous concrete pavement to be in good condition during and at the end of ten (10) years from the date of its completion and acceptance, and he will be further required to furnish a suitable bond in legal form of a surety company authorized to do business by and operating in accordance with the laws of the State of New Jersey; or a certified check; or by the consent in writing of two (2) responsible real estate owners of Hudson County, that they will become surety in the penal sum of fifteen thousand dollars, for

the faithful performance of the contract, which two (2) responsible sureties must qualify under oath that they are each worth the penal sum of said bond, and which said bond shall be cancelled, and certified check returned, upon the payment of the retained percentage for the work done under the contract awarded, provided, that when a bond other than a surety company bond is given, the form of the said bond shall be approved by the corporation counsel, and the sufficiency of the surety approved by the city comptroller."

It will be observed that the amount of the bond "for the faithful performance of the contract" is fixed at the sum of \$15,000. This is entirely separate and distinct from the bond guaranteeing the condition of the pavement during and at the end of ten years—commonly called a maintenance bond. The objection to the specifications in this regard is that the amount of the maintenance bond is not given; neither is there any information in the specifications whereby the amount thereof may be determined. For all that appears in the specifications, a bond in the penal sum of one dollar would be sufficient compliance therewith. On the other hand, if it be said that the amount of the bond is to be determined by the engineer or by the director or by the Board of Commissioners, the question still remains *How* is it to be thus determined? Is it to be in the full amount of the estimate, to wit, \$66,000, or is it to be some proportion thereof? There is nothing whereby bidders who desire to submit surety company bonds (as they have the right to do under the advertisement and specifications) may determine how much this maintenance bond is to cost. It is obvious that the cost of a surety company bond depends upon the amount thereof.

For example, the rate paid by Mr. Crichfield is \$1.875 per thousand per annum. For a maintenance bond of ten years this would be \$18.75 per thousand. If the maintenance bond were \$1,000 the cost would be \$18.75. If it were \$60,000 the cost would be \$1,125 (p. 47, l. 20).

Mr. Murphy, who prepared the bid for the Clinton Contracting Company, the successful bidder, on cross examination, was asked what he thought the amount of the maintenance bond would be and he replied: "Well, I did not assume it was on the whole job; that is the way it read to me" (p. 119, ll. 10-25). On direct examination, Mr. Murphy had testified that he thought that he would have to put up a bond for the entire amount of the contract, whatever it might be (p. 108, ll. 20-30). There is nothing to prevent a maintenance bond being demanded for the full amount of the contract, and in the event of a large number of streets being improved and a demand being made for a maintenance bond for the full amount, it might be impossible for a contractor to comply with said demand. It makes a difference whether a contractor would only have to pay \$18.75 as premium on a maintenance bond instead of \$1,125. To sum up, first, not knowing the number of streets to be improved, and, therefore, the amount of work, it is impossible to tell whether the cost of maintenance will be large or small, and second, it is impossible to tell what amount the maintenance bond is to be, whether for the full amount of the work to be done whatever it may be, or only for a certain percentage thereof. It is clear that these uncertain and indefinite provisions take away the "common standard" which is essential for competition. As stated in the case of *Johnson v. Atlantic City*, 85 N. J. L., 145, *supra*: "The final end to be attained being that when such final

proposal shall be made, involving as its sole consideration the lowest price at which a responsible bidder will agree to perform the required work, the assurance shall be definite and beyond the region of cavil that all who bid in response to the invitation shall be presented with the same data, comprehending plans, materials, methods of construction, length of time allowed, etc., otherwise there can be no competition by which the lowest price which is the very element of competition sought to be attained by this class of legislation can be at all determined."

III.

The specifications do not state the amount or the depth of the binder on the asphalt pavements nor the grade to which the bituminous concrete pavement is to be brought.

In the specifications for the resurfacing of asphalt streets there is found the following provision (p. 28, l. 1):

"In the resurfacing of asphalt streets, the existing asphalt wearing surface and binder, where binder is used, shall be removed, and the concrete, or stone block pavement upon which the binder and asphalt wearing surface was laid, shall be thoroughly swept, and any depressions found in the foundation on the street, they shall be brought to the proper grade by the addition of binder to receive the bituminous concrete pavement, and the cost shall be included in the price paid per square yard for resurfacing asphalt streets."

According to the testimony of Mr. Crichfield (which is uncontradicted) it is impossible to determine the amount of binder until the surface

of the pavement has been removed and the foundations exposed (p. 49, l. 25). Hence, a bidder is in the dark as to how much binder will be required and must make the best guess he can. If bids were called for on the basis of the number of cubic yards the situation would be different.

There is another difficulty in this specification in that bidders cannot tell how much binder must be added in order to bring the pavement to the "proper grade" (p. 28, l. 25). There is no information as to what is the proper grade and there is not even a provision that the grade is to be determined by the engineer. This is so indefinite, we submit, that, aside from any other considerations, there was no common standard of bidding established.

If the names of streets to be improved had been given, then it would have been possible for a prospective bidder to examine the grade maps fixing the established grade of the streets in question, and in that way determine approximately how much binder would have to be added in order to bring the pavement to the proper grade. If the streets to be improved had been definitely determined it would have been possible for a prospective bidder to examine the streets and compare the actual grade with the grade as established by the city, and in that way determine the amount of binder that might be required. This defect might have been cured if a contractor was allowed so much per cubic yard for binder, for then he would be compensated for the amount of binder that he would have to use, no matter what amount it might be. The allowance of so much per cubic yard for binder is the only practical way of making certain that all bidders will be on a common basis, for only after the old asphalt pavement has been

removed and the foundation exposed is it possible to determine the quantity of binder necessary (p. 48, ll. 10-15). The cost of binder is a very important factor in the construction of a bituminous surface (p. 48, ll. 15-25). Mr. Murphy, Superintendent for the Clinton Contracting Company, the successful bidder, testified at first that he examined the grades and profiles of different streets in the office of the City Engineer, but when asked what grades or profiles he examined he then said that he did not think that he examined any grades or profiles (p. 115, ll. 30-40). He further testified that he allowed 5c per square yard for binder, but he does not state for how many square yards he allowed this amount. It was clearly impossible for him or anyone else to estimate in any way the number of square yards upon which he would have to use binder (p. 117, ll. 30-40).

Counsel for the defendants tried to show that Mr. Crichfield had bid on previous contracts in Jersey City in which there was no allowance for binder, but the binder used in those contracts was not asphaltic binder which the present contract calls for. There is a great difference in asphaltic binder and ordinary binder; asphaltic binder is composed of sand and stone heated to certain degrees and mixed with asphaltic cement which is termed binder; by ordinary binder is implied mixing old and new stone with clay or some other substance of similar nature to cause the stone to remain in place when rolled. The present contract calls for this kind of binder while the previous contracts did not (p. 199, ll. 20-30; p. 102, ll. 20-35). It will also be noted that the other contracts referred to by counsel for the defendants specified the streets were to be improved (p. 101, l. 1, to p. 102, l. 10). For this very important reason the contracts referred to

are distinguishable from the contract now in question, but even if the contracts were identical it would be no reason for sustaining the present contract, if it is in fact illegal. The mere fact that the city may have made illegal contracts on other occasions does not render the present contract legal.

Not knowing what streets were to be improved it was impossible to ascertain the established grades or the actual grades of the streets, and therefore it was impossible to ascertain the amount of binder. No allowance being made per cubic yard for binder a contractor could not ascertain what amount to allow for this very important item. Bidders, therefore, could not be upon common footing for each bidder must necessarily guess at the amount of binder he would be required to lay. Such a provision in a street paving contract as that set forth *supra* is clearly illegal.

IV.

The specifications do not state the quantity of the price to be paid for broken stone.

Under the title of "Foundation" is found the following provision:

"The existing macadam, or stone foundation, shall be thoroughly swept, and scarified with picks, or by a suitable machine in order to bring the same to the new grade as established by the Engineer. Old and new broken stone may be used in filling up depressions in the roadway, and the same shall be spread and mixed with clay or other suitable filler, as directed by the Engineer."

There is no information in this provision as to the extent of the depressions which were to be

filled up with broken stone and there is nothing elsewhere in the specifications which gives such information to intending bidders. If it be said that a bidder could ascertain the nature and extent of the depressions by an examination of the streets to be resurfaced, the answer is that, as shown under Point I. there is no definite information given as to what streets are to be resurfaced, but that matter is left entirely to the arbitrary determination of the Director of Streets and Public Improvements.

If it be said that it is to be presumed that whatever broken stone was to be used would be paid for, the answer is that there is no provision for such payment. There is nothing by which a bidder could determine whether he would need to secure new stones in order to fill up the depressions or whether the old stones would answer the purpose. Hence, if new stone is required he is apparently bound to furnish it without charge. Of course, if he knew how much new stone were needed, he could regulate his bid accordingly. But in the absence of information or any estimate as to how much new stone, if any, would be required, the bidder is in the dark as to what allowance to make for this item.

The testimony shows that it is impossible to determine the amount of stone required to bring the foundation of any certain street to the required grade when the street itself is unknown. Many of the macadam streets of Jersey City are worn down very much because of the traffic, and not knowing the location of the streets intended to be improved it is impossible to estimate what quantity of new stone would be required to bring the street in question to the grade whatever it might be required by the City Engineer (p. 48, l. 25, to p. 49, l. 25).

Here again, if the contract had provided that a certain amount would be allowed *per cubic yard* for stone that might be necessary to fill up depressions and the streets had been ascertained in advance, this illegality of the specification might have been cured.

Mr. Murphy, who prepared the bid for the Clinton Contracting Company, the successful bidder, testified on direct examination—"I had nothing to go by; no information or any grades or profiles or anything only to look at the streets as they were and to look at the grades as they (were) and the conditions of the streets generally and to use my judgment to figure on it" in order to determine the amount of broken stone that might be needed (p. 107, ll. 25-40). It is self evident that it is impossible for a prospective bidder from a cursory examination of 112 asphalt streets and 42 macadam streets to ascertain how much broken stone, old or new, may be needed to fill up depressions, and there can be no doubt that it was impossible for Mr. Murphy to estimate the amount of stone that might be needed for this purpose because he did not even know how many asphalt and macadam streets were out of guarantee (p. 112, l. 30, to p. 114, l. 10) and therefore might be included in the contract by the director of Streets and Public Improvements, as the selection of the streets depended upon which street or streets had the most complaints against them. We submit that the opportunity to compete by the furnishing of definite specifications open to all bidders and to which all could conform was not given in the case at bar. As stated in the case of *Kay v. Board of Education*, 83 N. J. L. 551, 557—"There is a public policy involved in a statute requiring a contract for public work to be awarded to the lowest bidder after adver-

tisement for proposals, and 'that each bid, actual or possible shall be put upon the same footing.' *Case v. Trenton*, 47 Vroom 696."

A definite contract and specifications are essential to competitive bidding because it is only through their agency that there is a reasonable assurance that all bidders are competing upon the same basis and without favoritism and that no fraud enters into the award. We submit that the competition which the legislature designed to secure by its enactments was not obtained in this case because there was not a full publication of the criteria which must govern all bidders before competition can exist.

V.

Comments on Supreme Court Opinion.

The Supreme Court says that the contract must be treated as a "single contract for repairs to various streets." We think this is so but it does not do away with the necessity of specifying *what streets* are to be paved, *where* they are located, *how many* of them there are to be, *what quantity of work* will have to be done, or *what the physical conditions are* of the streets to be paved.

The Court admits that if the selection of streets to be paved is left to the judgment of the city authorities, such discretion "opens the door to favoritism." Such a conclusion begs the question. The question is whether the specifications are so drawn that all bidders are on a common footing. The Supreme Court said that no doubt the specification opens the door to favoritism. If it does then there can be no question that the bidders were not on an equal footing and therefore the specification is illegal.

In regard to the maintenance bond the Supreme Court said the extent of the obligation "will depend on the amount of work done." This is not so as a matter of logic and furthermore it is not a term of the contract and if the city should try to compel the giving of a bond for the full amount of the work no matter what the amount of work, we doubt very much if this Court would sustain such a contention. But the complete answer is that no one at the time of the bidding could tell how much work there would be (whether one street or one hundred and fifty streets) and therefore it was impossible to tell the amount of the bond. There can be no doubt that each bidder made his own "guess" as to the amount of this bond, and therefore they were not on a common footing. There is only one way in which this failure to specify the amount of the bond might be sustained and that is by saying that it is not of sufficient importance to justify setting aside the contract and specifications. However, when we consider that the premium for such a bond might be \$25.00 or \$1000, it is self evident (even without considering the question of indemnifying a surety company) that such a contention is untenable.

In regard to the depth of binder and the grade to which the pavement is to be brought the Court below said that it is "probably impossible to state accurately all the work that may be required." It is self evident, however, that if the names of the streets to be improved have been given that it would have been possible to ascertain these things by examining the grade maps fixing the established grade, etc., as shown in point III of this brief. It was possible by specifying the streets, ascertaining their location, examining the maps, giving established grades and by examining the streets to ascertain

actual physical grades to estimate to a reasonable certainty the depth of binder and the grades. It was therefore not probably impossible.

The Court below did not express any opinion with regard to our point IV. We think this point which deals with the failure of the specifications to state the quantity of or the price to be paid for broken stone, of equal importance with the other points.

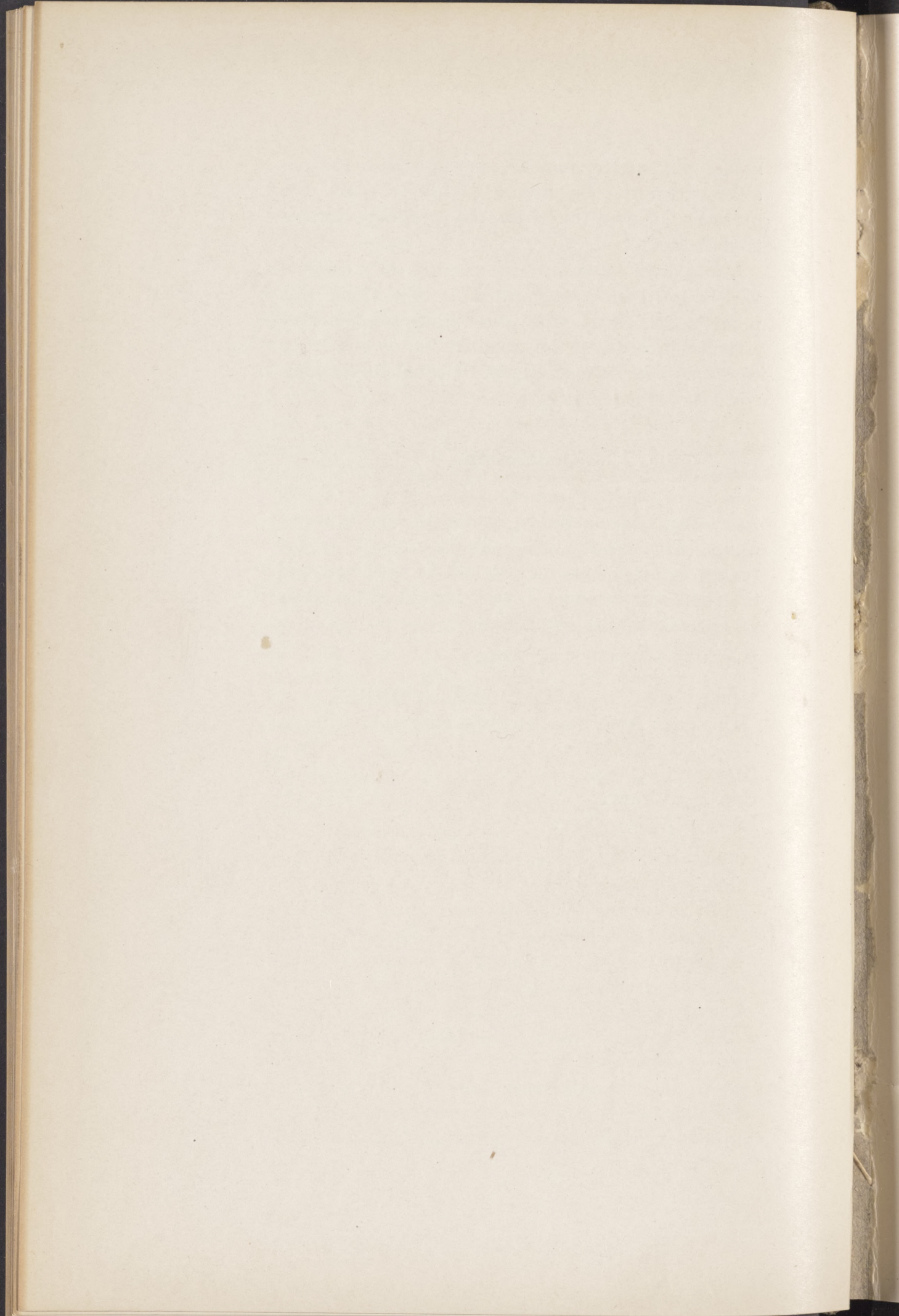
Conclusion.

We respectfully submit that because of the foregoing reasons the judgment of the Supreme Court affirming the proceedings brought up for review is erroneous and should be reversed and the proceedings under review should be set aside with costs to the appellants.

Dated November Term, 1916.

COLLINS & CORBIN,
Attorneys of Prosecutors-Appellants.

GILBERT COLLINS.
GEO. S. HOBART.
EDWARD A. MARKLEY.
Of Counsel.



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Notice of Appeal.

Notice of Appeal.

(Filed July 26, 1916).

New Jersey Supreme Court.

10

JAMES DEVLIN AND WILLIAM
T. S. CRICHFIELD,
Prosecutors,

vs.

MAYOR AND ALDERMEN OF JERSEY
CITY AND THE CLINTON CON-
TRACTING COMPANY,
Defendants.

*On Appeal
from
Supreme
Court.*

*Notice of
Appeal.*

20

To JOHN MILTON, Esq.,
Attorney for the Mayor and Aldermen
of Jersey City, and
J. EMIL WALSCHEID,
Attorney for the Clinton Contracting
Company:

SIRS:

TAKE NOTICE that the prosecutors appeal to
the Court of Errors and Appeals from the whole
of the judgment entered in this cause on the fol-
lowing grounds:

30

The Supreme Court affirmed the resolution of
the Mayor and Aldermen of Jersey City brought
up for review in said cause, whereas for one or
more of the reasons for reversal filed in said
Court under the writ of certiorari, which are
hereby stated as grounds of appeal in this Court,

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Notice of Appeal.

the said Supreme Court should have reversed
and set aside said resolution.

Dated, July 24, 1916.

COLLINS & CORBIN,
Attorneys of Appellants.

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Writ of Certiorari.

Writ of Certiorari.

NEW JERSEY, ss.

THE STATE OF NEW JERSEY to the
[SEAL] Mayor and Aldermen of Jersey City and
the Clerk of said City,

GREETING: We being willing for certain reasons to be certified of a certain resolution awarding to the Clinton Contracting Company a contract for the resurfacing with bituminous concrete of macadam roadways and asphalt streets (which are out of guarantee), dated April 18, 1916, together with all matters and proceedings of the Mayor and Aldermen of Jersey City touching and concerning the same, Do COMMAND YOU that the said resolution, together with all matters and proceedings touching and concerning the same, to our Supreme Court of Judicature at Trenton on the twelfth day of May, Nineteen hundred and sixteen, you certify and send, together with this writ, that therein may be done what of right and according to the laws and the constitution of this State ought to be done. 10
20

WITNESS, William S. Gummere, Chief Justice of our Supreme Court, at Trenton, this twenty-fourth day of April, in the year of our Lord, One thousand nine hundred and sixteen. 30

WM. C. GEBHARDT,
Clerk.

COLLINS & CORBIN,
Attorneys.

Return.

Allocatur.

I allow this writ. Let it be sealed.

C. W. PARKER,
J. S. C.

10 Dated, April 22, 1916.

Return.

*To the Honorable, the Justices of the Supreme
Court of Judicature of New Jersey.*

20 In obedience to the command of this writ to
the Mayor and Aldermen of Jersey City, and the
Clerk of said city, directed I, Michael I. Fagen,
City Clerk of Jersey City, do hereby certify and
send to the Honorable Justices of the Supreme
Court of Judicature of New Jersey, the resolu-
tion dated April eighteenth, Nineteen hundred and
sixteen, awarding a certain contract to the Clinton
Contracting Company, together with all matters
and proceedings touching and concerning the
same.

30 IN WITNESS WHEREOF I have hereunto set my
hand and the seal of the Mayor and Aldermen
of Jersey City, this day of May, A. D., Nine-
teen hundred and sixteen.

By MARK M. FAGAN,
Mayor.

[SEAL]

MICHAEL I. FAGEN,
City Clerk.

Notice to Contractors.

NOTICE TO CONTRACTORS.

Sealed proposals will be received by the Board of Commissioners of Jersey City,

THURSDAY, March 16, 1916,

at 2 p. m. in the Assembly Chamber, City Hall, Jersey City,

FOR THE RESURFACING WITH BITUMINOUS CONCRETE OF MACADAM ROADWAYS AND ASPHALT STREETS WHICH ARE OUT OF GUARANTEE,

in accordance with specifications on file in the office of the City Clerk.

Blank forms of bid, showing estimate of quantities and agreements of sureties, must be obtained at the office of the Chief Engineer, City Hall, Jersey City, N. J.

Proposals must be enclosed in sealed envelopes, endorsed "Proposal for the resurfacing of Streets," directed to this Board and handed to the City Clerk in open meeting when called for in the order of business relating to sealed proposals.

The bonds required to be furnished on proposals (and a possible subsequent contract) are those of some surety company authorized to do business in the State of New Jersey, or of two responsible real estate owners of Hudson County, or a certified check will be accepted in lieu of bond.

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Proof of Publication.

The Board reserves the right to reject any or all proposals if it is considered for the best interests of the city so do to.

BY ORDER OF THE BOARD OF COMMISSIONERS
OF JERSEY CITY.

10 Dated, City Clerk's office, Jersey City, February 29, 1916.

MICHAEL I. FAGEN,
City Clerk.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

20 FRED A. SEIDE, being duly sworn according to law, upon his oath saith, that he is Asst. Manager of the "Hudson Observer," a public newspaper printed and published in the City of Hoboken, Count of Hudson and State of New Jersey; that a notice, of which the annexed is a true copy, was published in said newspaper on the first day of March, 1916, and continued therein for four insertions thereafter, to wit, on the 4, 8, 11 and 14 days of March, 1916, making five publications in all.

30

FRED A. SEIDE.

Sworn and subscribed before me
this 14th day of March, A. D., 1916.

WM. W. McQUEEN,
Notary Public of New Jersey.

40

Resolution awarding Contract.

STATE OF NEW JERSEY, }
 COUNTY OF HUDSON. } ss.

CHARLOTTE STUHR, being duly sworn according to law, upon her oath said that she is the bookkeeper of the Jersey City Journal, a newspaper printed and published in Jersey City, County of and State aforesaid, and that a notice of which the annexed is a true copy, was published in the said newspaper for five times, commencing on the first day of March, 1916, and continued thereafter on March 4, 8, 11 and 14, 1916. 10

CHARLOTTE STUHR,

Sworn and subscribed before me this 14th day of March, A. D., 1916. 20

STELLA REDMOND,
Notary Public of New Jersey.

(Notice same as on previous affidavit.)

BOARD OF COMMISSIONERS OF JERSEY
 CITY, CITY CLERK'S OFFICE.

MICHAEL I. FAGEN,
City Clerk.

[SEAL] Jersey City, April 19th, 1916. 30

HON. JOHN BENTLEY,
Corporation Attorney.

Sir: This is to certify that the following is a copy of a resolution passed by the Board of Commissioners of Jersey City at the meeting held April 18th, 1916.

Very respectfully,

M. I. FAGEN, 40
City Clerk.

Proposal of Clinton Contracting Co.

RESOLVED, That upon the recommendation of the Director of the Department of Streets and Public Improvements, the contract for the resurfacing with bituminous concrete of macadam roadways and asphalt streets (which are out of guarantee) be and the same is hereby awarded to the Clinton Contracting Company at the price named in its bid, namely: 82% of Standard; that being the lowest bid received, and the Corporation Attorney be and he is hereby directed to prepare and have executed the necessary contract for the same.

DEPARTMENT OF STREETS AND PUBLIC
IMPROVEMENTS, BUREAU OF
ENGINEERING.
PROPOSAL.

2)

FOR THE RESURFACING WITH BITUMINOUS CONCRETE OF MACADAM ROADWAYS AND ASPHALT STREETS (WHICH ARE OUT OF GUARANTEE.)

GENTLEMEN:

The undersigned will contract to furnish all the materials and do all the work for the above improvement, (according to the Specifications for the same on file in the office of the Chief Engineer of the Department of Streets and Public Improvements,) for eight-two (82%) per cent of the Standard, as stated below.

ESTIMATE OF CHIEF ENGINEER, AND PRICES, TO BE
CONSIDERED AND TAKEN AS 100 PER CENT
OF THE STANDARD.

				\$	Cts.
Earth Excavation	About	Cu	Yds at	Per	Cu Yd
Rock Excavation	About	Cu	Yds at	Per	Cu Yd
Earth Filling	About	Cu	Yds at	Per	Cu Yd
Sand Filling	About	Cu	Yds at	Per	Cu Yd
Paving (Belgian) Base	About	Sq	Yds at	Per	Sq Yd
Paving (Granite) Base	About	Sq	Yds at	Per	Sq Yd

Proposal of Clinton Contracting Co.

Resurfacing Asphalt Streets including taking up and removal of present Binder and Asphalt	About	8700	Sq Yds	at	1.25	Per Sq Yd	
Resurfacing (Macadam) Roadways	About	50000	Sq Yds	at	1.10	Per Sq Yd	
Curb Stone set in concrete	About	500	Lin Ft	at	.25	Per Lin Ft	
Reset'g without concrete Curb Stone	About	100	Lin Ft	at	.06	Per Lin Ft	
Curb Stone (Gran.) 6"x16" set in Conc.	About		Lin Ft	at		Per Lin Ft	
Cement Curb 6"x16" with Curb Guard	About		Lin Ft	at		Per Lin Ft	10
Bridge Stone—Base	About		Sq Ft	at		Per Sq Ft	
Relaying & Dressing Bridge Stone	About		Sq Ft	at		Per Sq Ft	
Flagging—Feet in Width	About		Sq Ft	at		Per Sq Ft	
Relaying & Dressing Flagging Stone	About		Sq Ft	at		Per Sq Ft	
Cement Walk—Feet in Width	About		Sq Ft	at		Per Sq Ft	
Repaving in Gutters upon Macadam Streets only (Belgian) Sand Base	About	200	Sq Yds	at	.30	Per Sq Yd	
Repaving (Granite) Base	About		Sq Yds	at		Per Sq Yd	
Cribbing Stone 5"x16" set in Concrete	About		Lin Ft	at		Per Lin Ft	
Resetting Receiving Basin Heads	About		Lin Ft	at		Per Lin Ft	20
Resetting Manhole Heads	About	50		at	2.00	Each	
Resetting Water Gate Boxes	About	25		at	2.00	Each	
New Receiv'g Basins & Connec'ns Comp.	About	1		at	85.00	Each	
Receiving Basins Rebuilt & Connections	About	1		at	30.00	Each	
New Manholes Complete	About			at		Each	
Inch Vitrified Pipe	About		Lin Ft	at		Per Lin Ft	
Inch Vitrified Pipe	About		Lin Ft	at		Per Lin Ft	
Noiseless Manhole Covers	About			at		Each	
Blocks Clipped	About			M		M	
Blocks Removed & Hauled	About		Sq Yds	at		Per Sq Yd	

Jersey City, March 16, 1916.

30

CLINTON CONTRACTING COMPANY,

[SEAL] (Name) By John F. Murphy, Secy.
(Address) 308 Charles St., West Hoboken, N. J.

NOTICE—No unbalanced bids will be received or considered.

Agreement of Sureties on Other Side.

40

Proposal of Clinton Contracting Co.

THIS AGREEMENT made between Thomas Henry of Township of Weehawken and George W. Cranwell of Town of West Hoboken, County of Hudson, State of New Jersey, sureties for Clinton Contracting Company, of the first part, and the Mayor and Aldermen of Jersey City of the second part.

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WITNESSETH, That the party of the first part for and in consideration of the acceptance of the above proposal of the said Clinton Contracting Company by the Board of Commissioners of Jersey City, and for the further consideration of one dollar to them paid by the party of the second part, the receipt whereof is hereby acknowledged, agree that the said Clinton Contracting Company within ten days after notice by mail or otherwise so to do, shall and will sign and deliver a contract, based upon said proposal and the specifications for the work contemplated therein, with the party of the second part, to do all the work and furnish all the materials required by said proposal and specifications, which contract shall be in the form and common use by the party of the second part; and further that the party of the first part will also execute a bond to the party of the second part, to be annexed to such contract, in the sum of Fifteen thousand (\$15,000.00) dollars conditioned for the faithful performance of such contract by the said Clinton Contracting Company.

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And the party of the first part further agree that if the said Clinton Contracting Company shall neglect or refuse to execute such contract within ten days after being notified so to do, we, the said party of the first part will, upon demand,

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Proposal of Clinton Contracting Co.

pay to the Mayor and Aldermen of Jersey City such amount of money as it may necessarily expend in doing the work and furnishing the materials necessary therefor, specified in said contract, over and above the amount which it would have been required to pay to the said Clinton Contracting Company had said Clinton Contracting Company executed such contract and fully performed the same. 10

Witness our hands and seals this
sixteenth day of March, 1916.

(L. S.) GEORGE W. CRANWELL,
Residence, West Hoboken, N. J.

(L. S.) THOMAS HENRY,
Residence, Weehawken, N. J.

Signed, sealed and delivered, in
the presence of 20

[SEAL] BERTIN A. McCAFFREY,
Notary Public, N. J.

This Bond must be accompanied by justification of surety.

This proposal must be enclosed by itself in a sealed envelope properly endorsed and directed. A certified check accompanying this Bid will be accepted in place of bond. 30

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

THOMAS HENRY, being duly sworn, according to law on his oath says:

I am a resident of the Township of Weehawken, in the County aforesaid, and am a freeholder of said County and own in my own name lands 40

Proposal of Clinton Contracting Co.

and premises of the clear value of more than fifteen thousand dollars and am worth at least the sum of fifteen thousand dollars in real estate in said County after all my just debts and liabilities have been paid and satisfied.

THOMAS HENRY.

10

Sworn and subscribed to before me this 13th day of March, in the year 1916.

[SEAL] RALPH BERNHARDT,
Notary Public, N. J.

20

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

GEORGE W. CRANWELL, being duly sworn according to law on his oath says:

I am a resident of the Town of West Hoboken, in the County aforesaid and am a freeholder of said County, and own in my own name lands and premises of the clear value of more than fifteen thousand dollars and am worth at least the sum of fifteen thousand dollars in real estate in said County after all my just debts and liabilities have been paid and satisfied.

30

GEORGE W. CRANWELL.

Sworn and subscribed to before me this 13th day of March, in the year 1916.

[SEAL] BERTIN A. McCaffrey,
Notary Public, N. J.

40

Proposal of W. T. S. Crichfield.

BOARD OF COMMISSIONERS,

Jersey City, N. J.

Department of Streets and Public Improvements
Bureau of Engineering.

PROPOSAL.

For the resurfacing with bituminous concrete
of macadam from roadways and asphalt streets
(which are out of guarantee.) 10

NOTE—The price must be written in the pro-
posal and also stated in figures.

GENTLEMEN :

The undersigned will contract to furnish all
the materials and do all the work for the above
improvement, (according to the Specifications for
the same on file in the office of the Chief Engineer
of the Department of Streets and Public Improve-
ments,) for ninety-two (92%) per cent. of the
Standard, as stated below. 20

ESTIMATE OF CHIEF ENGINEER, AND PRICES, TO BE
CONSIDERED AND TAKEN AS 100 PER CENT
OF THE STANDARD.

			\$ Cts.		
Earth Excavation	About	Cu Yds at		Per Cu Yd	
Rock Excavation	About	Cu Yds at		Per Cu Yd	
Earth Filling	About	Cu Yds at		Per Cu Yd	
Sand Filling	About	Cu Yds at		Per Cu Yd	30
Paving (Belgian) Base	About	Sq Yds at		Per Sq Yd	
Paving (Granite) Base	About	Sq Yds at		Per Sq Yd	
Resurfacing Asphalt Streets including taking up and removal of present Binder and Asphalt	About	8700 Sq Yds at	1.25	Per Sq Yd	
Resurfacing (M a c a d a m) Roadways	About	50000 Sq Yds at	1.10	Per Sq Yd	
Curb Stone set in Concrete	About	500 Lin Ft at	.25	Per Lin Ft	
Reset'g without Concrete Curb Stone	About	100 Lin Ft at	.06	Per Lin Ft	
Curb Stone (Gran.) 6"x16" set in Conc.	About	Lin Ft at		Per Lin Ft	
Cement Curb 6" x 6" with Curb Guard	About	Lin Ft at		Per Lin Ft	
Bridge Stone Base	About	Sq Ft at		Per Sq Ft	40

Proposal of W. T. S. Crichfield.

	Relaying & Dressing Bridge							
	Stone	About	Sq	Ft	at		Per	Sq Ft
	Flagging—Feet in width	About	Sq	Ft	at		Per	Sq Ft
	Relaying & Dressing Flag-							
	Stone	About	Sq	Ft	at		Per	Sq Ft
	Cement Walk—Feet in							
	Width	About	Sq	Ft	at		Per	Sq Ft
	Repaving in Gutters upon							
	Macadam sheets only							
	(Belgian) Sand Base	About	200	Sq	Yds	at	.30	Per
	Repaving (Granite) Base	About		Sq	Yds	at		Per
10	Cribbing Stone 5"x16" set in							
	Concrete	About		Lin	Ft	at		Per
	Resetting Receiving Basin							
	Heads	About				at		Each
	Resetting Manhole Heads	About	50			at	2.00	Each
	Resetting Water Gate Boxes							
	in Concrete	About	25			at	2.00	Each
	New Receiv'g Basin & Con-							
	nect'ns Comp.	About	1			at	85.00	Each
	Receiving Basins Rebuilt &							
	Connections	About	1			at	30.00	Each
	New Manholes Complete	About				at		Each
	Inch Vitrified Pipe	About		Lin	Ft	at		Per
	Inch Vitrified Pipe	About		Lin	Ft	at		Per
	Noiseless Manhole Covers	About				at		Each
	Blocks Clipped	About				M		Per
20	Blocks Removed & Hauled	About		Sq	Yds	at		Per

Jersey City, March 16, 1916.

(Name) W. T. S. CRICHFIELD,

(Address) 2 Green street, Jersey City, N. J.

NOTICE—No unbalanced bids will be received or considered.

AGREEMENTS OF SURETIES ON OTHER SIDE.

30 THIS AGREEMENT made between American Fidelity Company, a corporation of the State of Vermont, of Montpelier, Vermont, sureties for W. T. S. Crichfield of the first part and the Mayor and Aldermen of Jersey City of the second part.

40 WITNESSETH, That the party of the first part for and in consideration of the acceptance of the above proposal of the said W. T. S. Crichfield by the Board of Commissioners of Jersey City, and for the further consideration of one dollar to them paid by the party of the second part, the

Proposal of W. T. S. Crichfield.

receipt whereof is hereby acknowledged, agree that the said W. T. S. Crichfield within ten days after notice by mail or otherwise so to do, shall and will sign and deliver a contract, based upon said proposal and the specifications for the work contemplated therein, with the party of the second part, to do all the work and furnish all the materials required by said proposal and specifications, which contract shall be in the form and common use by the party of the second part; and further that the party of the first part will also execute a bond to the party of the second part, to be annexed to such contract, in the sum of Fifteen thousand (\$15,000.00) dollars conditioned for the faithful performance of such contract by the said W. T. S. Crichfield.

10

And the party of the first part further agree that if the said W. T. S. Crichfield shall neglect or refuse to execute such contract within ten days after being notified so to do, we, the said party of the first part will, upon demand, pay to the Mayor and Aldermen of Jersey City such amount of money as it may necessarily expend in doing the work and furnishing the materials necessary therefor, specified in said contract, over and above the amount which it would have been required to pay to the said W. T. S. Crichfield had said W. T. S. Crichfield executed such contract and fully performed the same.

20

30

Witness our hands and seals this
13th day of March, 1916.

AMERICAN FIDELITY COMPANY,

[SEAL]

By CECIL PIATT,
Resident Vice President.

40

Proposal of W. T. S. Crichfield.

Signed, sealed and delivered, in the
presence of

Attest: WILLIAM H. MACPHERSON,
[L. s.] *Resident Secretary.*

10 This Bond must be accompanied by justification
of Surety.

This proposal must be enclosed by itself in a
sealed envelope properly endorsed and directed.
A Certified Check accompanying this Bid will be
accepted in place of Bond.

JUSTIFICATION FORM—RESIDENT VICE PRESIDENTS
AND RESIDENT SECRETARIES.

AMERICAN FIDELITY COMPANY,

20 Montpelier, Vermont.
Branch Office at New York.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. }*ss.*

30 On this 13th day of March, 1916, before me
personally appeared William H. MacPherson to
me known and known to me to be the Resident
Secretary of the American Fidelity Company,
who being by me first duly sworn did depose and
say that he resides in the City of New York,
State of New York; that he is the Resident Secre-
tary of the American Fidelity Company, the
corporation described in and which executed the
foregoing instrument; that he knows the corpor-
ate seal of said company and that the seal affixed
to said instrument is such corporate seal; that
said company is duly and legally incorporated
40 licensed and authorized to transact fidelity and

Proposal of W. T. S. Crichfield.

surety business in the State of New Jersey and in the State of New York and that the liabilities of said company do not exceed its assets as ascertained in the manner provided in Section 183 of the Insurance Law of the State of New York.

He did further depose and say that he signed his name and affixed the corporate seal of said company, as its act, to said instrument under authority given and conferred upon him by a certain power of attorney from said company signed by Charles H. Darling, the President of said company, and attested by Ralph B. Denny, the Secretary of said company, pursuant to a certain by-law of said company relating to the authority of Resident Vice Presidents and Attorneys, a copy of which, certified by the Secretary of said company, is attached to said power of attorney and is as follows:

“Resident Vice President and Attorneys, when authorized and empowered by the President for that purpose, shall have full authority to approve of and execute bonds, contracts, insurances and undertakings which the company under and by virtue of its charter has authority to execute.”

And that said power of attorney is dated January 26th, 1916, and was in full force and effect at the time he signed said instrument, and is now in full force and effect.

He did further depose and say that he is acquainted with Cecil Piatt and knows him to be the Res. Vice-President of said company and that the signature of said Cecil Piatt subscribed to said bond is the genuine handwriting of said Cecil Piatt and was subscribed thereto under authority given and conferred upon the said Cecil

Proposal of W. T. S. Crichfield.

Piatt by the said power of attorney, and in the presence of him, the said deponent.

He did further depose and say that the following statement of the resources and liabilities of the company as of December 31, 1915, is correct to the best of his knowledge:

10

RESOURCES.

Bonds at market value:	
\$100,000 Baltimore City	\$ 98,250.00
10,000 Boston City	9,400.00
50,000 Buffalo City	51,050.00
50,000 Canton City	56,525.00
100,000 Massachusetts State	91,362.50
200,000 New York City.....	182,533.00

20

\$510,000	\$489,120.50
Cash in Bank and Office.....	\$191,580.05
Accrued Interest	7,812.48
Premiums in Course of Collection (less than three months due).....	76,471.09
Due from Reinsuring Companies.....	86,819.44
	<hr/>
	\$851,803.56

LIABILITIES.

30

Loss Reserve	\$213,163.48
Legal Reserve	172,754.78
Reserve for Commissions.....	24,096.96
Reserve for Taxes.....	6,420.37
Other Reserves except Capital.....	2,038.15
Capital Stock	305,500.00
Surplus	127,829.82
	<hr/>
	\$851,803.56

[L. S.]

WILLIAM P. MACPHERSON,

40

[SEAL]

S. MARKS,

Commissioner of Deeds.

Proposal of Uvalde Asphalt Paving Co.

Commissioner of Deeds, N. Y. City, residing in Bronx County.

County Clerk, N. Y., No. 1147, Register No. 17076.

Bronx 20, Register 7022, Kings 253 Register. Queens 2519, Certificate filed in Richmond Co. Commission expires June 8th, 1917.

10

BOARD OF COMMISSIONERS

Jersey City, N. J.

Department of Streets and Public Improvements
Bureau of Engineering.

PROPOSAL.

For the resurfacing with bituminous concrete of macadam roadways and asphalt streets (which are out of guarantee.)

20

NOTICE—The prices must be written in the proposal and also stated in figures.

GENTLEMEN:

The undersigned will contract to furnish all the materials and do all the work for the above improvement, (according to the Specifications for the same on file in the office of the Chief Engineer of the Department of Streets and Public Improvements,) for one hundred nine (109) per cent. of the Standard, as stated below.

30

ESTIMATE OF CHIEF ENGINEER, AND PRICES, TO BE
CONSIDERED AND TAKEN AS 100 PER CENT
OF THE STANDARD.

				\$	Cts.	
Earth Excavation	About	Cu	Yds at	Per	Cu	Yd
Rock Excavation	About	Cu	Yds at	Per	Cu	Yd
Earth Filling	About	Cu	Yds at	Per	Cu	Yd
Sand Filling	About	Cu	Yds at	Per	Cu	Yd
Paving (Belgian) Base	About	Sq	Yds at	Per	Sq	Yd
Paving (Granite) Base	About	Sq	Yds at	Per	Sq	Yd

40

Proposal of Uvalde Asphalt Paving Co.

	Resurfacing Asphalt Streets including taking up and removal of present Binder and Asphalt	About	8700	Sq Yds	at	1.25	Per Sq Yd
	Resurfacing (Macadam) Roadways	About	50000	Sq Yds	at	1.10	Per Sq Yd
	Curb Stone set in Concrete	About	500	Lin Ft	at	.25	Per Lin Ft
	Reset'g without Concrete Curb Stone	About	100	Lin Ft	at	.06	Per Lin Ft
10	Curb Stone (Gran.) 6"x16" set in Conc.	About		Lin Ft	at		Per Lin Ft
	Cement Curb 6"x16" with Curb Guard	About		Lin Ft	at		Per Lin Ft
	Bridge Stone Base	About		Sq Ft	at		Per Sq Ft
	Relaying & Dressing Bridge Stone	About		Sq Ft	at		Per Sq Ft
	Flagging—Feet in Width	About		Sq Ft	at		Per Sq Ft
	Relaying & Dressing Bridge ging Stone	About		Sq Ft	at		Per Sq Ft
	Cement Walk—Feet in Width	About		Sq Ft	at		Per Sq Ft
	Repaving in Gutters upon Macadam Streets only (Belgian) Sand Base	About	200	Sq Yds	at	.30	Per Sq Yd
	Repaving (Granite) Base	About		Sq Yds	at		Per Sq Yd
20	Cribbing Stone 5"x16" set in Concrete	About		Lin Ft	at		Per Lin Ft
	Resetting Receiving Basin Heads	About			at		Each
	Resetting Manhole Heads	About	50		at	2.00	Each
	Resetting Water Gate Boxes in Concrete		25		at	2.00	Each
	New Receiv'g Basin & Connec'ns Comp.	About	1		at	85.00	Each
	Receiving Basins Rebuilt & Connections	About	1		at	30.00	Each
	New Manholes Complete	About			at		Each
	Inch Vitrified Pipe	About		Lin Ft	at		Per Lin Ft
	Inch Vitrified Pipe	About		Lin Ft	at		Per Lin Ft
	Noiseless Manhole Covers	About			at		Each
	Blocks Clipped	About			M		M
	Blocks Removed & Hauled	About		Sq Yds	at		Per Sq Yd

30

Jersey City, March 16, 1916.

UVALDE ASPHALT PAVING COMPANY.

(Name) By R. T. ROKELY,
President.

(Address) 1 Broadway, N. Y. City.

NOTICE—No unbalanced bids will be received or considered.

40

Proposal of Uvalde Asphalt Paving Co.

THIS AGREEMENT made between National Surety Company, a corporation under the Laws of the State of New York, of 115 Broadway, of New York, N. Y., sureties for Uvalde Asphalt Paving Company, of the first part and the Mayor and Aldermen of Jersey City of the second part

WITNESSETH, That the party of the first part 10
for and in consideration of the acceptance of the
above proposal of the said Uvalde Asphalt Paving
Company by the Board of Commissioners of
Jersey City, and for the further consideration
of one dollar to them paid by the party of the
second part, the receipt whereof is hereby ac-
knowledged, agree that the said Uvalde Asphalt
Paving Co. within ten days after notice by mail
or otherwise so to do, shall and will sign and de- 20
liver a contract, based upon said proposal and the
Specifications for the work contemplated therein,
with the party of the second part, to do all the
work and furnish all the materials required by
said proposal and Specifications, which contract
shall be in the form and common use by the party
of the second part; and further that the party of
the first part will also execute a bond to the
party of the second part, to be annexed to such
contract in the sum of Fifteen Thousand (\$15,-
000) Dollars conditional for the faithful perform- 30
ance of such contract by the said Uvalde Asphalt
Paving Company.

And the party of the first part further agree
that if the said Uvalde Asphalt Paving Company
shall neglect or refuse to execute such a contract
within ten days after being notified so to do, we,
the said party of the first part will, upon demand,
pay to the Mayor and Aldermen of Jersey City
such amount of money as it may necessarily ex- 40
pend in doing the work and furnishing the ma-

Proposal of Uvalde Asphalt Paving Co.

materials necessary therefor, specified in said contract, over and above the amount which it would have been required to pay to the said Uvalde Asphalt Paving Company had said Uvalde Asphalt Paving Company executed such contract and fully performed the same.

10 Witness our hands and seal this
10th day of March, 1916.

NATIONAL SURETY COMPANY,

By HOWARD ABRAHAMS,
Vice President.

Attest: CHARLES J KOCH,
Res. Asst. Secretary.

20 Signed, sealed and delivered in the presence of
A. S. RICHMOND.

This Bond must be accompanied by justification of Surety.

This proposal must be enclosed by itself in a sealed envelope properly endorsed and directed. A certified check accompanying this bid will be accepted in place of bond.

30 STATE OF NEW YORK, }
COUNTY OF NEW YORK. } *ss.*

40 On this 10th day of March, 1916, before me personally appeared Howard Abrahams, Vice President of the National Surety Company, with whom I am personally acquainted, who, being by me duly sworn, said that he resides in the County of New York, that he is the Vice President of the National Surety Company, the corporation described in and which executed the within instru-

Proposal of Uvalde Asphalt Paving Co.

ment; that he knows the corporate seal of said company; that the seal affixed to the within instrument is such corporate seal; that it was affixed by order of the Board of Directors of said company, and that he signed said instrument as Vice President of said company by like authority and that the liabilities of said company do not exceed its assets as determined by an audit of the company's annual statement filed with the Superintendent of Insurance of the State of New York and certified to by said superintendent, pursuant to Section 2 of Chapter 182 of the Laws of the State of New York for the year 1913, amending Section 182 of Chapter 33 of the laws of the State of New York for the year 1909 constituting Chapter 28 of the Consolidated Laws of the State of New York. And said Howard Abrahams further said that he is acquainted with Charles K. Koch and knows him to be the Res. Asst. Secretary of said company; that the signature of the said Charles J. Koch subscribed to the said instrument is in the genuine handwriting of the said Charles J. Koch and was thereto subscribed by the like order of the said Board of Directors and in the presence of him, the said Vice President.

[SEAL]

P. P. MARCONE.

COPY OF BY-LAW.

BE IT REMEMBERED: That at a regular meeting of the Board of Directors of the National Surety Company, duly called and held on the sixth day of February, 1912, a quorum being present, the following by-law was adopted:

10

20

30

40

Proposal of Uvalde Asphalt Paving Co.

ARTICLE XIII.

Section 1. Signatures required. All bonds, recognizances, or contracts of indemnity, policies of insurance, and all other writings obligatory in the nature thereof, shall be signed by the President, a Vice President, a Resident Vice President, or Attorney-in-Fact, and shall have the seal of the company affixed thereto, duly attested by the Secretary, an Assistant Secretary, or Resident Assistant Secretary. All Vice Presidents and Resident Vice Presidents shall each have authority to sign such instruments, whether the President be absent or incapacitated, or not, and the Assistant Secretaries and Resident Assistant Secretaries shall each have authority to seal and attest such instruments, whether the Secretary be absent or incapacitated, or not; and the Attorneys-in-Fact shall each have authority, in the discretion of such Attorneys-in-Fact, to affix to such instruments an impression of the company's seal, whether the Secretary be absent or incapacitated, or not, or to attach the individual seal of the Attorney-in-Fact thereto, or to use the scroll of the Attorney-in-Fact, or a wafer, wax, or other similar adhesive substance affixed thereto, or a seal of paper or other similar substance affixed thereto by mucilage, or other adhesive substance, or use the word "seal" or the letters "L. S." opposite the signature of such Attorneys-in-Fact, as the case may be.

Proposal of Uvalde Asphalt Paving Co.

STATE OF NEW YORK, }
 COUNTY OF NEW YORK. } ss.

I, Charles J. Koch, Resident Assistant Secretary of the National Surety Company, have compared the foregoing By-Law with the original thereof, as recorded in the Minute Book of said company, and do certify that the same is a correct and true transcript therefrom, and of the whole of Article XIII, Section 1 of said original By-Law. 10

Given under my hand and seal of the Company, in the County of New York, this 10th day of March, 1916.

[L. s.]

CHARLES J. KOCH,
Resident Asst. Secretary.

20

For use in New York State and other states which do not require published figures to conform to statement furnished the department of such state after audit by them.

NATIONAL SURETY COMPANY OF NEW YORK.

Financial Statement, December 31, 1915.

30

Wm. B. Joyce, Pres. Tubert J. Hewitt, Sec.

ASSETS.

Cash in Banks and Offices.....	\$1,705,698.26	
Government, Municipal and Other Bonds, and Stocks	1,972,088.88	
Real Estate, Mortgages and Collateral Loans	209,377.89	
Unpaid Premiums (excluding Premiums 90 days overdue).....	596,557.99	40

Proposal of Uvalde Asphalt Paving Co.

Accrued Interest and Accounts Re- ceivable	467,171.93
Total	<u>\$9,950,894.95</u>

LIABILITIES.

10	Unearned Premium Reserve	\$2,092,689.75
	Contingent Claim and Expense Re- serve (Less Reinsurance).....	1,192,426.81
	Reserve for Taxes and Unpaid Com- missions (not due).....	196,498.14
	Accounts Payable and Expenses In- curred (not due).....	119,769.34
	Dividend Declared (Payable Jan. 3rd, 1916)	60,000.00
	Capital Stock	3,000,000.00
20	Surplus	3,289,510.91
	Total	<u>\$9,950,894.95</u>

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss.

30 Charles J. Koch, being duly sworn, says: That he is Resident Assistant Secretary of the National Surety Company, that said company is a corporation duly organized, existing, and engaged in business as a surety by virtue of the laws of the State of New York, and has duly complied with all the requirements of the laws of said State and of the laws of the State of New Jersey applicable to said company, and is duly qualified to act as surety under such laws; that said company has also complied with and is duly qualified to act as surety under the Act of August 13, 1894, entitled,
40 "An Act Relative to Recognizances, Stipulations, Bonds and Undertakings, and To Allow Certain

Specifications for Street Improvements.

Corporations To be Accepted As Surety Thereon," as amended by the Act of Congress of March 23, 1910. That the foregoing is a full, true and correct statement of the financial condition of said company on the 31st day of December, 1915.

[NOTARY SEAL]

CHARLES J. KOCH. 10

Sworn to before me this 10th day

of March, 1916.

P. P. MARCONE. [NOTARY STAMP]

DEPARTMENT OF STREETS AND PUBLIC IMPROVEMENTS. 20

BUREAU OF ENGINEERING
BOARD OF COMMISSIONERS.
JERSEY CITY.

SPECIFICATIONS FOR STREET
IMPROVEMENT.

BITUMINOUS CONCRETE PAVEMENT.

For the re-surfacing with bituminous concrete of macadam roadways and asphalt streets (which are out of guarantee.) The following is a statement of the quantity of work to be done. The names of the streets to be re-surfaced will be determined upon by the Director of Streets and Public Improvements. The selection of the streets, however, will not affect the quantity of work to be done under the contract. 30

Estimate of Chief Engineer, and prices to be considered and taken as one hundred (100%) 40

Specifications for Street Improvements.

per cent of the standard. Quantities to be more or less.

	Re-surfacing Macadam Roadways,	about 50,000 sq. yds..@ 1.10	\$55,000.00
	Re-surfacing Asphalt Streets, including taking up and removal of present binder and asphalt,	" 8,700 " ..@ 1.25	10,875.00
	Manhole heads reset,	" 50 ..@ 2.00	100.00
10	Water-gate boxes reset,	" 25 ..@ 2.00	50.00
	Curbstone set in concrete,	" 500 lin. ft. ..@ .25	125.00
	Curbstone reset (without concrete),	" 100 " ..@ .06	6.00
	Belgian Pavement in gutters upon Macadam Streets only, ..	" 200 sq. yds..@ .30	60.00
	Rebuilt Receiving Basins,	" 1 ..@300.0	30.00
	New Receiving Basins and connections, complete,	" 1 ..@85.00	85.00
		TOTAL,.....	\$66,331.00

Jersey City, February 10, 1916.

20 Director Henry Byrne.

Dear Sir:

Herewith please find specifications for the re-surfacing of macadam roadways with bituminous concrete.

Respectfully submitted,

C. A. VAN KEUREN,
Chief Engineer.

30

40

Specifications for Street Improvements.

SEALED BIDS FOR PROPOSALS.

Sealed bids or proposals for the work and materials named in this specification, will be received by the Board of Commissioners in the Assembly Chamber of the City Hall, Jersey City, N. J., on the date advertised for receiving said bids.

10

The award of the contract, if awarded, will be made to the lowest responsible bidder with adequate security (if in the judgment of the Board of Commissioners it will be advantageous to the city) as soon thereafter as practicable.

The person or persons to whom the contract may be awarded will be required to attend at the office of the Corporation Attorney with the sureties offered by him or them, and execute the contract within ten (10) days from the date of the service of the notice to the effect that the sureties have been accepted, and the contract awarded; in case of failure so to do, he or they will be considered as having abandoned it, and in default to the city.

20

The price must be written in the proposal, and also stated in figures; any proposal not conforming with all these requirements will be deemed informal and rejected. The estimate and prices of the Chief Engineer herein contained will be considered and taken as ONE HUNDRED (100%) PER CENT OF THE STANDARD.

30

Bidders must state a single fixed percentage of the ONE HUNDRED (100%) PER CENT STANDARD, above quoted, for which they will furnish the materials, and do all the work comprehended in this specification, and if final award of contract is made, the per cent so stated will form the basis upon which payment will be made.

40

Specifications for Street Improvements.

RE-SURFACING ASPHALT STREETS.

10 In the re-surfacing of asphalt streets, the existing asphalt wearing surface and binder, where binder is used, shall be removed, and the concrete, or stone block pavement upon which the binder and asphalt wearing surface was laid, shall be thoroughly swept, and any depressions found in the foundation on the street, they shall be brought to the proper grade by the addition of binder to receive the *bituminous concrete pavement*, and the cost shall be included in the price paid per square yard for re-surfacing asphalt streets.

Bidders will not be required under these specifications to furnish any samples with their bids.

20 The party or parties to whom contract is to be awarded will be required to furnish samples within three (3) days notice from the Director of the Department of Streets and Public Improvements to furnish said samples.

When samples are furnished, the mixture will be in the proportion as hereafter stated.

FOUNDATION.

30 The existing macadam, or stone foundation, shall be thoroughly swept, and scarified with picks, or by a suitable machine in order to bring the same to the new grade as established by the engineer. Old or new broken stone may be used in filling up depressions in the roadway, and the same shall be spread and mixed with clay or other suitable filler, as directed by the engineer.

40 When the gutters adjacent to the curb are paved with stone block pavement, the same shall be relaid, if directed by the engineer, to the new established grade, and after which the entire roadway to be used for a foundation, shall be

Specifications for Street Improvements.

thoroughly compacted by a steam roller weighing not less than ten (10) tons.

BITUMINOUS CONCRETE PAVEMENT.

On the prepared macadam or stone foundation shall be spread the bituminous concrete pavement, which shall have a thickness of two and one-half (2½) inches after ultimate compression, and which shall be composed of materials and mixed in proportions as follows: 10

Asphaltic Cement, from 7 to 11 per cent.					
Mineral aggregate passing 200 mesh screen	from	5	to	11%	
"	"	40	"	"	18 to 30%
"	"	10	"	"	25 to 55%
"	"	4	"	"	8 to 22%
"	"	2	less than		10%

SIEVES TO BE USED IN THE ORDER NAMED.

The mineral aggregate used in making the bituminous concrete mixture shall consist of suitable screened sand, crushed trap rock, and pulverized filler (Portland cement) of sizes and percentages called for in the specifications above. 20

The crushed trap rock and sand shall be heated in revolving dryers or drums to a temperature not greater than 325 degrees *F.*, and mixed as above provided for, after which the filler (which shall be Portland cement) shall be added cold, and then the asphaltic cement, of quality hereinafter described, shall be added at the proper temperature and proper proportion, to affect a bituminous mixture of the best quality. These materials shall then be placed in a revolving mixer and thoroughly agitated until all particles of the aggregate are thoroughly and completely coated with the hot asphaltic cement, and shall be mixed until the combination is a uniform bituminous concrete. 30

Specifications for Street Improvements.

This mixture shall be delivered to the work in wagons or carts, at a temperature not less than 225 degrees *F.*, and dumped and spread with hot iron shovels and rakes to such depth that it will have a thickness of two and one-half (2½) inches after having been thoroughly compressed with a steam roller weighing not less than ten (10) tons.

10 After the pavement has been rolled with a ten (10) ton steam roller, the surface of same shall be swept and covered with Portland cement in order to completely fill any surface voids which may exist.

20 The asphaltic cement used in cementing the mineral aggregate shall consist of a refined natural asphalt mixed with a liquid asphaltic flux, or the residue from the distillation of an asphaltic petroleum, or if the refined asphalt has the penetration required for asphaltic cement hereinafter specified, it may be used without flux, and said refined asphalt shall be considered as asphaltic cement, and shall fulfill all the requirements therefor.

30 The refined natural asphalt shall be obtained by refining crude natural asphalt at a temperature not greater than 350 degrees Fahrenheit, and the asphalt used must be of the best quality. The asphalt used must contain not less than ninety (90) per cent of the bitumen soluble in carbon bisulphide, not less than sixty-eight (68) per cent shall be soluble in Pennsylvania petroleum naphtha (boiling point from 40 to 60 centigrade), or, if it does not contain sixty-eight (68) per cent thus soluble in naphtha, but is satisfactory in other respects, the deficiency may be supplied by fluxing the refined natural quality satisfactory to the

Specifications for Street Improvements.

engineer as will bring it up to the required standard.

The refined asphalt, or the residue from the distillation of an asphaltic petroleum, when mixed with the liquid asphalt flux in such quantities as will produce an asphaltic cement of fifty (50) penetration or refined asphalt of this penetration, at seventy-seven (77) degrees Fahrenheit, shall have a ductility of not less than twenty (20) centimeters at seventy-seven (77) degrees Fahrenheit. The tests for ductility shall be made in accordance with the specifications for same given in detail in the report of the "Operations of the Engineering Department of the District of Columbia, for the year 1904." The asphaltic cement used shall have a penetration ranging from fifty to sixty (50 to 60) at seventy-seven (77) degrees Fahrenheit.

The liquid asphalt flux if used in the asphaltic cement shall comply with the following tests:

(a) Flash test shall not be less than three hundred and twenty-five (325) degrees Fahrenheit. (The flash test shall be taken in a New York State closed oil tester.)

(b) The fire test shall not be less than three hundred and fifty (350) degrees Fahrenheit.

(c) It shall contain no appreciable amount of light oils or matter volatile under two hundred and fifty (250) degrees Fahrenheit.

(d) Matter volatile at three hundred and fifty (350) degrees Fahrenheit in twenty-four (24) hours shall be less than eight (8) per cent. (The test for matter volatile at three hundred and fifty (350) degrees Fahrenheit shall be made with approximately fifty (50) grams of oil, in an open, flat bottom, cylin-

Specifications for Street Improvements.

drical dish, $2\frac{1}{2}$ inches in diameter, and $1\frac{3}{8}$ inches high. The thermometer shall be applied so as to register the temperature of the oil.)

(e) The liquid asphalt shall be free from coke and any manner or form of adulteration.

10 As soon as the fluxing agent is added to the refined asphalt, the entire mass shall be agitated by an air blast or other suitable appliance, and the agitation continued until a homogeneous asphaltic cement is produced. The asphaltic cement must not be heated to a temperature of greater than three hundred and fifty (350) degrees Fahrenheit.

20 During the prosecution of the work, if ordered by the engineer, the contractor shall keep a section of the roadway open sufficiently wide to permit one vehicle to pass during the progress of the work.

30 All material to be furnished and used under these specifications shall strictly comply therewith, and shall be subject to the inspection and rejection of the engineer, and should any material furnished require inspection at a point outside of Hudson County, the contractor shall pay the expense of such inspection to the Board of Commissioners, and in the event of his failure so to do, the amount thereof will be deducted from any moneys due or which may become due the contractor under this contract.

40 The contractor or party doing the work called for under these specifications, will be required during the construction of the work, to use suitable barricades and red lights for the purpose of preventing accidents, and will be further required to remove promptly, at his own expense, any improper or unsuitable materials delivered on the

Specifications for Street Improvements.

work which has been condemned by the engineer. The contractor will be further required to preserve all points, stakes and bench marks in the proper positions until authorized by the engineer to remove them. Any expense incurred in replacing any point, stake or bench mark which the contractor has failed to preserve, will be charged to him and the amount deducted from any moneys due him, a result of this contract. 10

The bituminous concrete pavement, when completed, will be measured by the engineer, and on which measurements payment will be made by the Board of Commissioners, and the price paid for same shall cover the furnishing of all the different materials used in the construction of same, and the cost of labor and all expenses connected therewith together with the proper maintenance of said pavement of a period of ten (10) years. 20

The contractor will be required to enter into a contract and bond guaranteeing the bituminous concrete pavement to be in good condition during and at the end of ten (10) years from the date of its completion and acceptance, and he will be further required to furnish a suitable bond in legal form of a surety company authorized to do business by and operating in accordance with the laws of the State of New Jersey; or a certified check; or by the consent in writing of two (2) responsible *real estate owners of Hudson County*, that they will become surety in the penal sum of *fifteen thousand dollars*, for the faithful performance of the contract, which two (2) responsible sureties must qualify under oath that they are each worth the penal sum of said bond, and which said bond shall be cancelled, and certified check returned, upon the payment of the retained per- 30 40

Specifications for Street Improvements.

centage for the work done under the contract awarded, provided, that when a bond other than a surety company bond is given, the form of the said bond shall be approved by the corporation counsel, and the sufficiency of the surety approved by the city comptroller.

10 The person or company to whom the contract is awarded, will be required to complete the entire work to the satisfaction of the city, and in strict accordance with these specifications, and will be allowed from date of contract to November 30, 1916.

The contractor will be required to commence work within five (5) days from the date of notification by the director of the Department of Streets and Public Improvements.

20 It is hereby further agreed between the parties hereto, that the chief engineer of the Department of Streets and Public Improvements of the City of Jersey City, shall determine the amount and quantity of work to be paid for, and further that the Board of Commissioners shall decide every question which may arise relating to any work under this contract, and in case of a dispute on either side, they shall act as arbiters, and their decision shall be final.

30 IF CONTRACT IS NOT COMPLETED AS PER TERMS.

If at any time the work shall be abandoned, or if this contract shall be assigned other than herein specified, or if at any time the chief engineer, or the engineer in charge of the work shall be of the opinion, and shall so certify in writing to the Board of Commissioners that the work is unnecessarily delayed, or that the contractor is wilfully violating any of the conditions of these specifications, said Board of Commissioners shall have the power to notify the contractor to discontinue all work under his contract, and the contractor shall

40

Specifications for Street Improvements.

cease to continue the work or such part thereof the the board may designate, and the board thereupon will have the power to complete the work, and provide all materials and labor necessary therefor, and charge the expense of same to the contractor, and the expense so charged will b deducted and paid by the city out of any moneys that are due, or may thereafter become due to the said contractor under and by virtue of this contract, or any part thereof, and in case such expense is less than the sum which would have been payable under this contract if the same had been completed by the contractor, he shall be entitled to receive the difference, and in case such expense is greater, the contractor shall pay the amount of excess on notice from the Board of Commissioners, of the excess so due.

The amount paid for inspection by the city on the foregoing work after the date hereinafter specified for its completion, shall be deducted and paid from the moneys due the contractor under this contract.

NOTICE TO CONTRACTORS.

The Board of Commissioners reserves at any time the right to accept, or reject, any or all proposals made under these specifications, if in their judgment, it is to the best interest of the city so to do.

Proposals will not be received later than time fixed in advertisement.

The sureties' agreement must be properly signed and acknowledged.

The contractor, or contractors, shall also promptly replace the bituminous concrete pavement when the same is removed during the period of said guarantee to make a sewer, water, or gas connection, or any other connection or

Specifications for Street Improvements.

opening for which work he will receive the original price bid per square yard.

10 While it is the intention of the Board of Commissioners to have estimated quantities accurate, yet they are only preliminary, and no allowance will be made for any difference shown on final estimate. Payments will be made at contract prices only, no matter whether actual quantities shall exceed or be less than those on which the proposal is based.

The contractor shall not be allowed to sublet any part of his work, or make any assignment of the contract, entered into in accordance with this specification, or of the moneys to be paid to him thereon, without special permission in writing from the Board of Commissioners.

20

PAYMENTS.

30 Payments will be made semi-monthly on estimate and certification of same by the chief engineer for work performed under and in accordance with these specifications, in sums not less than *five hundred (\$500.00) dollars* in cash, twenty (20%) per cent being retained from each estimate; *provided*, that nothing herein contained shall be construed to affect the rights hereby reserved by the said Board of Commissioners to reject the whole or any portion of the aforesaid work should the final certificates be found or known to be inconsistent with the terms of these specifications or otherwise improperly given. The twenty (20%) per cent so retained shall be paid to the contractor upon the completion and acceptance of the work.

40 *The Board of Commissioners* shall have the right to waive the certificates of the engineer in charge, and of the inspector of the work.

Rule.

NEW JERSEY SUPREME COURT.

FRANK DEVLIN and WILLIAM T. S.
CRICHFIELD,

*Prosecutors,**vs.*

THE MAYOR AND ALDERMEN OF
JERSEY CITY and the CLINTON
CONTRACTING COMPANY,

*On Certiorari.**Rule for
Affidavits.*

10

On application in behalf of the prosecutors, it
is ORDERED that both parties have leave to take
affidavits to be used on the hearing of the writ in
above stated cause.

20

Let this rule be entered.

C. W. PARKER,
J. S. C.

Entered April 25, 1916. On motion of

COLLINS & CORBIN,
Attorneys of Prosecutors.

A true copy.

30

WM. C. GEBHARDT,
Clerk.

40

Reasons.

Reasons.

(Filed May 24, 1916.)

The prosecutors file the following reasons upon which they will rely upon the reversal of the proceedings herein:

10 The contract and specifications under which the work described in the proceedings under review was to be performed did not establish a common standard for bidding and prevented fair and open competition by reason of:

20 1. The said contract and specifications did not state what streets are to be re-surfaced, but left that matter to the arbitrary determination of the Director of Streets and Public Improvements of the City of Jersey City, without affording to bidders an opportunity to examine or inspect these streets to be re-surfaced or the location thereof or the condition of the pavement thereon or the amount of traffic using the same;

30 2. The said contract and specifications required the contractor to enter into a contract and bond guaranteeing the pavement to be in good condition during and at the end of ten years from the date of its completion and acceptance, without stating the amount of such bond or giving any information whereby the amount of such bond might be determined;

3. The said contract and specifications, so far as they relate to the re-surfacing of asphalt streets, did not state the amount or the depth of the binder and no means were afforded to bidders to determine the amount or depth of such binder;

40 4. The said contract and specifications so far as they relate to the re-surfacing of asphalt streets required the asphalt wearing surface and

Reasons.

binder to be brought to the proper grade, but they did not state what was the proper grade, nor afford any means to bidders of determining the same.

5. The said contract and specifications so far as they relate to the existing macadam or stone foundation, specified that old or new broken stone might be used in filling up depressions in the roadway, but they did not state the extent of the depressions nor afford any means whereby bidders might determine same, nor was any information given as to the quantity of broken stone required for the purpose of carrying out the contract. 10

6. The contract and specifications so far as they relate to the existing macadam or stone foundation specified that old or new broken stone might be used in filling up depressions in the roadway, but they did not make any provision for determining the quantity of new stone that might be required or the price to be paid therefor, nor was any information given to bidders whereby such facts might be determined, nor was there any provision for making payment for such new stone as might be required. 20

COLLINS & CORBIN, 30
Attorneys of Prosecutors.

William T. S. Crichfield, direct.

New Jersey Supreme Court.

10	JAMES DEVLIN AND WILLIAM T. S. CRICHFIELD, <i>Prosecutors,</i>	}	<i>On</i>
	<i>vs.</i>		<i>Certiorari.</i>
	THE MAYOR AND ALDERMEN OF JERSEY CITY AND THE CLINTON CONTRACTING COMPANY, <i>Defendants.</i>		<i>Depositions.</i>

20 : Deposition taken before me, William C. Asper,
 a Supreme Court Commissioner, at the office of
 Collins & Corbin, 243 Washington street, Jersey
 City, New Jersey, this twenty-seventh day of
 May, 1916, at ten o'clock in the forenoon, by
 agreement and consent of counsel.

Appearances:

Messrs. Collins & Corbin, attorneys for prose-
 cutors.

John Milton, Esq., attorney for Mayor and
 Aldermen of Jersey City.

30 J. Emil Walscheid, Esq., and William F.
 Burke, Esq., attorneys of The Clinton Contract-
 ing Company.

It is stipulated that the depositions be taken
 stenographically and the signatures of witntsses
 waived.

WILLIAM T. S. CRICHFIELD, sworn.

Direct examination by Mr. Markley.

40 Q Where do you reside, Mr. Crichfield? A
 54 Fifth street, Hoboken, New Jersey.

William T. S. Crichfield, direct.

Q What business are you engaged in? A Contracting.

Q What kind of contracting business? A General contracting, asphalt paving, work of that character.

Q Are you employed by anybody else, or do you do business on your own account, or both? 10

A I do business on my own account, for my own benefit and profit, and I also have connection with the Uvalde Asphalt Paving Company, 1 Broadway, New York, to perform certain services for them.

Q In what capacity are you employed by the Uvalde Asphalt Paving Company? A I have always carried the title of General Superintendent.

Q Does your arrangement with the Uvalde Asphalt Paving Company permit you to submit bids in your own behalf for paving work? A It does. 20

Q Are you the William T. S. Crichfield who submitted a proposal to the Board of Commissioners of Jersey City for the resurfacing with bituminous concrete of macadam roadways and asphalt streets out of guarantee in response to advertisement of February 29th, 1916? A I am. 30

Q Did you, before submitting a bid, examine the specifications for that work upon which proposals were invited? A I did. 30

Q What did the specifications state, if anything, with regard to the names of the streets to be resurfaced? A The specifications mentioned no streets to be resurfaced with bituminous concrete.

Q Did the specifications that were given to you upon your request state how the streets to be resurfaced were to be determined? A I examined 40

William T. S. Crichfield, direct.

the specifications on file in the City Engineer's office, and, to the best of my memory—

Mr. Walscheid. Say they don't mention the names of any streets, Mr. Crichfield.

10 A To the best of my memory a provision in the specifications stated that the streets to be resurfaced were to be determined by the Director of Streets and Public Improvements; in the specifications no streets were enumerated to be resurfaced under the bidding called for.

Q What did the specifications provide for, with regard to the quantity of work to be done under the proposed contract?

Mr. Walscheid. I object to that on the ground that the specifications definitely show what quantity of work to be done.

20 A The specifications called for the resurfacing of a certain number of square yards of macadam roadways with bituminous concrete surface, which, as I recall it, was about 50,000 square yards, and also for resurfacing asphalt roadways which were out of guarantee, to the extent of about 8,700 square yards.

Q Was this stated to be the exact quantity, or quantity more or less.

30 *Mr. Walscheid.* I object to that on the ground that the specifications show for themselves.

A The engineer's approximate quantities.

Q From your examination of the specifications and the contract, had you anything to guide you as to the particular streets to be resurfaced? A I could not get any information from the chief engineer or from the director of streets and public improvements, the specifications, or from any source
40 whatsoever, after diligent inquiry as to what streets should be resurfaced, what macadam streets should be resurfaced under that contract.

William T. S. Crichfield, direct.

By Mr. Walscheid.

Q Are you limiting your answer to macadam streets? A Yes. May I finish the answer? Applying to streets to be resurfaced with asphalt, I finally succeeded in getting a letter from Chief Engineer Van Kueren, in which he stated that the streets to be resurfaced with bituminous concrete— 10

By Mr. Markley.

Q Have you got that letter? A I think I have that letter. (Produces letter). I received the following letter:

DEPARTMENT OF
STREETS AND PUBLIC IMPROVEMENTS

Henry Byrne, Director.

Office
C. A. Van Keuren
Chief Engineer
Room 21

20

Jersey City, N. J., March 14, 1916

Mr. W. T. S. Crichfield,
Hoboken, N. J.

Dear Sir:

In the contract for re-surfacing macadam roadways, the letting of which takes place next Thursday at the City Hall, Jersey City, N. J., there is included in that specification, work to be performed by removing and resurfacing streets paved with asphalt. 30

In this class there is Mercer street, from Henderson to Brunswick street; and Grove street, from Mercer to Montgomery street.

It is the intention to allow Bergen avenue, and Newark avenue, where terms of guarantee will expire next Fall, to remain until the year 1917. 40

William T. S. Crichfield, direct.

If there are sufficient moneys left in the appropriation after the macadam streets which it is proposed to resurface have been completed, Eighth street, East and West Hamilton place will probably be included in the work to be performed.

This is in addition to Mercer street and Grove street.

10

Respectfully,

C. A. VAN KEUREN,
Chief Engineer.

Q Did you have any other information, either from the contract, plans or specifications, or from the public officials as to the streets? A That is the only information I could receive or did receive.

20

Q Are you familiar with the territorial limits of the City of Jersey City? A Yes.

Q Have you a plant in Jersey City? A Yes.

Q Where is that plant? A Greene street and Morris Canal Basin.

Q Do you know whether there is any difference in volume between the vehicular traffic on some streets in Jersey City as compared with other streets? A I do; there is a decided and great difference.

30

Q Can you name any street where the traffic is heavy? A Jersey City has a population of two hundred and sixty-five or seventy thousand people, and, as a general rule, its traffic is reasonably heavy throughout the entire city, except in the outskirts; many of the streets, of course, have a much heavier traffic, through arteries; for instance, in the business section, they have a heavier traffic than other streets would have; that can only be determined by looking at the street and observing the traffic which passes over it.

40

William T. S. Crichfield, direct.

Q I believe you said your plant was at the corner of Green street and Morris Canal Basin?

A Yes; a plant which I have contracted for, or, at least, for the work which I secure and perform is located at the foot of Greene street and Morris Canal Basin.

Q Have you your materials stored there, working apparatus, etc? A Yes, materials for the bituminous construction and equipment, delivery trucks, etc., are stored there. 10

Q Would the amount of traffic on a certain street or streets be any factor in determining the amount of your bid for street paving work for streets? A That is a very important factor; in submitting a proposal for resurfacing a street the amount of traffic which a pavement sustains is a decidedly important factor, for the reason that the pavement is laid under a long term guarantee and the expense of maintenance of a pavement under heavy traffic conditions is much greater than if laid under and used for light traffic. 20

Q Would the question of how far you would have to haul your material in paving a street be a determining factor in making up your bid? A That is also an important factor, yes. The cost of trucking is a very important cost of laying a pavement, and the further the distance from your factory naturally would mean a greater cost for trucking. 30

Q What was your understanding, from the examination of the specifications that you made, as to the expression "out of guarantee" in those specifications? A My understanding, applied to macadam streets, was this: That some of those streets were laid under a one year guarantee, and the streets to be included in this work were those which had been laid longer than a period of one 40

William T. S. Crichfield, direct.

10 year. Applying to resurfacing streets, which had been paved with sheet asphalt, many of those streets, in fact, I think practically all of them in Jersey City, had been laid under a ten year guarantee, and under the specifications only such asphalt streets would be included which had passed beyond the guarantee, or, in other words, which had been laid longer than ten years.

Q Then, you did not understand the expression "out of guarantee" to refer to macadam streets?

A Yes, I did; some of the macadam which had been laid, as I stated before, as I understand, for one year, under a one year guarantee, and included such of those streets which had passed beyond that time.

20 Q Eighth street and East Hamilton place referred to in the letter of the chief engineer of the City of Jersey City are paved with what kind of material? A Sheet asphalt.

Q And Bergen avenue and Newark avenue, also referred to in the letter of March 14th of the chief engineer, are paved with what kind of material at the present time? A Those two streets are paved with sheet asphalt pavement on a concrete foundation; the other streets are paved with sheet asphalt on a Belgian block foundation.

30 Q Did you also ascertain when the guarantee expired upon the latter two streets, Bergen avenue and Newark avenue? A Yes.

Q Did you find when it expired? A About the first of October of this year, both of them.

Q Do you know whether the volume of traffic is heavy on Newark avenue? A It is a very heavy traffic street, one of the heaviest in the city.

40 Q How about Bergen avenue? A Well, that is a heavy traffic street also, but not as great in volume as the traffic on Newark avenue, a different

William T. S. Crichfield, direct.

class of traffic; although heavy, it is a different class of traffic, mostly automobiles and light vehicles.

Q Did you examine the specifications for the work in question in regard to the kind of bond that would be required guaranteeing the work? A I did.

Q Did you find what kind of bond would be required? A The specification stated that a bond would be required, but it did not give the amount of the bond. 10

Q Did you make a thorough examination of the specifications to ascertain the amount of the bond? A I did; and also made repeated attempts to obtain the amount of the bond from Chief Engineer Charles Van Keuren and also from Director Byrne.

Q Have you had occasion to procure surety company bonds for guarantee of pavements? A Very frequently, yes. 20

Q What rate have you had to pay per thousand dollars per annum for such bond? A On a construction bond the rate is five dollars per thousand; a maintenance bond rate is \$1.87½ per thousand per annum; for ten years maintenance it would be \$18.75 for the ten years.

Q In examining the specifications for the work in question did you examine the provision which provided that "in the resurfacing of asphalt streets, the existing asphalt wearing surface and binder, where binder is used, shall be removed, and the concrete, or stone block pavement upon which the binder and asphalt wearing surface was laid, shall be thoroughly swept, and any depressions found in the foundation on the street, they shall be brought to the proper grade by the addition of binder to receive the bituminous concrete pavement, and the cost shall be included in the price per square yard for resurfacing asphalt streets? Did 30 40

William T. S. Crichfield, direct.

you find such provision in regard to resurfacing asphalt streets? A I did.

Q Was it possible for you to determine the amount of binder that would be required under such provision? A Absolutely impossible.

10 Q Under what circumstances would it be possible for you to ascertain the amount of binder?
A Only after the old asphalt pavement had been removed and the foundation exposed on a street where the subgrade is of Belgian block; as a rule the Belgian blocks are very uneven and it is impossible to determine the quantity of binder necessary to fill up those uneven places until after the foundation is exposed. The cost of binder is a very important factor in the construction of a bituminous surface; the specifications require that
20 any depression in the Belgian block foundation shall be brought to the proper grade by the use of binder furnished by the contractor at his own expense, to be included in the price bid for the bituminous concrete surface.

Q Under the specification providing in regard to the foundation, that "the existing macadam, or stone foundation, shall be thoroughly swept, and scarified with picks, or by a suitable machine in order to bring the same to the new grade as established by the engineer. Old or new broken stone
30 may be used in filling up depressions in the roadway, and the same shall be spread and mixed with clay or other suitable filler, as directed by the engineer," did you see that provision when you were preparing your bid? A Yes.

Q Could you ascertain the depressions or quantities of stone required in the foundation from reading that provision? A It is absolutely impossible for anyone to determine the amount of stone
40 required to bring the foundation to the required grade

William T. S. Crichfield, direct.

when you don't know what streets are to be paved. Many of these macadam streets are worn down under heavy traffic, and not knowing the location of these streets it is impossible for me to figure what quantity of new stone would be required to bring the roadway to the grade required by the department of streets and public improvements.

Q This was due to a great extent to the fact that the streets were unascertained? A Due to the fact that I could not get information as to what streets were to be paved.

10

Q Part of the provision is that old or new broken stone may be used in filling up depressions in the roadway; did you find any provision in the plans, contract or specifications in regard to payment for this new stone? A No provision was made for payment for any new stone furnished by the contractor under these specifications,—payment by the city.

20

Q In the absence of knowing the streets that were to be improved was there any way of determining the quantity of old and new broken stone that was to be used? A No.

Q Now, in regard to the provision which I read to you a few minutes ago, in reference to resurfacing asphalt streets and providing that the street shall be brought to the proper grade by the addition of binder; is there any way for you to ascertain the proper grade from the plans, the specifications, or contract? A It is impossible for anyone to determine the quantity of binder required to bring any of these asphalt streets which are out of guarantee to the proper grade until the old surface has been removed; it varies in depth, where a Belgian block foundation exists, and it varies in cost. I paved a street last year in Jersey City which cost me 15 cents a square yard to prepare the Bel-

30

40

William T. S. Crichfield, cross.

gian block pavement before the bituminous surface was laid; I paved other streets where it would not cost one cent a square yard to bring up the base to the proper grade.

Cross examination by Mr. Walscheid.

10 Q How many bids were received for this work, Mr. Crichfield? A My recollection is three.

Q Who were the three bidders? A The Uvalde Asphalt Paving Company; The Clinton Contracting Company and myself.

Q The Uvalde Asphalt Paving Company, about which you are now testifying, is the concern for which you act in the capacity of general superintendent? A That is the title under which I act for that company, yes.

20 Q Well, whatever you do perform for them you perform under that title? A Yes.

Q Have they a plant? A Yes; several of them.

Q Where is their plant located? A They have several plants.

Q Have they a plant in Jersey City? A Yes.

Q Where is that plant located in Jersey City? A Green street and Morris Canal Basin, Jersey City.

30 Q Have you a plant? A For the performance of any work which I secure I have arrangements made with the Uvalde Company to use their plant under a lease.

Q That is, to use this plant which you have just mentioned? A Yes; I have that right. However, I can use any other plant I see fit to use.

Q Has The Clinton Contracting Company a plant? A I believe they have a plant on the Hudson River, in North Bergen.

40 Q You have been in the asphalt business for a great number of years? A Yes.

William T. S. Crichfield, cross.

Q And you have laid many asphalt bituminous concrete pavements in Hudson County and in the City of Jersey City, generally? A Yes.

Q And are familiar with that industry in all of its phases in Jersey City? A I think so.

Q Are there any other plants in the City of Jersey City besides the Uvalde plant? A No 10
other plant here.

Q Are you acquainted with the distance of the Clinton Contracting Company plant from the northerly boundary line of Jersey City, approximately? A Yes.

Q About how far away is that? A Well, that would vary, depending upon what point in Jersey City you mean.

Q I said the northerly boundary line, the nearest point? A The nearest point I would say would 20
be about four miles; that might be too little or too great; I am not positive.

Q That is a fair estimate of the distance? A I would so consider it, yes.

Q Are there any other plants in the County of Hudson? A I believe the Standard Bithulithic Company has a plant in Harrison.

Q And those are the only plants in the County of Hudson that you know of? A So far as I 30
know of.

Q And of those plants, the plant which you intended to use is nearest to the work in question beyond all doubt, isn't it? A No, I wouldn't say that; if you take the northern portion of Jersey City, if you have any work done in that section, it would be closer to the Clinton Company than the Uvalde Company's plant.

Q What street would you say is more than four miles away from the plant of the Uvalde Asphalt Company that might possibly have any work done 40

William T. S. Crichfield, cross.

10 on it under this specification? A I am basing that statement on the fact that Hoboken is a three and a half mile haul from the Uvalde Company's Jersey City plant and I believe the northern line of Jersey City is perhaps two and a half miles further than that; I would think that work in the northern portion of Jersey City would be six miles from the Uvalde Company plant at Jersey City, on Greene street and the Morris Canal Basin and I should judge about four miles from the Clinton Contracting Company plant.

20 Q What street have you in mind in that northern section which you think would be further away from your plant than the distance from the Clinton Contracting Company plant to the northerly line of Jersey City? A I have no particular street in view.

Q And you know of none? A I am considering the boundary line only.

30 Q Now, Mr. Crichfield, isn't it a fact that the haul, approximately, from the plant of the Clinton Contracting Company to the northerly line of Jersey City is at least one half a mile longer than the haul from your plant, or the plant of the Uvalde Asphalt Company, computing that haul in a straight line? A Yes, if you take the location of the boundary line at the Hudson Boulevard; but if you take it to the extreme northerly line of Jersey City, no.

Q But the extreme northerly point that you just spoke of is out in the meadows and has no streets?

A It is in the meadows, but I don't know whether it has streets or not.

Q But you have never seen any streets out there, have you? A I never looked for any.

40

William T. S. Crichfield, cross.

Q Now, in order to lay this bituminous concrete pavement you do need a plant, do you not? A Yes.

Q In bidding on this work you made out your bid upon the supposition that you were going to use this Greene Street plant of the Uvalde Asphalt Company? A I did.

10

Q And what prices did you bid? A I bid \$1.01½ per square yard for the bituminous concrete surface on all macadam streets, 92 per cent. of the standard, the standard being \$1.10; for this bituminous concrete on the old asphalt streets out of guarantee I bid 92 per cent. of the standard, which standard was \$1.25, my bid being \$1.15 a square yard, for the bituminous concrete surface laid on bases where the old sheet asphalt was removed.

20

Q And \$1.10 where it was laid upon a macadam surface? A 92 per cent. of that, or \$1.01½.

Q So that the specifications provided for different standards so far as asphalt resurfacing was concerned, as distinguished from resurfacing of macadam streets? A Yes.

Q And the specifications in themselves made an allowance of more money in the standard for the resurfacing of asphalt streets? A Yes, for the reason that the old asphalt surface had to be removed from the old asphalt streets, while there was no removing of any surface on macadam streets.

30

Q And the specifications also provided, did they not, that the cost of binder was to be figured into the cost of the bituminous concrete? A That is true, wherever laid.

Q Wherever laid? A Wherever required to fill up depressions in foundations.

40

William T. S. Crichfield, cross.

Q In the specifications a reference to the binder is found in that portion of the specification under the title of "Resurfacing Asphalt Street?" A Yes.

Q And that is the only place where it is found? A Correct.

10 Q And in the resurfacing of asphalt streets, where binder is used, the depression shall be brought to grade by putting in a binder? A Yes; at the contractor's expense.

Q In other words, he is expected to figure on that? A Yes, he is expected to figure, but he cannot figure on it.

Q He is expected to do it under the specifications? A But it is impossible.

20 Q Because it is absolutely impossible to determine how much binder will be used until the wearing surface is taken up? A That is correct, yes.

Q So that even Chief Engineer Van Keuren and the whole engineering department of Jersey City could not have given a fixed quantity of binder? A They could not.

30 Q It is one of the uncertainties that must be dealt with in contracts of this kind? A It is one of the uncertainties that I have never had to deal with in my thirty-two years in the contracting business throughout the United States.

Q In other words, you have never had a contract for the resurfacing of streets in which binder was used for filling up depressions? A On the contrary, I had many, and the binder was paid for by the cubic foot, in order that the contractor might bid intelligently on the job.

40 Q Every other contractor has suffered the same as you did—every other prospective bidder—that follows, doesn't it? A I think so; in other words,

William T. S. Crichfield, cross.

every other contractor who bid on the work, I suppose, did as I did, put in a guess bid.

Q And protected himself against loss? A Well, he probably might have.

Q Well, you protected yourself against loss on your bid? A No, I did not; I was protected against probable loss by the Clinton Contracting Company getting the lowest bid.

10

Q If you received that contract would you have had any possible loss on your bid? A I might have if I received the contract.

Q What is the cost of placing into your truck, ready for hauling, of one cubic yard of bituminous concrete? A Well, I do not propose to answer that question for the benefit of my opponents and my enemies, unless I am compelled to.

Q I ask you to answer it at this time? A That is giving away my business secrets in a way that I think is entirely unfair, uncalled for, asked without reason and asked without good faith on your part.

20

Mr. Markley. I object to that question as incompetent, irrelevant and immaterial and instruct the witness not to answer.

The Commissioner. Answer the question, please.

Mr. Markley. I instruct the witness not to answer.

30

Q I will ask you again, Mr. Crichfield: What is the cost of placing into your truck, ready for hauling, of one cubic yard of bituminous concrete? A I will not answer unless I am directed to by the Court.

The Commissioner. Do you waive an answer, Mr. Walscheid.

40

William T. S. Crichfield, cross.

Mr. Walscheid. No, I do not. Mr. Markley, will you agree to this, that I may reserve my right to have an answer to this question enforced by the Court?

Mr. Markley. You may continue with your examination of this witness and reserve your right so far as that question is concerned.

10 Q The bid which you presented to the city for the purpose of this work was presented in good faith by you? A It was.

Q And it was based upon your experience as a contractor and with your knowledge of prices? A Yes.

Q And if you had been the lowest bidder you undoubtedly would have performed the contract? A Absolutely correct, sir.

20 Q And you calculated your bid to the best of your ability? A Based on the specifications, yes.

Q Yes, and on your knowledge of prices? A Yes.

Q And your experience? A Yes.

Q Based upon that knowledge and that experience, the performance of that contract at the prices at which you bid would have yielded you a profit? A That is what I figured on, a small profit, yes;

30 just how much I could not determine, not knowing the quantity of new stone that was required on the old macadam streets, not knowing the quantity of binder on the old asphalt streets, not knowing the premium on the bond.

Q Just answer the question, please. You made no complaint to the city about the indefiniteness of these specifications prior to bidding? A I did.

Q To whom? A To Charles A. Van Keuren, chief engineer, and to Commissioner Byrne, both.

40 Q You did not make any objection to the Board of Commissioners? A No.

William T. S. Crichfield, cross.

Q You know that the City is run by the Board of Commissioners? A Yes.

Q So that you were appraised, according to your own statement, of all these infirmities which you found in the specification before bidding, and with full knowledge of the infirmities you made your bid? A That is correct.

10

Q The specifications do say that about 50,000 square yards of this bituminous concrete is to be used in resurfacing macadam roadways? A Yes.

Q And the specifications do further say that about 8,700 square yards of this material is to be used in resurfacing asphalt streets? A Yes.

Q As you have indicated before, the binder material applies only to asphalt streets, doesn't it? A That is right.

20

Q It applies only to asphalt streets which have been laid upon old block pavements? A Or on concrete pavements.

Q Or on concrete pavements? A Or concrete foundations; that applies to all streets where the old asphalt is worn off.

Q I am talking now about your knowledge of pavements generally. Isn't it a fact that where a pavement is laid upon a concrete foundation you do not find or expect to find the same depressions that you would find where such a pavement is laid upon an old block pavement? A That depends entirely upon the condition of the pavement to be laid; if traffic has been very great it is frequently the case that there is more holes in the concrete than there are depressions in the Belgian block foundation.

30

Q You did inquire as to this binder of the chief engineer, Mr. Van Keuren, you said? A I don't understand you.

40

William T. S. Crichfield, cross.

Q Did you complain to the chief engineer about the fact that there was uncertainty in these specifications? A Yes, yes.

Q By reason of your inability to determine the quantity of binder to be used? A I did; I can state the conversation I had with him if you like.

10 Q Just answer my question. Did you also at that time ask him what asphalt streets were to be resurfaced? A I did.

Q So that was the time when he gave you the letter? A No; he sent me the letter, well, it was several days after that, when he sent the letter.

Q Several days after that? A Yes.

Q And that letter indicated to you that the streets which would be repaved were Mercer street— A That was one of them.

20 Q And Grove street? A Yes.

Q You know Mercer street? A Yes.

Q How is that paved now? A With sheet asphalt pavement laid on a Belgian block base.

Q Did you go over that street to note the depressions in it? A I noted depressions in the surface of the street.

30 Q You did go over that street and noted depressions in the surface of it? A Of the pavement.

Q Of course, when you found such depressions you expected to find a corresponding depression in the substratum, didn't you? A Yes.

Q Did you go over Grove street in the same way? A Yes.

Q And saw the depressions there? A I saw depressions and holes in Grove street.

40 Q And the same as to the other three streets that are mentioned in the letter? A Yes.

William T. S. Crichfield, cross.

Q So that you accumulated all the information that you could as to those streets, by actual physical examination prior to submitting a bid? A Yes.

Q And don't you know that all the other bidders who came to examine the plans and specifications for this work received just such a letter as you received? A I don't know that, no; I supposed they did; in all fairness they should have received such a letter. 10

Q And if they did, of course, they were placed upon the same basis as you were? A I should think so, unless they had information that I could not obtain.

Q You now say, Mr. Critchfield, that you understand by the term "out of guarantee," insofar as it applies to macadam streets, streets which have been laid more than one year? A Yes, that is my understanding. 20

Q In your affidavit, if you will look at it, you say that the term "out of guarantee," as you understand it, when you bid, does not apply to macadam streets at all? A The reason for that statement is—

Q Well, it is there, isn't it? A I don't know; I don't recall. My understanding is yet that there was a one-year guarantee on those macadam streets; that is my understanding; it is possible that some of them may have been laid without guarantee, but my understanding is that the policy in Jersey City has always been to lay macadam streets under a one-year guarantee. I may be wrong on that. 30

Q What did you understand this language to mean: "Macadam roadways and asphalt streets which are out of guarantee;" didn't you understand that that applied to the asphalt streets only. A My understanding is that that applies to any 40

William T. S. Crichfield, cross.

streets which they contemplate improving which is out of guarantee whether it be macadam or whether it be an asphalt street.

10 Q Your objection as to the binder then is that they did not give you a price on binder, or allow you an opportunity to bid a price on binder as a separate item? A My objection to that clause of the specification, before bids were received, I wrote to Mr. Van Keuren—

Q I am not asking about your talks with Mr. Van Keuren. A My objection to that is the fact that I could not ascertain the quantity of binder that would be required on any of these streets.

20 Q You thought that a fictitious quantity should have been mentioned in this specification and called for, and then you would have had an opportunity to give a price as against that quantity of binder and that that would improve your knowledge of the situation? A Decidedly so, yes.

Q Although you would have absolutely no means of ascertaining the amount of binder that was required? A In a bid by the cubic yard it makes no difference what was required.

30 Q Then the price would be the same to you, if the bid was by the cubic yard? A If I had an opportunity to bid by the cubic yard for the binder it would be immaterial to me whether you put in one cubic yard or one million cubic yards; that would make no difference in my view.

Q That would make no difference in your view? A Absolutely none whatsoever.

40 Q And does that same answer apply to the broken stone? A With reference to broken stone it is an impossibility for anyone to determine what holes in the street are to be filled with new stone if you don't know where the street is located and don't know the condition of the base of that street.

William T. S. Crichfield, cross.

Q What would you want other than a price? A I would want the location of the street.

Q Well, supposing you had the location of the street; how would that aid you? A If I had the location of the street and knew the cross section of that street to determine how much stone would be required to bring the foundation to grade that the city had established for the finished grade of this pavement, I could determine the quantity of new stone required.

10

Q You know that the city has established grades for all of these streets, don't you? A Yes.

Q You know that those grades which the city has thus established are obtainable by you? A Every city has established the grade of all streets.

Q I am talking about the city of Jersey City. A I am, too.

20

Q You know that every street in the city of Jersey City has its established grade? A That is very true; I suppose they have.

Q Now, getting back again to the stone: Is it your suggestion that there should have been in this specification an item covering broken stone to be used in filling depressions? A It isn't up to me to make such suggestion as to that. It is up to the city to give me the information so that I can go and determine the quantity of stone required.

30

Q What information would you want for that purpose? A I would want the location of the street to determine the present grade of that street, and then to determine what grade they want for that asphalt surface.

Q I am talking about macadam streets now. A I am talking about macadam streets also.

Q Your finished bituminous concrete surface when compressed was to be 2½ inches thick, wasn't it? A Yes.

40

William T. S. Crichfield, cross.

Q And that, of course, was to bring the street to the fixed grade, as fixed and as existing under the laws and ordinances of the city of Jersey City? A Many of these streets—

Q Oh, answer the question, yes or no. A That is a question nobody can answer.

10 Q Then just say you can't answer. A Nobody can answer that yes or no.

Q No matter to what grade you were to bring this street, you were not supposed to lay more than two and a half inches of compressed bituminous concrete? A That was a specification requirement, two and a half inches of compressed bituminous concrete surface.

20 Q So that when you had laid that you had brought the street to the grade to which it was to go, allowing for any depressions that may have existed in that grade? A And the preparation of the foundation.

Q And the preparation of the foundation. A Yes.

Q There is no trouble about the preparation of the foundation under this specification, is there? A No.

30 Q So that the only thing that you have then to allow for was the depressions in the street? A Not necessarily depressions; many of these streets are worn down; I know one street, Ramapo avenue, which, instead of having a grade to it, is a perfectly flat surface, and if that was included it would have to be filled in.

Q Would you call that a depression? A No.

40 Q Now, under this specification, would you be required to put crushed stone over a surface of that kind, when the specification only calls for crushed stone in depressions? A Generally speaking, a depression means a hole in the surface, as I under-

William T. S. Crichfield, cross.

stand it, and in order to bring the street to the grade required it would be necessary to build the entire street up with crushed stone.

Q Is there anything in that specification under which you say you would be compelled to build up a whole street with crushed stone to bring it up to any grade, and if there is, show it to me? A Any grade! What do you mean? 10

Q You were just speaking about bringing a street up to grade by covering the whole surface with crushed stone. A Bringing it up to the required grade.

Q What is the required grade? A I assume the required grade is the grade established by the city of Jersey City in this street.

Q Why do you assume that? A I think it is a correct assumption on my part. 20

Q When you have yourself testified a few moments ago that all you would have to do is to level the surface of the existing roadways and upon the surface thus levelled to lay a bituminous concrete surface which when compressed is two and a half inches thick; isn't that your work? A I ask you to read over the record there where I made that statement.

Q Is that your answer? A That is not my answer. I did not say that. 30

Q Will you answer my question then? A You quoted me as saying something I did not say.

Q What else would you have to do under this specification?

Mr. Markley. I object to that as indefinite.

A It is very difficult for me to understand your question.

Q Well now, Mr. Crichfield, what, under this specification, so far as macadam streets are concerned, is there for a contractor to do besides scari- 40

William T. S. Crichfield, cross.

fyng the surface, filling in depressions with crushed stone and laying a bituminous concrete surface two and a half inches thick when compressed? A I know of one street which may be included—

10 Q No, no, no. A I am talking about the specifications and you are referring to streets. I don't know what streets you are referring to.

Q Then take any particular street in the city of Jersey City, apply the specifications to the work in hand, and tell me what else you would have to do under this specification? A Now, I will tell you what else a contractor would have to do. You take in the case of Ramapo avenue; you said—

20 Q No, no; under the specification. A That is under the specification. They have a right, as I understand it, to include Ramapo avenue if they wished; you don't know what streets they include under this specification.

30 Q Won't you answer my question? A I am answering your question. I said if you take Ramapo avenue, from the Hudson Boulevard east, a street which has been worn down, and instead of having a crown to the present foundation there is a hole, and that street could not be improved without using a large amount of stone with the old stone which you may obtain from outside sources to build up the foudation, to re-regulate it before you scari-
fy you would have to use new stone, and you don't know the amount required but it would amount to several hundred cubic yards.

Q Now, will you show me any expression of the specification which covers such work as you now claim that you would have to do? A (No answer).

40 Q Kindly point to that portion of the specification which would require you to do that and read it into the record. A The specification, under "Foundation" states: "The existing macadam or

William T. S. Crichfield, cross.

stone foundation shall be thoroughly swept and scarified with picks, or by a suitable machine in order to bring the same to the new grade as established by the engineer"—a new grade as established by the engineer—"Old or new broken stone may be used in filling up depressions in the roadway and the same shall be spread and mixed with clay or other suitable filler, as directed by the engineer." 10

Q That is the clause? A Yes.

Q You don't say that that word "depression" would force you to resurface that over with crushed stone? A I certainly do.

Q That word "depression?" A Certainly.

Q That is what you say? A That is what is the fact.

Q That that word "depressions" would force you to resurface that line of holes that you talked about in order to comply with this specification; yes or no. A This clause of the specification would require that to be done. 20

Q What do you mean by scarifying with picks or by a suitable machine? A By scarifying you loosen the existing foundation for the purpose of causing a bond to be made between the old and new foundation.

Q What do you mean by scarifying in order to bring it to the new grade? A That does not mean anything. 30

Q Scarify with picks or by a suitable machine in order to bring the same to the new grade as established by the engineer? A Read on.

Q I am asking you what that means? A That is qualified by the following statement in the same paragraph. The meaning of that is not fully expressed in that one sentence.

Q Goodness gracious, you know it the same as I do. What do you mean by scarification, independ- 40

William T. S. Crichfield, cross.

ent of any other qualification, now? What do you understand by that in the contract work? A That is, scarifying the old roadway, is to loosen the existing surface of that roadway.

Q To loosen the existing surface? A And it is only a part of the general proposition of bringing that street to grade as required by the engineer.

10 Q When the Engineer says that you shall scarify existing surfaces of the roadway that means that you shall loosen the existing surface? A Correct.

Q When you say you shall scarify to such extent as to bring the same to the new grade, that means that you shall loosen it to the extent of bringing it to the new grade? A No, it says old and new grade.

20 Q All right; that is your answer. When you speak of Ramapo avenue and the streets which you have mentioned as an example, which you think might have been done, you mean to convey the idea that the crown of that street has been worn off? A I do; worn off; washed off.

Q And is flat? A Yes.

Q Do you know Mr. James Devlin? A Yes.

Q Is he employed by you? A He is not.

Q Is he employed by the Uvalde Asphalt Paving Company?

30 *Mr. Markley.* I object to that as incompetent, immaterial and irrelevant and not cross examination.

A He is not employed by the Uvalde Asphalt Paving Company or by myself.

Q How long do you know him?

Mr. Markley. I object to that as immaterial, incompetent and irrelevant and as not cross examination.

40 A I do not remember the number of years; I knew him for several years.

William T. S. Crichfield, cross.

Q Did you induce Mr. Devlin to become a prosecutor in this case?

Mr. Markley. I object to that as immaterial, incompetent and irrelevant, and not cross examination.

A I have had a conversation with Mr. Devlin, in which I told him that this proceeding was wrong; 10
Mr. Devlin is a large property owner in this city, a personal friend of mine and I explained the whole situation to him and he said he would be glad to become a prosecutor in this case.

Q You asked him to, didn't you? A He said he would be glad to do so.

Q You asked him, didn't you? A Probably I did.

Mr. Markley. I object to that; you cannot attack the standing of the prosecutor at this time; and it is immaterial, incompetent and irrelevant. 20

Q Mr. Crichfield, you did not go to Mr. Devlin with this matter until after you had bid and until after the Clinton Contracting Company turned out to be a lower bidder?

Mr. Markley. The same objection.

A I would not state that that is the case; I do not recall; my impression is that I discussed this matter with Mr. Devlin in advance. 30

Q Getting ready for the certiorari. A I discussed with him, with the Director of Streets and Public Improvements, with the Chief Engineer, and all along the line.

Q Your impression now is that before you put in your bid you spoke to Mr. Devlin about this situation and a possible certiorari proceeding?

Mr. Markley. I object to that on the same grounds. 40

William T. S. Crichfield, cross.

A I don't remember whether I did or not; you can put my answer either way you say.

Q Mr. Crichfield, was your bid accompanied by an agreement of a bonding company? A Yes.

Q And the agreement was of the American Fidelity Company? A I believe they executed my bidding bond, yes.

10 Q Did you have to submit this specification to the bonding company for your bond, or did you get it without it?

Mr. Markley. I object to that as immaterial, irrelevant and incompetent, and not cross examination.

A I got it without it.

Q Did you tell them about the peculiar wording of the bonding provisions when you asked them for a bond? A No, I did not.

20 Q Just told them you wanted a bond to cover this specification? A Yes.

Q Which they gave you? A I just sent the bidding proposal and asked for a bond to cover the bidding proposal, which they did, and returned it to me.

Q Could an engineer getting up the specification tell in advance how much crushed stone was to be used in this work? A Yes.

30 Q How much do you say could be used, or would be used? A That is difficult to answer; I don't know what streets were to be covered, so it is impossible for me to answer that question.

Q To fill depressions? A You cannot tell the quantity of stone required to fill depressions unless you know what the depression is.

Q Then you would expect, for this repair, that the engineer should measure each and every depression in order to give you, or give to a prospective

40

William T. S. Crichfield, cross.

bidder, an idea of the amount of stone which would be required? A That is the only way that it could be ascertained, for an engineer to make a cross section of the street, which could be done quickly, and determine the quantity of stone required to bring that foundation to the grade which he requires.

10

Q I am not talking about bringing the foundations to grade; I am talking about depressions in foundations which may or may not be up to grade. A Well, so am I talking about the same thing, or trying to talk about it.

Q Let us understand each other. I am talking about depressions, which I consider to be holes in pavements; is that what you are talking about? A Yes; a depression is a spot which is lower than the grade required; that would be a hole, a flat spot.

20

Q It is usually, or very seldom, more than a yard or a yard and a half in circumference? A A depression?

Q Yes. A I consider a street upon which there has been a great amount of traffic, worn entirely out, that could very well be considered a depression.

Q That is just what we want to know; we want to know what you consider a depression and what I may consider depressions; I am talking about holes in otherwise approximately level surfaces and you are talking about depressed surfaces, depressed from grade. A Yes.

30

Q Lowered from grade. A Yes.

Q Now then, would you expect, if my construction of this specification was correct, and that this word depressions applies to such holes as I have indicated, the engineer to furnish an estimate of the quantity of stone which is to go into that? A I might, yes, if he complied with ordinary custom in

40

William T. S. Crichfield, cross.

street construction; if he did not do it he would have more than one place in the street out of shape.

Q Why? A For the reason that foundations are very irregular, many of them.

Q What is this scarifying for, except to remove depressions? A To scarify in order to bring the street to the required grade.

10 Q To a grade? A The grade required by the engineer; in other words, in building a grade, building up the foundation which is below grade, it is necessary to scarify the surface in order to make a bond between the new material and the old material before it is applied.

Q Which is only necessary in reducing or lowering a grade, to scarify the surface and remove it? A Yes, that is true.

20 Q Now then, is there any doubt in your mind as to whether you would have made a profit on your bid? A There is a doubt in my mind, yes.

Q Now, then, if there is that doubt in your mind, I repeat now and ask you to give to me the cost of a cubic yard of bituminous concrete to you as it leaves your plant in the truck?

30 *Mr. Markley.* I object to that on the ground that it is immaterial, irrelevant and incompetent how Mr. Crichfield's bid was made up, and it is not cross examination.

A The doubt as to myself making a profit on this work has nothing whatsoever to do with this reference, except, possibly, the question of hauling distance; the doubt in my mind is based upon the present status or condition of the roadways to be covered under this specification.

40 Q That does not answer the question. Will you or will you not answer my question? A I am answering your question.

William T. S. Crichfield, cross.

Q No, you are not. I asked you specifically for the cost of a product at a certain point of construction; will you give it to me or won't you? A I will not, unless I am directed by the Court to do so. I do not consider that that is any of your business.

Mr. Markley. It is stipulated that all formalities necessary to bring the question of the propriety of the question asked and the necessity for an answer thereto be waived, the plaintiff reserving the right to insist upon an answer to the question. 10

Q How much does it cost you to haul a cubic yard of bituminous concrete one mile?

Mr. Markley. If you can answer that question.

A That is something I must figure out; I don't carry those things in my head. 20

Q Delay your figuring one moment: Haven't you figured it? A I have started to figure it.

Q Haven't you, up to this time, figured it in this case? A I have not; I just started to figure it.

Q I now waive the requirement that you do figure it. How, Mr. Crichfield, does the question of traffic affect the cost of this work? A The pavement laid on a heavy traffic street would cost more to maintain for ten years than one laid on light traffic streets. 30

Q Have you any method of figuring that? A That is more or less of a guess, perhaps; it must be determined to the best of one's judgment after observing traffic conditions.

Q In other words, there is no fixed way of figuring that in dollars and cents? A One could come reasonably close to it.

Q You haven't, up to this moment, attempted to come reasonably close to anything like that? A For 40

William T. S. Crichfield, cross.

the reason that I did not know what streets were proposed to be improved; I could not ascertain what streets were proposed to be improved.

Q You had the improvement of Mercer street, didn't you? A That is one street, yes.

Q You had the improvement of Grove street?
10 A So the letter stated.

Q Have you figured the cost of traffic on those streets? A Yes, I took that into consideration.

Q How much was it per cubic yard? A We don't lay pavement by the cubic yard; that is where you are entirely wrong.

Q How would you figure the cost of traffic in this work; by what unit; give me the unit; that is what I want? A You mean the price per square yard exactly?
20

Q I mean the unit; you are figuring the cost of traffic as it affects your work. A I want to get your mind right. You mean how much a square yard would it cost me to maintain the pavement for a period of ten years?

Q I didn't ask you that. A What is your question?

Q I asked you how much traffic affected this job; and I asked you to figure it according to the unit; I don't care in what manner it affects it, whether it is maintenance or what; I want to know what unit you used, if you used a square yard, that is what I want to know? A That is what I asked you.
30

Q You say it affects the maintenace proposition? A Decidedly so.

Q Have you figured it as to maintenance? A Certainly.

Q On this street? A I certainly did include it
40 in my price submitted here.

William T. S. Crichfield, cross.

Q How much was it? A I don't recall just for the moment.

Q When did you figure it? A Before I submitted my bid.

Q How much traffic per hour did you use on Mercer street? A I don't figure it on a basis of traffic on that street.

Q How much traffic per day did you use? A 10
What do you mean, traffic per day?

Q You must have figured on traffic per hour, per day or per minute. A There are a great many things entering into the maintenance of pavement on a street.

Q I am holding you down to this traffic proposition. A That is not the only proposition you have to figure.

Q Isn't it a fact that you did not take up this traffic proposition and figure on it? A It is not; I figured it in. 20

Q Then you did do it? A I did.

Q If you did do it how much traffic per hour did you use in your figures?

Mr. Markley. I object to that on the ground that it is a very unfair question, and it is immaterial, irrelevant and incompetent; traffic cannot be figured per unit, by the traffic per hour or per day; it must necessarily be taken in the judgment of the contractor who bids; he must use his judgment in that regard, without figuring up so many trucks per hour or so many trucks per day. 30

Mr. Walscheid. If Mr. Crichfield will say that that is all that is involved in traffic propositions I am willing to waive an answer.

Mr. Markley. He said that; he figures what the difference would be between a street with heavy traffic and a street that has not nearly 40

William T. S. Crichfield, cross.

as much traffic and uses his judgment in that; he did not figure that by two times two or anything like that.

Q You have heard what Mr. Markley says; is that all there is to this traffic problem? A No.

10 Q I thought not. A I am trying to explain it to you.

Q I don't want your explanation. A Then put it as an answer instead of explanation.

Q You have made a calculation of this traffic insofar as it affects the work of laying or resurfacing Mercer street, haven't you? A As a part of the cost of maintaining the pavement, yes.

Q Now I ask you what unit of traffic you used—a minute, an hour, a day, or a year?

20 *Mr. Markley.* How did he figure, that is what you mean, isn't it?

Q Did you use any units of traffic? A I will say this—

Q Yes, or no. A I am not going to answer yes or no.

Q You are not going to answer yes or no? A No; I want to explain my answer; I want to answer correctly, which you are trying to prevent me from doing.

30 Q You refuse to answer the question whether you used any specific units in making your calculation?

Mr. Markley. No, he does not refuse to answer. He said he would not answer yes or no.

Q Well, I ask you now to give me categorically the units which you used in making your calculation? A What do you mean by units; make that plain.

40 Q Things that you multiply by and divide by in order to ascertain the cost. A Yes.

William T. S. Crichfield, cross.

Q Standards of measurements. A Well, the first procedure that I took to ascertain the cost is to determine the character of foundation upon which this pavement is to be laid, the character of the foundation—

Q I am speaking about traffic.

Mr. Markley. I submit he is answering the question. 10

Mr. Walscheid. I don't want any speeches.

Q Mr. Critchfield, you have come into this court and you have testified that traffic in Mercer street is an ingredient in the ascertainment of the cost of this work. A Partially so.

Q Then it is, if it is partially so, isn't it? A Partially so, yes.

Q And that you have included that ingredient in arriving at your bid? A Partially so, yes. 20

Q Have you only calculated it partially? A I think that—

Q Have you only calculated it partially? A I calculate the cost of maintaining that street, covering the cost of maintaining it for traffic, covering the cost of maintaining it, due to the defective foundation that existed there.

Q I am confining my question; all that I want information on at this point is traffic; I want you to get me now; the units which you used in calculating the cost of that traffic to you in the maintenance of that street; traffic alone? A You want me to say what the street costs per square yard. 30

Q I don't want that at all. A No.

Q You say traffic on Mercer street is heavy? A I so consider it, yes.

Q And traffic on other streets is light? A In this suit, yes.

Q How many vehicles must pass over Mercer street in a day in order to make traffic upon that 40

William T. S. Crichfield, re-direct.

street heavy? A A limited number of vehicles must pass over that street and still be heavy traffic; due to the heavy loads which these vehicles might draw; there might be about a hundred teams or more passing over that street with light vehicles that might not affect that pavement as much as heavy trucks.

10

Q How many pounds of vehicular travel must pass over that road before you say it is heavy? A That is a different question for anyone to answer.

Q Have you figured it? A I have figured the cost of maintaining the pavement.

Q You have figured that? A I certainly did.

Q Have you included tools? A I figured that in conjunction with the foundation.

20

Q How much did you put down for that? A I put down for the foundation and traffic conditions?

Q No. A I won't answer any question that I cannot.

Q You cannot answer that question; is that your answer? A I can say that I am ready to make an explanation and then, I can answer it.

Re-direct examination by Mr. Markley.

30

Q Explain in what way, Mr. Crichfield, you did figure in traffic, heavy or light, in making up your bid, knowing that Mercer street, or knowing as far as you could ascertain Mercer street might be one of the streets included in the work to be done under this proposed contract? A I based my figures as to the cost of maintaining that pavement on two conditions: first, the traffic which a pavement would sustain when it is completed; second, the condition of the foundation, which is Belgian block foundation, and which class of foundation has passed out
40 of use, generally speaking, throughout the country.

William T. S. Crichfield, re-direct.

On those two points I based the cost of maintaining that pavement for a period of ten years.

Q And the traffic; just explain once again, how did the traffic enter into making up your bid? A Mercer street sustains heavy traffic, heavily loaded trucks which, on an insecure foundation such as is at present on Mercer street is liable to cause the pavement in cold weather to give and break, which naturally would increase the cost of maintaining that pavement for a long period of years. 10

Q Would that make a difference in your bid? A Certainly.

Q On cross examination by Mr. Walscheid he stopped you off when you were going to explain how you might suffer a loss on your present bid; will you explain how you might sustain a loss if you had secured the contract on the bid that you submitted? A The question raising the uncertainty in my mind about the profit on this work is the foundation on which this pavement is laid; not knowing the condition of the present foundations of the streets which are proposed to be improved, not knowing the location, not knowing the present grade of any of these streets, not knowing whether they shall be rebuilt by the addition of large quantities of new materials to such grades as established by the City Engineer, not knowing whether or not how much macadam pavements should be cut down, with the possibility of striking telford under the macadam, which would have to be removed; in reality the question of foundations entered exclusively into my mind as to whether or not I could make a profit on this work if it had been awarded to me at the figures submitted. 20 30

Q Assuming that those different things might have to be done, might you have suffered a loss?

A In all probability, yes. 40

William T. S. Crichfield, re-direct.

Q Would it depend also on the quantity in each instance of removing telford foundation and other things such as that? A Yes.

Q If there was a large quantity it would cost more to remove it? A Yes.

10 Q In bidding did you know to a certainty that Mercer street or any other street would be actually resurfaced. A The only information was obtained from the Chief Engineer in the form of a letter, that Mercer street and Grove street would be included in this work.

Q Had you any definite information, or any other information, outside of that letter from the City Engineer, which would inform you as to what streets were to be improved? A None whatever; I could not obtain any.

20 Q Will you just tell us once again, Mr. Crichfield, what you mean by scarifying—what is meant by scarifying? A Scarifying is done either with picks or by what is called a scarifying machine; in the case of a machine it is pulled over the surface of a macadam pavement for the purpose of loosening the surface thereof for the purpose of causing a bond between the new material, which is placed on top of it and the old material; that is what scarifying means; that is the object of it.

30 Q May it be possible to scarify the old macadam or stone foundation very thoroughly— A You mean crushed stone foundation.

Q Yes; and yet not be able to bring the foundation up to the grade, the new grade established by the engineer? A Frequently in scarifying a pavement you loosen up the stone and have to cart it away; in other cases you loosen up the foundation and make additions with new stones to the foundation after you scarify.

40

William T. S. Crichfield, re-direct.

Q It would not make any difference how much you scarify the old foundation; you could scarify it and scarify it, and still it would be necessary in some cases to put in additional fill? A Yes, that is the usual condition.

Q What is the customary provision in specifications of this kind, when such specifications provide that the depressions in foundations shall be brought to grade by addition of binder? 10

Mr. Walscheid. I object to that on the ground that custom cannot affect this specification; it is a pure question of construing the language of the specification; and on the further ground that there is no evidence of any custom in the trade in relation to such matter.

A Wherever I have bid on contracts in the United States it has always been customary where an item required in the construction of pavement was indefinite, that bids would be asked for at so much per unit, a cubic foot, cubic yard, etc. 20

Mr. Walscheid. Now I ask that that all be stricken out as not establishing any custom.

Q How long have you been bidding on contracts for street paving work of this kind, Mr. Crichfield? A I have been bidding on contracts in my own behalf for about eight years; I have figured bids for contractors with whom I have been connected for about 24 years. 30

Q And during all that time have you had occasion to have contracts with similar provisions to this provision in regard to filling in depressions found in foundations of street and bringing them to proper grade by the addition of binder? A Very frequently, yes. 40

William T. S. Crichfield, re-direct.

10 Q How many contracts would you say you have seen in your experience which contained a provision with regard to the filling in of depressions in foundations of streets with additional binder, approximately? A I have had charge of the construction of over 25,000,000 square yards of bituminous pavements throughout the United States and in Mexico; a large volume of work of that character, and it is impossible to state how many of those contracts contained provisions of this kind; many of them did; how many I could not recall.

Q Of those contracts which you recall as having similar provisions? A I can mention certain contracts, if you wish me to.

20 Q In all of your experience have you ever found a provision such as the one contained in the present contract under the head of "resurfacing asphalt streets," providing that in the resurfacing of asphalt streets, the existing asphalt wearing surface and binder, where binder is used, shall be removed, and the concrete, or stone block pavement upon which the binder and asphalt wearing surface is laid, shall be thoroughly swept, and any depressions found in the foundation on the street, they shall be brought to the proper grade by the addition of binder to receive the bituminous concrete pavement, and the cost shall be included in the price per square yard for resurfacing asphalt streets; have you ever seen a provision like that? A I don't recall ever seeing one like that.

30 Q Do you recall ever seeing a provision providing for the filling in of depressions with additional binder, or filling up depressions, which did not provide for payment for the same? A I never have, to my memory.

William T. S. Crichfield, re-cross.

Re-cross examination by Mr. Walschied.

Q Mr. Crichfield, having now given the reasons why you anticipated a possible loss in the doing of this work, I again ask you, in order to test the credency of that statement, to give me the cost of one cubic yard of bituminous concrete, placed on your truck, in your yard, or plant, that you have mentioned, the cost of hauling that cubic yard for a distance of one mile, the cost of spreading that cubic yard into a layer two and a half inches thick when compressed upon the road surface, and eliminating therefrom the cost or price of any binder to you? 10

Mr. Markley. I object to that as immaterial, irrelevant and incompetent.

A I will answer that question by stating that that is prying into the secrets of my business in a way to which I object; I object to disclosing my personal and private business to my competitors whom you represent, and I further state that it takes a considerable amount of nerve on your part to ask me that question. 20

Q You refuse to answer that question? A That is my answer.

Q Will you kindly answer that question?

Mr. Markley. Yes, we refuse to answer it.

Mr. Walscheid. Now I ask that we adjourn before some Supreme Court Justice for the purpose of determining the propriety of this question and the necessity of an answer, and I understand that counsel waives all formalities which might be required to properly present this question to the Court. 30

Mr. Markley. There is no need of any formality. We waive all of that.

The taking of further depositions was thereupon adjourned until Monday, May 29th, 1916, at three o'clock in the afternoon, at the office of Messrs. Collins & Corbin.

Jersey City, May 29th, 1916.

10 The hearing in the above entitled matter was further adjourned until Wednesday, May 31st, 1916, at ten o'clock in the forenoon.

Continuation of the taking of depositions in the above entitled cause, before me, William C. Asper, a Supreme Court Commissioner, at the office of Messrs. Collins & Corbin, 243 Washington street, Jersey City, N. J., this thirty-first day of May, 1916, at ten o'clock in the forenoon; in the presence of counsel for the respective parties.

20 It is stipulated that there may be received in evidence certain lists and a map prepared by the Engineering Department of Jersey City, as follows:

List showing asphalt streets out of guarantee. Admitted and marked Exhibit P. 2.

List of asphalt streets under guarantee. Admitted and marked Exhibit P. 3.

30 List of macadam streets, the streets marked with a check mark being those that are still under guarantee, to wit: Neptune avenue, from Old Bergen road to the boulevard, an approximate distance of 1,200 feet; and Van Nostrand avenue, from Ocean avenue to Bergen avenue, an approximate distance of 2,000 feet; all the other streets on this list being out of guarantee. Admitted and marked Exhibit P. 4.

40 Map showing thereon and indicated in colors, the following: Asphalt streets under guarantee, shown in pink with black cross marks; asphalt

James Devlin, direct.

streets out of guarantee shown in pink without cross lines; macadam streets under guarantee shown in blue with black cross lines; macadam streets out of guarantee shown in blue without cross lines. Admitted and marked Exhibit P. 5.

Mr. Hobart. The prosecutors rest.

10

JAMES DEVLIN, sworn.

Direct examination by Mr. Walscheid.

Q Mr. Devlin, where do you reside? A I reside at present in Haworth, New Jersey.

Q How long have you lived at Haworth, New Jersey? A Well, about a month.

Q You mean, you are up there for the summer? A Why, I am going to stay up there for a year.

Q Do you own any real estate in Jersey City? A Yes, sir. 20

Q Where is that real estate located? A At No. 2 Clinton avenue and 164 and 166 Neptune avenue.

Q Is the title of it in your own name? A Yes.

Q What is your business, Mr. Devlin? A Charcoal.

Q What do you mean by charcoal? A The charcoal business, going around and selling to customers and to grocery stores and such. 30

Q You sell charcoal? A Yes, sir.

Q Do you sell to the Uvalde Asphalt Paving Company? A No.

Q Have you any business relations with that company? A No, sir.

Q None whatever? A Not any business relations; in real estate transactions, yes.

Q Then you have real estate transactions with them? A Yes. 40

James Devlin, direct.

Q What do you mean by that? A They got property of mine leased that I have an interest in as an estate that I have a one-half interest in.

Q They are your tenants? A Yes.

10 Q Is that how you met Mr. Crichfield? A Well, I guess it was; he was on my property down there sixteen years.

Q On what property is that? A It is 45 and 47 Essex street.

Q Is that where their plant is located? A No, they use it as a driveway and storeroom; they got a garage built on it.

Q I suppose you have known Mr. Crichfield during all those years? A I wouldn't say all those years; I have known him quite a while.

20 Q Do you know he is its general superintendent? A Yes.

Q When did you first become acquainted with any members of the firm of Collins & Corbin? A When?

Q Yes.

Mr. Markley. I object to that as immaterial and irrelevant.

A In March some time, I think it was the latter part of March; some time in March.

30 Q Of this year? A Of this year.

Q In connection with this suit? A Yes, sir.

Q And Mr. Crichfield brought you in here? A I came up with Mr. Crichfield, yes.

Q For the purpose of signing an affidavit? A Yes.

Q When you arrived, on that occasion, that affidavit was fully and completely prepared, wasn't it? A No, sir.

40 Q Was it drawn while you waited? A Yes, sir.

James Devlin, direct.

Q And you signed it on that day? A Yes, sir.

Q Was that the shown on the jurat of your affidavit when you first became acquainted with Collins & Corbin? A That is the first time I was up here, yes.

Q Looking at what purports to be a copy of that affidavit, it appears to be the 19th day of April, 1916. A I am not sure when it was. 10

Q That would be the day? A Yes; the date is there.

Q Then that would be the correct date? A Yes.

Q How long before this 19th day of April, 1916, did you make up your mind to become a prosecutor in this case? A Well, at the beginning of March there some time.

Q Why did you fix the beginning of March? A Well, I say the beginning of March because that was the time that I decided to prosecute. 20

Q In relation to the date on which you signed this affidavit, how many days before that was it that you thus made up your mind? A Well, it might have been three weeks.

Q Three weeks? A It might have been.

Q What then induced you to make up your mind? A Well, Mr. Crichfield called up my house one morning and asked me would I meet him and I said yes, and I said where, and he said, any place you say, so I met Mr. Crichfield down at his office, and he explained this specification to me, and I read it, and I did not think the way it was drawn it was not fair. 30

Q He told you it was not fair? A He read it to me and I thought so myself.

Q What else did he say to you? A Well—

Q Well, he asked you to become a prosecutor in the case, didn't he? A Yes, sir. 40

James Devlin, direct.

Q And you agreed to become a prosecutor in the case? A Yes, sir.

Q And he told you that he would be responsible for the costs and disbursements? A No, he did not tell me that at all.

Q You didn't take that up at all? A No, sir.

10 Q Never spoke about that? A Not at that time; no, sir.

Q Not at that time? A No, sir.

Q When did you take it up? A We never took it up.

Q What did you mean by saying "not at that time?" A Well, I understood that it would not cost me anything for bringing this; that Mr. Crichfield would stand the expenses.

20 Q What caused you to have that understanding? A I don't know.

Q Have you acted as prosecutor for Mr. Crichfield before? A No, sir.

Q You have? A No, sir.

Q Did you see anybody else besides Mr. Crichfield in relation to the bringing of this writ? A No, sir.

Q Did you see any other officers of the Uvalde Asphalt Paving Company? A No, sir.

Q Just Mr. Crichfield? A Yes, sir.

30 Q Where did you meet Mr. Crichfield on this occasion? A In his office, No. 2 Greene street.

Q In the office of the Uvalde Asphalt Paving Company? A In the office of the Uvalde Asphalt Paving Company.

Q He has an office himself there? A I don't know; the sign over the door says Uvalde Asphalt Paving Company's office; Mr. Crichfield's name is not over the door at all.

40 Q That is where you always find him? A Yes, we expect to find him there, I know.

James Devlin, cross.

Q Isn't the word "Superintendent" on the door, or anything like that? A I didn't notice it.

Q What is the total value of your real estate?
A You mean all told, or what I have an interest in?

Q What you have in Jersey City? A In my own name? 10

Q No; whatever you own in Jersey City upon which you pay taxes, whether that is in your own name or in the name of an estate to which you contribute taxes or for which you are in any way responsible for taxes? A Well, I should say about \$25,000.

Q And that includes everything? A Yes, everything.

Q Is that the net worth, about, after deducting mortgages and things like that? A No, I got a morgage of \$5,000 on it. 20

Q So that, deducting mortgages, your net real estate values in Jersey City would represent about \$20,000? A About \$20,000.

Q Prior to the time when Mr. Crichfield called you up and asked you to meet him, you knew nothing about this proceeding at all, did you? A Only what I read in the papers.

Q Did you read things in the paper about it? 30
A I generally read the papers and when such things are in the newspapers I read them over.

Q You mean you had seen the advertisements?
A Yes.

Q That is all you did know? A That is all I did know.

Cross examination by Mr. Hobart.

Q Do you recall whether or not your conversation with Mr. Crichfield about the specifications 40

James Devlin, re-direct.

was before the contract was awarded? A Whether it was before?

Q Whether it was before the accident was awarded. A Yes.

Q How do you know that? A Well, because Mr. Crichfield and I talked it over.

10 Q He did talk it over before the contract was awarded? A Before the contract was awarded.

Q Was part of your conversation to the effect that Mr. Crichfield, or that somebody, contemplated bringing proceedings to test the specifications? A Yes, sir.

20 Q Now, how did you determine the fact that this conversation in regard to a test of the specifications was before the contract was actually awarded? I don't suppose you know the exact date of the awarding of the contract? A No.

Q How did you fix your conversation as being before the award? A Of course, after the award I saw it in the newspapers and I know I had the conversation before that.

Q There was a newspaper report of the fact of the award being made, was there not? A Yes, sir.

Re-direct examination by Mr. Walscheid.

30 Q Mr. Crichfield told you, in this first conversation, which was held before the award, that he was going to bid, didn't he? A He didn't tell me, but I thought he would bid, on account of him being in that business.

Q Why did you think he would bid on an unfair specification?

40 *Mr. Hobart.* I object to that as immaterial why he thinks he would bid on an unfair specification.

James Devlin, re-direct.

A I know that if I was in that same business I would bid, too.

Q You are sure he did not say anything about his bidding? A I don't think so.

Q Isn't it a fact that he told you that that was the specification on which he intended to bid?

A He never told me that; the only thing he told me, he said, the specification was not drawn up properly, because it did not name any streets in it and he couldn't tell— 10

Q All right now; go ahead and tell us; what else did he say? Tell us in detail what he said at that time? A He said about the specification not being drawn up properly; and he also informed me that Commissioner Byrne holds a mortgage against this Mr. Murphy of the Clinton Contracting Company— 20

Q A what? A Holds a mortgage on his house in West Hoboken.

Q Yes. A And it looked to me to be a crooked game all through, and he told me that; I didn't know until he told me.

Q What else did he tell you? A That is all.

Q What did he want you to do? A To become one of the prosecutors.

Q He wanted you to be one of the prosecutors? A Yes, sir. 30

Q Did he tell you when he was going to start suit? A No, he did not, because I was living in the city here at the time.

Q Isn't it a fact that he said to you, "If I do want to start a suit will you be one of the prosecutors?" A Yes, he did say that.

Q He did say that? A Yes.

Q And "If I do want to start suit will you be the prosecutor?" A Will I be one of them.

Q And that he would be the other? A Yes. 40

William T. S. Crichfield, direct.

Q So that you agreed with him before the awarding of this contract that if he, Crichfield, chose to start a certiorari proceeding in this case after the award of contract, that you would be one of the prosecutors? A Yes.

Re-cross examination by Mr. Hobart.

10 Q Is this Mr. Byrne to whom you referred the gentleman who holds the position of Director of Streets and Public Improvements in Jersey City?

A Yes, sir.

Q And did at that time? A Yes, sir.

WILLIAM T. S. CRICHFIELD, recalled.

Direct examination by Mr. Hobart.

20 Q Mr. Crichfield, please state your conversation with Mr. Devlin, according to your recollection of it, and the circumstances under which he became one of the prosecutors in this proceeding?

A I telephoned Mr. Devlin at his residence and requested him to make an appointment with me, which he did at my office; Mr. Devlin and I together read certain sections of the specifications under which bids were advertised to be received, and I stated to him that the specifications did

30 not name the streets upon which the city was soliciting proposals, and that therefore I did not know how to make out my bid. I further stated to Mr. Devlin that a section of the specifications provided that the old foundations should be sacrificed and depressions should be filled up with new or old stone, and I stated to him that not knowing the location of the streets, or the streets to be paved under the proposals to be received, I could

40 not determine the quantity of new stone which would be required to bring the foundation to the

William T. S. Crichfield, direct.

grade decided by the engineer. I furthermore stated and pointed out to Mr. Devlin in the specification that the amount of the bond, the maintenance bond, was not fixed, and stated to him that I usually, and, in fact practically all the time, in bidding on work, furnished a surety company on work awarded to me, and I therefore could not determine in advance the amount of premium I would be compelled to pay, not knowing the amount of bond which the city would exact should the contract be awarded to me. I furthermore stated to Mr. Devlin that the whole proposition, as near as I could understand it from the specification, was not right, was not fair, that I believed that there was favoritism being shown in advertising for proposals under this specification; Mr. Devlin asked me how favoritism was being shown and I stated to him that I have a copy of a certified copy of a mortgage which Director Byrne has on the residence and property of the manager of the Clinton Contracting Company and that did not look right to me. Mr. Devlin, as near in substance as I can state, stated to me that the whole proposition looked to him as though it was crooked and that he would be glad to join with me in an application to the court to prevent work being executed under this specification.

10

20

30

Q Do you recall whether this conversation was before or after the award was made? A It was before the award of the contract.

Q Do you remember about how long before?

A I believe it was before the city received bids; it is possible it might have been immediately after that.

Q Have you this certified copy of the paper which you referred to? A I have.

40

Joseph Murphy, direct.

Q Produce it, please? A (Witness produces paper called for).

10 *Mr. Hobart.* I offer in evidence certified copy of document, which, according to the Register, is a deed, dated May 1, 1912, from Joseph Murphy and wife to Henry Byrne, covering certain property, and I ask that it be marked.

Mr. Walschied. I object to that as immaterial, incompetent and irrelevant.

(The paper was thereupon admitted, subject to the objections, and marked Exhibit P. 1).

20 Q After the award of the contract did you call Mr. Devlin's attention to the fact that the contract had been awarded? A Yes.

Q Did you have any conversation with him about his joining in a suit to review the contract? A I did.

Q And did he say as to whether or not he would be willing to join in such suit? A He said he would be glad to join.

By Mr. Walschied.

30 Q This paper which has just been marked in evidence is the instrument which you have spoken of as a mortgage? A Yes, sir.

JOSEPH MURPHY, sworn.

Direct examination by Mr. Hobart.

Q I believe you are an officer of the Clinton Contracting Company, Mr. Murphy? A Yes, sir.

Q What position did you hold with the company? A I am general superintendent.

40 Q It is a corporation, is it not? A Yes.

Joseph Murphy, direct.

Q Do you own some of the stock? A I own some; yes, sir.

Q You own most of it? A No, sir; I own some of it.

Q Are you the active manager of the company?
A Yes.

Q You superintend contracts that the company succeeds in obtaining, do you? A Yes. 10

Q In other words, you run the company, practically, do you not? A Well, I do my work; I do what is up to me.

Q Your work is to run the company, is it not?
A Well, I take charge of the construction work.

Q Are you the Mr. Joseph Murphy who is mentioned in this deed marked Exhibit P. 1 of this date to one Henry Byrne, purporting to have been executed May 1st, 1912? A I suppose I am. 20

Q Perhaps it is only fair to identify it a little further.

Mr. Walscheid. You don't have to identify it; those lots were sold.

Q Your wife's name is Margaret Murphy, isn't it? A That is right.

Q You and your wife did execute a deed to Henry Byrne on the 1st day of May, 1912; you recall the fact of signing such paper? A I remember selling that property. 30

Q Conveying certain property in the town of West Hoboken? A Yes, sir.

Q And the deed recites a consideration of one dollar; what was the true consideration? A I don't have to tell you that.

Mr. Walscheid. I object to that on the ground that it is immaterial and irrelevant to the issues in this case. 40

Joseph Murphy, direct.

The Commissioner. Answer the question, Mr. Murphy, please.

The Witness. Well, I refuse to answer it.

Q Under the advice of counsel or without the advice of counsel; which? A I refuse to answer.

Q On what grounds? A Well, it is my private affairs.

The Commissioner. Do you waive your right to an answer?

Mr. Hobart. No, I think not. We will have to find out later whether he is obliged to answer.

The Commissioner. What disposition do you wish to make of this question; do you want to continue your examination with that reservation?

Mr. Hobart. Yes, I will continue with that reservation.

The Commissioner. Is that agreeable to you, Mr. Walscheid?

Mr. Walscheid. Oh, yes.

Q You know Mr. Henry Byrne, of Jersey City?

A I do.

Q How long have you known him? A 25 years or more.

30 Q Has Mr. Byrne gone on your bond in connection with street paving contracts any time within the last few years? A No.

Q He has never been on your bond? A Well, yes; one bond, about, I guess, ten years ago.

Q For you, personally? A No.

Q For your company? A For me and my son.

Q For you and your son together? A Yes.

40 Q Has Mr. Byrne ever gone on a bond for the Clinton Contracting Company? A Never.

Joseph Murphy, direct.

Q When you executed this deed of May 1st, 1912, to Mr. Byrne, did you take any agreement back from him? A No.

Q Was the property paid for in full when you sold it to him? A Yes.

Q You refuse to tell us how much was paid, do you? A I do.

Q Is that the property where you are now living? A Part of it, yes.

Q Part of this same property is the property where you and your family live? A Yes.

Q Do you pay any rent? A Well, what I want to know—

The Commissioner. One moment, Mr. Murphy. Counsel will advise you.

Mr. Walscheid. I object to this whole line of testimony.

A That hasn't got nothing to do with this case.

Q You refuse to answer, do you? A Yes, sir; I do.

Mr. Walscheid. I don't care whether he answers or not.

Q Your counsel says he doesn't care; do you still refuse to answer? A I refuse, yes.

Q On what grounds? A On the grounds that that is my private business, and this is a paving job not a real estate transaction.

Q How large a lot is the house built on in which you live which is part of the property conveyed by this deed? A I couldn't tell you; I ain't got no survey with me.

Q Do you know whether the lot is 10 feet wide, 50 feet, or 100 feet,—I mean the lot on which the house is located?

Mr. Walscheid. I object to that as immaterial and irrelevant to the issues in the case.

Joseph Murphy, cross—re-direct.

A I couldn't tell you exactly.

Q Well, tell us as nearly as you can? A Well, I don't know; I object to answering.

Q You refuse to answer, do you? A Yes.

Q Why? A Because it is my private business and don't apply to a paving job.

10 Q All right; I only want to know. A That is why.

Q Do you live there rent free? A I have a right to sell a house to a man if I want to, haven't I?

Q Do you live in this house— A I wont answer you.

Q Do you live in the house rent free? A Do I live in the house rent free?

Q Yes. A I refuse to answer.

20 Q Do you pay any rent? A I refuse to answer.

Q Have you any interest in the house? A No.

Cross examination by Mr. Walscheid.

Q How many shares of stock have you in the Clinton Contracting Company? A I got one.

Re-direct examination by Mr. Hobart.

30 Q Who holds the other shares? A I don't know that I got to answer those questions.

Q Do you refuse to answer who owns the other shares? A I do, yes.

Q Under the advice of counsel? A I refuse to answer anything that don't pertain to this paving job.

Q Is there anybody other than members of your family who has any interest in the Clinton Contracting Company? A Yes.

40 Q Who? A Well, I am not going to tell you; that is my private business.

William T. S. Crichfield, direct.

Q Very well; don't tell me if you don't want to. A Well, I refuse to answer.

Q Has your son an interest in the company? A Well, I refuse to answer any questions of that kind.

Q Has any other member of your family, other than your son, an interest in that company? A I wont answer any of those questions. 10

Q How much stock is there in the company? A Well, I refuse to answer that question.

Q You say you own one share? What is the par value of it? You understand what I mean by par value? A Yes; \$100.

Q That has a par value of \$100? A Yes.

Q How many shares are there all together in the company? A Well, I wont tell you. 20

Q That is on record, I suppose, at Trenton? A I suppose so.

Q You organized under the laws of New Jersey? A Yes.

Q When were you organized? A I can't tell you; I don't just remember the date.

Q It was within the last few years, wasn't it? A Oh, yes.

WILLIAM T. S. CRICHFIELD, recalled. 30

Direct examination by Mr. Walscheid.

Q Mr. Crichfield, you bid upon and obtained the contract for the work of resurfacing Pavonia avenue, from Summit avenue to Chestnut avenue, and Mercer street from Baldwin avenue to Summit avenue, with bituminous concrete, did you not?

A During 1915, yes.

Q I call your attention to the original papers in that contract and ask you to examine the para- 40

William T. S. Crichfield, direct.

graph of those specifications under the title "Foundation"? A I have examined it.

Q Just say whether or not that is not the original contract with your signature attached to it? A That is a copy of the original.

10 *Mr. Walscheid.* I now desire to read in evidence an extract from the specifications just shown to Mr. Crichfield, as follows:

20 "Foundation: All existing macadam or stone foundations shall be thoroughly swept, and scarified with picks, or by a suitable machine, in order to bring the same to the new grade as established by the engineer. Old or new broken stone may be used in filling up depressions in the roadway, and the same shall be spread and mixed with sand or other suitable filler, as directed by the engineer. When the gutters adjacent to the curb are found with stone block pavement, the same shall be relaid, if directed by the engineer, to the new established grade, and after which the entire roadway to be used for a foundation shall be thoroughly compacted with a steam roller weighing not less than ten tons."

Mr. Hobart. I object to that as immaterial, irrelevant and incompetent.

30 Q You had no trouble in bidding on this specification, did you? A Not the slightest, because I knew the location of the streets.

Q It also provided for the use of a binder material, did it not? A Binder material.

Q Yes, a binder material, in connection with the laying of the bituminous concrete? A No asphaltic binder.

40 Q Looking over the engineer's estimate of prices and the materials to be bid upon, do you

William T. S. Crichfield, direct.

find any items covering the old or new stone to be used in filling up depressions? A No such item was bid upon under that contract.

Q So that in that contract you made up your bid without knowing from the engineer anything about the quantities of old or new stone to be used in filling up depressions? A I did not consult with the engineer about that but I determined it myself. 10

Q I mean so far as the specifications are concerned. A Not so far as the specifications are concerned; but I made an examination of the streets in question upon which bids were received to determine that myself.

Q And didn't this specification contain a provision which reads as follows: "The Board of Commissioners reserve the right under this contract and specification to increase the quantity of paving to be relaid by selecting such street or streets which are paved with macadam pavement; the cost of pavement upon such street or streets that may be added will be paid for at the same rate as Mercer street and Pavonia avenue, being the price contained in the bid submitted?" A That contract contains such a provision, yes. 20

Q And the specification contained it when you bid upon it? A Yes. 30

Q And you had no trouble in bidding on that specification? A No trouble in bidding on Pavonia avenue or Mercer street, no.

Q You were now there? A Yes.

Q And you did, in fact, undertake and do the work? A I have completed that contract.

Q And under it you did, in fact, pave Garfield avenue, a street not mentioned in the heading of the specification? A On which contract the city of Jersey City paid me one thousand dollars extra, 40

William T. S. Crichfield, direct.

outside of the contract, for extra work which was performed.

Q But you did it under this contract? A Yes, under that contract.

Q Now, Mr. Crichfield, didn't you, on another occasion during the last year, submit a bid to the
10 city of Jersey City for the repaving with bituminous concrete of Arlington avenue, Bay View avenue and Garfield avenue? A I did.

Q And on that bid you were not low? A I think not.

Q And on that occasion bids were all thrown out? A To the best of my memory that is a fact.

Q Will you kindly look at the specification for that work, examine the same, and see whether
20 or not it does not contain the identical provision which I have read into the record from the Pavonia avenue contract, regarding foundations? A Do I understand that this is the specification you hand me upon which bids were received for Arlington avenue, Garfield avenue and Bay View avenue?

Q Yes. A Yes, it does.

Q Was there any asphaltic binder used in this work just mentioned? A There was not.

Q Examining the estimate of quantities furnished by the engineer, was there any bid called
30 for by the engineer for old or new stone to be used in filling up depressions under that foundation clause which I have mentioned? A There was not.

Q You made no complaint about that specification? A None whatsoever, because I knew the location of the streets to be improved and could make an examination for myself to determine the
40 quantity of new stone which may be required.

William T. S. Crichfield, cross.

Cross examination by Mr. Hobart.

Q The contract for the repaving of Pavonia avenue, between certain points and Mercer street, between certain points, of July 24th, 1915, an extract from the specification of which was read into the record, specified the streets and the particular locality where the paving was to be done, did it not. Mr. Crichfield? A Yes, sir. 10

Q Which is on Pavonia avenue, and it mentions specifically from Summit avenue to Chestnut avenue? A Yes.

Q And on Mercer street, from the west curb of Baldwin avenue to Summit avenue? A Yes.

Q That is the contract which you carried out? A Yes, sir; that is the contract which I executed.

Q On which you were able to make a bid because of the fact that the locality was specified? A Yes. 20

Q And by reason of the clause in that contract whereby the Commissioners reserve the right to select other streets you have also done some other work? A Yes.

Q As directed by the Commissioners, or by the Director of Streets and Public Improvements? A Both by the Commissioners and the Director, as I recall it. 30

Q On one of those streets selected an extra compensation was allowed? A Yes.

Q What was that street? A Garfield avenue.

Q What was that for? A The city paid me one thousand dollars for concrete laid in a trench through Garfield avenue, from the northern to the southern end of the street, that was not provided for in the contract.

Q Now, the second of the two contracts to which Mr. Walseheid referred, designated, accord- 40

William T. S. Crichfield, re-direct.

ing to the specification, the particular streets and particular locality, did it not? A It did.

10 Q Thus, specifications for repaving Arlington avenue, from Communipaw avenue to the south side of Bay View avenue; Bay View avenue from Arlington to the east side of Garfield avenue, and Garfield avenue, from Bay View to the stone block pavement south of Merrit street? A It contained such provision.

Q And by reference to that you were enabled to examine the streets and determine the locality of and the nature of the streets, and so on? A That is correct.

Q There was no award made under that second contract at all, was there? A No; bids were rejected by the Commissioners.

20 Q Was there any asphaltic binder called for in either of these two sets of specifications? A There was not.

Q Is there any difference between an asphaltic binder and the ordinary binder? A Yes, there is a difference. An asphaltic binder is composed of sand and stone heated to certain degrees and mixed with concrete asphaltic cement, which is termed binder, by which is implied mixing with old or new stone with clay or some other substance of similar nature to cause the stone to continue to remain in place when rolled.

30 Q Does the contract that is under review in this proceeding provide for asphaltic binder? A It does.

Re-direct examination by Mr. Walscheid.

Q Mr. Crichfield, isn't it a fact that under this Pavonia avenue contract which you did last year, in addition to doing Garfield avenue, you also did Sip avenue or Journal square? A Yes.

40

Joseph Murphy, direct.

Q At the same price and figures; in other words, under the estimate of the Pavonia avenue contract? A Well, those streets I performed.

Q Well, you did them? A Yes.

Q Under that specification and according to those prices? A Yes, I say at the same prices as for that work at Pavonia avenue and Mercer street. 10

By Mr. Hobart.

Q You have not been paid for all of this work under this contract? A That has all been paid excepting \$6,600, which has been withheld by the Director of Streets and Public Improvements.

Q Do you know for what purpose? A I have been informed—

Q All right; you have not been informed directly by him? A Not by him, but by his clerk. 20

AFTERNOON SESSION.

JOSEPH MURPHY, recalled.

Direct examination by Mr. Walscheid.

Q Mr. Murphy, you are connected with the Clinton Contracting Company? A Yes, sir.

Q In what capacity? A General superintendent. 30

Q And you have been in the contracting business for how long a time? A 30 years, about.

Q And have you, during that time, personally laid asphalt and bituminous concrete streets? A Yes, sir.

Q Do you know the price of materials? A Yes, sir.

Q And the prices of hauling and other incidentals going into the making up of the bids for such work? A Yes, sir. 40

Joseph Murphy, direct.

Q Did you make a bid for the Clinton Contracting Company for the improvements with bituminous concrete of certain macadam roadways and asphalt streets in the city of Jersey City under these specifications? A Yes, sir.

10 Q And do you know who else put in bids for that work? A Yes, the Uvalde, Mr. Crichfield and the Clinton Contracting Company.

Q And you were the lower of the three bidders, that is the Clinton Contracting Company? A Yes, sir.

20 Q I notice in the specifications the provisions under the title of "Re-surfacing Asphalt Streets: In the re-surfacing of asphalt streets, the existing asphalt wearing surface and binder, where binder is used, shall be removed, and the concrete, or stone block pavement upon which the binder and asphalt wearing surface was laid, shall be thoroughly swept, and any depressions found in the foundation on the street, they shall be brought to the proper grade by the addition of binder to receive the bituminous concrete pavement, and the cost shall be included in the price paid per square yard for re-surfacing asphalt streets"; you noticed that? A Yes, sir.

30 Q Did that give you any trouble in making up your bid? A I had to make up my bid on the average estimate satisfactory to myself.

Q Why did you have to do that? A Because the strip was covered with the old dirt and I didn't have use for it.

Q You could not tell how much binder was required? A No.

Q And nobody could have told? A No.

40 Q And it was impossible to compute that in advance? A Yes, sir.

Joseph Murphy, direct.

Q Would any arbitrary figure in the estimate prepared by the engineer, or in the contract and specifications, have been any aid to you in making up a bid? A Well, my bid would not have been any higher if that had been done, because I had my figures so as to arrive at a bid on the same percentage that I would bid anyway.

Q You bid upon a percentage; what do you mean by that? A On the standard of the engineer's estimate.

10

Q Did you figure any amount of binder material anywhere on this work? A I allowed on my bid five cents per square foot for the whole strip.

Q For the binder material? A Yes, sir.

Q And is that based upon your past experience? A Yes, sir.

20

Q Based upon the average depressions in the improvements as you found it? A Yes, sir; it was the best I could do, satisfactory to myself, it was an even chance, any other man had just the same conditions to contend with.

Q There is in these specifications another provision which reads as follows: "Foundation: The existing macadam, or stone foundation, shall be thoroughly swept, and scarified with picks, or by a suitable machine in order to bring the same to the new grade as established by the engineer. Old or new broken stone may be used in filling up depressions in the roadway, and the same shall be spread and mixed with clay or other suitable filler, as directed by the engineer;" did you have any trouble by reason of that provision in the specifications in formulating your bid? A No, sir.

30

Q Was it necessary for you to know, in relation to these macadam streets, what quantity of

40

Joseph Murphy, direct.

old or new broken stone might be used in the filling of these depressions? A Well, all macadam streets are always built with the same crown so as to shed the water off, probably four to six inches over the curb.

10 Q That is in the center line? A Yes, sir; asphalt pavements cannot stand any crowns like that and the gutter blocks are left in these streets, and you have to lower the solid macadam to the depth of the bituminous pavements on the outside of the blocks.

Q And how deep has that bituminous concrete to be? A Two and a half inches.

20 Q So that at the edge of the gutter blocks you would have to go the two and a half inches below the top surface? A Yes, sir; and the result was that there was a surplus of old stone which you would be allowed to use; I figured that there would be a surplus because the street is below two ; the crowns are too high.

Q Too high for what? A Too high for the surface of asphalt.

Q Of bituminous concrete? A Yes, sir.

30 Q According to that, then, in scarifying any macadam street in Jersey City here, you would have to scarify to a level two and a half inches below the outer level of the existing curbstone? A Yes, the gutter pavement remains in.

Q The gutter pavement remains in? A Yes, sir.

Q And you would have to lower the sub-base of the street two and a half inches below the surface of the street? A Yes, that is my figure of it myself.

40 Q And the result would be that you would have to take up all the material? A You would have to remove it.

Joseph Murphy, direct.

Q What does that consist of? A Broken stone, that would have to be taken from samples, that was also on the street.

Q You could move it from one place to another? A Yes, sir.

Q Did you make an examination of the macadam streets in Jersey City before bidding? A Yes, sir; I took my horse and carriage and drove over all the macadam streets; there is a list in the office of them, and I drove over them. 10

Q A list in what office? A In the engineer's office.

Q What engineer's office? A The engineer's office of Jersey City, and I went down probably not carefully and as I walked down and drove the horse over all the macadam streets I could find; I did not know which street, or any street, that was to be done, but they were all macadam streets, and I went over all of them. 20

Q Did you find any of these high crown conditions existing in the streets? A Yes, sir; on practically all of them.

Q So that in practically all of those streets you knew that you would not have to buy any broken stone? A Yes, there were some streets where the macadam had worn down in the center, but taking that view of it, the thickness of the asphalt concrete would bring it up again to the grade of the manhole, as they stood above; of course I had nothing to go by, no information or any grades or any profiles, or anything, only to look at the streets as they were, and to look at the grades as they and the condition of the streets generally and to use my own judgment to figure on it. 30

Joseph Murphy, direct.

Q And you knew that the bituminous concrete would have to be two and a half inches thick for depression? A Yes, sir.

10 Q And you knew that you would have to level off with the level of the curb? A Yes, sir; the engineer, of course, had a clause for resetting curb, and I don't know how far that would go, it calls for some certain quantity, but, of course, it might be more or less.

Q That is always the case, isn't it? A Yes, sir.

Q So that in your opinion, the item, the quantity of new or old broken stone to be used in filling in depressions is of no moment in this bid?

A No, I figured to get enough material on the job to do it; that is what I figured on.

20 Q There is also a provision in here for a bond for a period of ten years; or how much of a bond did you think you had to furnish under that provision?

Mr. Hobart. I object to what the witness thought; the contract speaks for itself.

A I thought I had to put up a bond for the whole amount.

Q A one hundred per cent? A Yes, it didn't say anything about any price.

30 Q In making up your bid did you take into consideration the question of haul? A Yes, sir.

Q Where were you to get your material from, the bituminous concrete? A On the Hudson River, opposite 31st street, Woodcliff.

Q In what township is that? A North Bergen.

Q Is that north of the Jersey City line? A Yes, four and a half to five miles north of the Jersey City line.

40 Q And did you take into consideration the question of haul of this material? A I did.

Joseph Murphy, cross.

Q And how did you deal with the question of haul? A Well, I figured we would make three loads; our automobiles can travel sixty miles a day.

Q Did you figure any distance in the haul? A Yes, sir.

Q What distance did you figure? A Ten miles each way, for three trips, twenty miles the round trip. 10

Q So that in making up your bid you based your figure on what you considered to be the longest haul? A Yes, sir.

Q As to asphalt streets, did you have any information as to the asphalt streets that were to be reimproved? A Yes, sir; I got a letter from the chief engineer.

Q I show you a letter, or rather a copy of a letter dated March 14, 1916, beginning at the bottom of page five of the testimony herein addressed to Mr. Crichfield, and ask you to read it and say whether you received a like letter? A Yes, sir; I received such a letter. 20

Q Like that one? A Yes, sir.

Q So that you had the information from a letter of this kind as to the asphalt streets which were to be considered in the making of these repairs? A Yes, that is what I said. 30

Cross examination by Mr. Hobart.

Q I call your attention again to this letter of March 14, 1916, and particularly to that part thereof, which reads: "If there are sufficient moneys left in the appropriation after the macadam streets, which it is proposed to re-surface have been completed, Eighth street, East and West Hamilton place, will probably be included in the work to be performed"; in your bid did you 40

Joseph Murphy, cross.

include those three streets, Eighth street, East and West Hamilton place? A Yes, I would do them for my figure if they gave them to me.

Q Does it make any difference with you in making up a bid whether you are to do one or ten streets? A No, sir; not when all things are equal.

10 Q You are willing to do one street at the same price as ten; and it didn't make any difference in wholesale prices? A No, sir.

Q Did you take into consideration those three streets: Eighth street, East and West Hamilton place? A No, sir; I didn't take into account any more than they gave them to me, of course I would do them, or any other streets that they wanted to be done, because I was bidding in
20 accordance with the specifications within the limits of Jersey City.

Q Whether they were macadam or asphalt? A Yes, sir; that was my best information and I went to find out, it was the best way to get it.

Q You were willing then and are now to do any streets in Jersey City, either asphalt or macadam, that may come within this guarantee, under the terms of your bid? A No, sir; I didn't say that.

30 Q At the same rate? A No, sir; I didn't say that.

Q Then, I did understand you correct, that you were willing to do any street, either asphalt or macadam, that maybe within guarantee, at the figure that you have submitted? A Yes, I will say that I will do it in the city of Jersey City.

Q No matter where the street is located, is that right? A Yes, that is right.

40 Q No matter how much traffic there is on the street? A No, sir; no matter how much traffic there is on the street.

Joseph Murphy, cross.

Q It does not make any difference? A No, sir.

Q No matter how much is to be put down, whether a block or six blocks? A I am talking of doing this work in rotation; I would not want to go down and do a short piece on a street; I would do it one street after the other.

10

Q You would not be willing to do more than one street at a time? A Well, doing one at a time is doing something.

Q One at a time is what you mean? A No, three at a time.

Q Any more than three at a time? A I will say that I will do any of that work for the figure that I bid.

Q How many at a time, what is your limit? A Well, what would you think, about three?

20

Q Answer my question. A I would do it as ordered and as called for; I will fulfill the contract.

Q How many will you do at once? A I don't know how they want.

Q How many were you prepared to do under your bid? A Well, I could do two or three at once.

Q Did you know that there was any time limit in these specifications? A Yes, sir.

30

Q What is it? A To the 30th of November, if I recollect right, I think that is it.

Q Is that the time limit within which the work is to be completed? A Yes, sir.

Q Do you know how many macadam streets in Jersey City that are to be done out of guarantee? A I don't know how many streets.

Q Did you examine the list of macadam streets in Jersey City? A I went over every one of

40

Joseph Murphy, cross.

them, whether they are under a guarantee or no guarantee.

Q Did you go over the asphalt streets? A Well, no, I did not; I am all the time going over them, I am riding over them all the time.

Q Did you look at the list of asphalt streets?

10 A No, sir, well, just the list that I made my bid on and to be sure—

Q I asked you did you look at the asphalt streets? A That were out of guarantee?

Q Yes. A No, I didn't look at the list that were out of guarantee.

Q Do you know how many streets are out of guarantee and would come under the terms of this contract? A No, sir; I do not.

20 Q Have you any idea? A Well, really, I have not any idea; that don't make any difference, I could do them all if they would give them to me.

Q Between the time of the awarding of the contract and November 30th? A They could not expect me to do more than the contract calls for in that stipulated time, I would have to have a longer time.

30 Q You have not any idea how many asphalt streets are out of guarantee in Jersey City? A I have in a way, while I don't know exactly.

Q Then, if I understand you rightly, Mr. Murphy, you knew without looking at the list on file in the city engineer's office what asphalt streets there are in Jersey City? A Yes, sir.

Q And you did know at the time you prepared your bid? A Yes, sir.

Q How many are there? A I don't know, but I know, because we worked on them.

40 Q You say you know how many there are? A I know we have a list in the office.

Joseph Murphy, cross.

Q Can you give me an estimate whether it was five or fifty? A Well, I could not tell you; those streets in question Eighth and Ninth streets.

Q I didn't ask you for the names. A That is the only way I can count them, by enumerating them all, I don't remember them all; I say right here that I will do every street that they have got in Jersey City for the money that I bid. 10

Q Tell me the number of streets, if you know them. A I don't care about the number; I will do the work if they give me the contract.

Q Tell me as nearly as you can? A I can't tell you.

Q Can you tell within twenty or thirty? A How many do you think there are in it yourself; I don't know; I can't tell you.

Q You can't answer the question? A Yes, I can't tell you. 20

Q If you can't answer it say so. A I say so.

Q Would it surprise you to know that there were over a hundred? A I don't care if there were two hundred.

Q Doing two or three streets at a time and getting them all done under these specifications by the 30th of November? A The specifications would not require me to do that; I think I would be allowed an extension of time. 30

Q You would expect to get a change? A No, I wouldn't expect to get a change.

Q How were you going to get a change, an extension of time; did you have any understanding with Henry Byrne that you were going to get a change? A No, sir; I did not have any understanding with Henry Byrne that I was going to get a change; this man here may have an understanding; Henry Byrne is nothing to me only a casual friend. 40

Joseph Murphy, cross.

Q Only your landlord? A He aint my landlord; I am telling you I don't know how many streets there are.

Q Can you tell me how many macadam streets there are in Jersey City out of guarantee? A No, sir.

10 Q Didn't you ride over them? A Yes, sir.

Q Did you count them to see? A No.

Q You went over them? A No.

Q Can you give us any idea? A No.

Q How long did it take you to ride over them?

A I was a full half day, from about half past eleven.

Q Was your horse walking? A You know I aint got a very fast horse; he jogs along, I couldn't
20 jump out.

Q At any rate you saw them all? A Yes, I did.

Q Then you had a list of the macadam streets that were out of guarantee? A No, I didn't have a list; I went down and saw Mr. Van Keuren; I knew where they were located down there in Greenville and Lafayette section and everything is principally macadam down that way.

Q That is macadam streets? A Yes, sir.

30 Q How many miles of macadam streets did you drive over? A I don't know, I went down one and up another and through another.

Q And from that half day examination of macadam streets you acquired sufficient information to prepare your bid? A I did.

Q You didn't drive over the asphalt streets, did you? A I am riding over them off and on all the time.

Q How many did you ride over off and on?
40 A I didn't ride over the asphalt streets with the

Joseph Murphy, cross.

idea of improving them all, I am riding over them all the time.

Q I mean in reference to these particular bids, did you make any examination of these asphalt streets or did you rely on this letter? A I relied on the letter.

Q In other words you relied on the letter from the chief engineer? A No; they were particularly mentioned and I went to look at them. 10

Q Did you look at any others? A I am looking at them all the time, I have been along Palisade avenue and Baldwin avenue and also from Henderson street section and down in lower Jersey City, and all of those streets, I am all the time driving over them; the condition was similar in all those streets, I made this bid in good faith, I was not in collusion with Byrne. 20

Q I didn't say that. A Well, you have inferred that; and I want to say he aint that kind of a man.

Q Mr. Murphy, now, I understood you to say, and I want to make sure, whether I am right that the reason you went over the macadam streets, was because you had no grades or profiles? A I didn't say that at all; I went over the macadam streets to look at those streets, but I had no grades or profiles with me in going over them. 30

Q Did you ever have any? A No, sir.

Q Then you made your bid without having any grades or profiles? A I examined them in the engineer's office.

Q What grades or profiles did you examine there? A Well, there was one street, no, I don't think I did examine any grades or profiles there.

Q You did not examine any? A No, sir.

Q There were not any there to examine; at any rate you did not examine them? A I went 40

Joseph Murphy, cross.

in Mr. office and I did examine something in there.

10 Q Do you remember what it was? A I just looked at the grades maybe, and then I went up to Mr. Van Keuren's office and asked him if he knew what streets were going to be repaired and he said, he didn't know, and for me to go and see Mr. Byrne, and I went and saw Mr. Byrne and Mr. Byrne told me this: "I have so much money to spend and there are so many more streets to be repaired than I have money to pay for, and I am going to do the worst of them, and then I went away.

Q And did he say that he would do more if he got more money? A He did not say it to me.

20 Q But he said so in this letter, if there are sufficient funds left; did Byrne say anything to you to the same effect? A He said that they had more streets to repair than they had money to repair them with.

Q In other words, Mr. Murphy, you were not able to tell by inquiry of Mr. Byrne's just what streets were to be done? A No, sir, I was not; he told me he didn't know.

Q He didn't know? A No.

30 Q You were familiar with that part of the specifications which provided for the names of the streets to be determined by Mr. Byrne, as Director of Streets and Public Improvements? A Well, if he called for them to be done I would go and do it; that was the information I had to bid on.

40 Q Now, this discussion that you had with Mr. Byrne, as to what streets were to be repaired, did you ask him about both kinds of streets, that is macadam and asphalt streets? A I didn't ask him about asphalt or macadam streets, I asked him

Joseph Murphy, cross.

generally, I asked him which of those streets have got to be fixed.

Q You didn't limit your inquiry? A No, sir; not at that time.

Q Did you ask him generally what streets were to come within the contract? A Yes.

Q And he said he didn't know? A Yes, and then we got that letter and then I went back and asked him and he said he didn't know; he said he had more to fix than he had money to fix. 10

Q In other words he would call upon the contractor to do whatever streets there was the most complaint about, that is about what it amounted to? A That is the way I would take it.

Q And that is what you understood? A Yes, sir.

Q Did he tell you what streets he had the most complaints about? A He didn't say anything about any complaints, not a word. 20

Q Did he ever inform you after that what streets were complained about? A No, sir.

Q You never asked anything further about those before you put in your bid? A No, sir; I tried to get that information, and then I went out and got what I could for myself.

Q Now, you said that you allowed five cents per square yard for binder, that is on the asphalt? 30

A Yes, sir; that is for the whole area, there is plenty of them that won't require any at all.

Q You mean on the average? A Yes, sir.

Q That is only on the asphalt streets isn't it? A Yes, sir.

Q Have you ever done any asphalt work? A Yes, sir.

Q Where? A Right here in Jersey City.

Q When did you do it? A The year before last. 40

Joseph Murphy, cross.

Q How much did you do? A Oh, about three or four thousand yards.

Q How much did you allow for binder on that other contract? A I don't remember now.

Q Is that the only other asphalt work you have ever done? A Of sheet asphalt work that I have done, practically?

10 Q What do you mean by "done practically?"
A That is we had a contract for a lot of work that the Barber Asphalt Company did for us.

Q Under sub-contract with the Barber Asphalt Company? A No, they were under sub-contract with us.

Q Then you didn't do that work yourself, although you were the contractor for it? A Yes.

20 Q Then your experience on laying sheet asphalt is limited to this one contract last year that you have mentioned? A Mr. Hobart, I have been over twenty years working around these asphalt streets with Mr. Crichfield and Mr. Barber.

Q (Last question repeated)? A No, it is not; I have laid a hundred thousand yards of asphalt concrete.

Q Is that the same as sheet asphalt? A Yes, except for the binder and it is not as close a mixture.

30 Q What is sheet asphalt anyhow?

Mr. Walscheid. I object to that question as immaterial; what do you mean "By what is sheet asphalt?"

A It is mixture of binder and top.

40 Q Is that all? A The asphalt is a close mixture carrying the most amount of asphalt cement by reason of its closeness; it is a very close grind mixture; whereas the asphalt concrete is of a coarser nature.

Joseph Murphy, cross.

Q By the asphalt concrete do you mean what is mentioned in these specifications as bituminous concrete? A Yes, sir.

Q That is another name for asphalt concrete? A Well, some call it that, yes.

Q Well, now, tell us what bituminous or asphalt concrete is? A I have told you that. 10

Q Your answer was intended to cover both? A Yes, the difference is in the grain of the mixture.

Q Now, when you examined these specifications you observed the provision as to the bond? A Yes, sir.

Q And you observed that the maintenance bond was for ten years, did you not? A Yes, sir.

Q And I assume that you considered that in preparing your bid? A Yes, sir. 20

Q Did you ask anybody, Mr. Byrne or any one else what the amount of the bond was to be? A Well, I did not assume it was on the whole job; that is the way it read to me.

Q Then you did not inquire further about it? A No, sir.

Q Does it make any difference in the case of maintenance as to where a street is located or the amount of traffic on the street? A Very little.

Q Very little difference? A Yes, sir. 30

Q You don't think there would be very much difference between Newark avenue and some little side street out in the meadows? A Yes, sir.

Q On what does the cost of maintenance depend, I mean in a general way? A Well, on the conditions of drainage and traffic, and extra heavy traffic.

Q In other words, then, the amount of traffic does have some difference in the cost of maintenance? A Well, very little.

Q Very little? A Yes, sir. 40

Joseph Murphy, cross.

Q How much? A I saw the report of the chief engineer of Brooklyn, and for a hundred miles of streets from six to ten years inclusively, it is three cents per yard.

10 Q Did you have that information when you made your bid? A Well, I know that from my own experience, I know it from streets that I worked on for myself, that is for asphalt pavements that have nothing on, that is nothing to speak of in ten or fifteen years.

Q Are any of those streets included in the list of streets here? A No, they are in other towns.

By Mr. Walscheid.

Q I suppose those would be residential streets? A No, there are three streets, Blum street is one, 20 and Morgan street is one, and various other streets that I can't call to mind now.

Q Now, Mr. Murphy, some of those streets that you looked at, you think would come within the contract, were in Greenville? A Yes, sir.

Q That is the southern section of the city? A Yes, sir.

Q And some are in the northern section of the city? A No, there are a couple of streets up that way, I didn't go up in the northern section, because 30 I don't know where there are any up there, only one small street, but down in Greenville, and down that way I know there are plenty of them.

Q So when you figured on the haul of ten miles you had in mind the Greenville section? A Yes, sir.

Q And by the haul of ten miles you mean from your plant to Greenville, did you? A Yes, sir, or twenty mile haul the round trip.

Certificate of Commissioner.

Mr. Hobart. I call for the certificate of incorporation of the Clinton Contracting Company.

(The certificate of incorporation was thereupon produced by Mr. Walscheid).

Mr. Hobart. I offer in evidence the certificate of incorporation of the Clinton Contracting Company now produced. 10

Mr. Walscheid. I object to that as immaterial and irrelevant.

(The certificate of incorporation of the Clinton Contracting Company produced on the call of the prosecutors was thereupon admitted, subject to the objection, and marked Exhibit P. 6).

TESTIMONY CLOSED. 20

To the Chief Justice of the Supreme Court of New Jersey:

I do certify that the foregoing depositions were taken before me, in my immediate presence and hearing, at the times and place and under the stipulations therein contained.

WM. C. ASPER, 30
Supreme Court Commissioner.

*Exhibit P. 1.***Exhibits.**

EXHIBIT P. 1.

10	JOSEPH MURPHY, <i>et ux.</i> , <i>to</i> HENRY BYRNE.	}	<i>Deed</i> <i>Dated</i> <i>May 1, 1912.</i>
----	---	---	--

THIS INDENTURE, Made the first day of May, in the year of our Lord one thousand nine hundred and twelve,

20 BETWEEN Joseph Murphy and Margaret Murphy, his wife, of the Town of West Hoboken, in the County of Hudson, and State of New Jersey, party of the first part;

30 WITNESSETH: That the said party of the first part, for and in consideration of One (\$1.00) Dollar, and other valuable consideration, lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof, is hereby acknowledged, and the said party of the first part being therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents, do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm, unto the said party of the second part, and to his heirs, and assigns, forever,

40 ALL those certain lots, tracts, or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Town of West Hoboken, in the County of Hudson and State of New Jersey, which are known, laid down and designated as Lots Numbers 1, 2, 2½, 3, 4, 21½, 22½ and

Exhibit P. 1.

23½ in Block Number 88 as *laid* down on the "Official Map of the Town of West Hoboken, Hudson County, N. J." made by Sebastian Maulbeck, Town Surveyor, 1906, and which..... taken together are more particularly described as follows:

COMMENCING at a point formed by the intersection of the Westerly side of Palisade avenue with the Northerly side of Charles street as shown on said map and running thence (1) Northerly and along the westerly side of Palisade Avenue, eighty-five feet and ninety-five (85.95) one hundredths of a foot to a point; said point being the Northeast corner of Lot number Thirty-one (31) as laid down on said map, thence (2) from said last mentioned point in a Westerly direction along the Northerly line of Lot Number Thirty-one (31) and parallel or nearly so with the Northerly side of Charles Street, one hundred (100) feet to a point, said point being in the Easterly line of lot number twenty-three and one-half (23½) as shown on said map; thence (3) from said last mentioned point Northerly and parallel with the first mentioned course sixty (60) feet to a point, said point being the Northeast corner of lot number twenty-three and one-half (23½) as shown on said map, thence (4) from said last mentioned point Westerly at right angles to said last mentioned course along the Northerly line of lots numbers twenty-three and one-half (23½) twenty-two and one-half (22½) and twenty-one and one-half (21½) seventy-five (75) feet to a point, said point being the most Northwesterly corner of lot number twenty-one and one-half (21½) as shown on said map; thence (5) from said last mentioned point in a southerly direction and at right angles to said last mentioned course or nearly so along the Westerly side of lot number twenty-one and one-half (21½) sixty-five feet and sixty-eight one-hun-

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Exhibit P. 1.

10 dredths (65.68) of a foot to a point, said point being the southwest corner of lot number twenty-one and one-half ($21\frac{1}{2}$) as shown on said map; thence (6) from said last mentioned point and in an Easterly direction along the Southerly line of said last mentioned lot twenty-five (25) feet to a point; said point being formed by the southerly line of lots

20 numbered twenty-one and one-half ($21\frac{1}{2}$) and twenty-two and one-half ($22\frac{1}{2}$) the Westerly line of lots number four (4) and twenty-two and one-half ($22\frac{1}{2}$); thence (7) from said last mentioned point in a Southerly direction along the Westerly line of lot number four (4) seventy-one feet and seventy-nine one hundredths (71.79) of foot to a point, in the Northerly line of Charles street, thence

30 (8) from said last mentioned point and along the Northerly line of Charles street in an Easterly direction one hundred and fifty feet and eleven one-hundredths (150.11) of a foot to the point or place of beginning.

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining.

30 ALSO ALL the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof,

To HAVE AND To HOLD, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, his heirs, and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs, and assigns, forever,

40 AND THE SAID Joseph Murphy, for himself, and his heirs, executors and administrators, does cove-

Exhibit P. 1.

nant, promise and agree to and with the said party of the second part, his heirs and assigns, that he has not made, done, committed, executed or suffered any act or acts, thing or things, whatsoever, whereby or by means whereof, the above mentioned and described premises or any part or parcel thereof, now are, or at any time hereafter, shall or may be impeached, charged or encumbered in any manner or way whatsoever, 10

IN WITNESS WHEREOF, the said party of the first part, have hereunto set their hands and seals the day and year first above written,

JOSEPH MURPHY, (SEAL.)
MARGET MURPHY, (SEAL.)

Signed, sealed and delivered in the presence of: 20

JAMES P. DOLAN.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.

BE IT REMEMBERED, That on this first day of May, in the year of our Lord one thousand nine hundred and twelve, before me, the subscriber, an Attorney at Law of the State of New Jersey, personally appeared Joseph Murphy, and Margaret Murphy, his wife, who, I am satisfied, are the grantors, mentioned in the within Instrument to whom I first made known the contents thereof, and thereupon they acknowledged that, they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed; 30

AND THE SAID Margaret Murphy, apart from her said husband, further acknowledged that she signed, 40

Exhibit P. 1.

sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats, or compulsion of her said husband.

JAMES P. DOLAN,
Attorney at Law of the State of New Jersey.

10 Received in the office and recorded October 14,
1912, at 9:28 A. M.

No. 7639.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.

I, John J. McMahon, Register of the County of Hudson, do hereby Certify that the foregoing is a true and correct copy of a certain Deed as the same
20 is on Record in my Office in Book 1124 of Deeds, on page 536, etc.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this 1st day of May, A. D., 1916.

(SEAL.)

JOHN J. McMAHON,
Register.

By CHARLES M. AUSTIN,
Deputy Register.

30

40

Exhibit P. 2.

EXHIBIT P. 2.
 ASPHALT STREETS
 OUT OF GUARANTEE.

Jersey City District:

STREET:	FROM:	TO:	
HENDERSON STREET,	Mercer Street,	Grand Street.	10
MONTGOMERY STREET,	Henderson Street,	Grove Street.	
GROVE STREET,	Montgomery Street,	Mercer Street.	
MERCER STREET,	Henderson Street,	Brunswick Street.	
BARROW STREET,	Newark Avenue,	Grand Street.	
YORK STREET,	Barrow Street,	Jersey Avenue.	
FRIGHT STREET,	Barrow Street,	Jersey Avenue.	
VARICK STREET,	Mercer Street,	Railroad Avenue.	
COLES STREET,	Railroad Avenue,	Eighth Street.	
SECOND STREET,	Grove Street,	Newark Avenue.	
THIRD STREET,	Henderson Street,	Newark Avenue.	20
FOURTH STREET,	Henderson Street,	Newark Avenue.	
EIGHTH STREET,	Coles Street,	Grove Street.	
WEST HAMILTON PLACE,	Eighth Street,	Ninth Street.	
EAST HAMILTON PLACE,	Eighth Street,	Ninth Street.	
NINTH STREET,	W. Hamilton Place,	Jersey Avenue.	
PAVONIA AVENUE,	Erie Street,	E. Hamilton Pl.	
THIRTEENTH STREET,	Viaduct,	Henderson Street.	

Hudson City District:

STREET:	FROM:	TO:	
BALDWIN AVENUE,	Laidlaw Avenue,	Prospect Street.	30
PALISADE AVENUE,	Newark Avenue,	Hoboken Avenue.	
JEFFERSON AVENUE,	Palisade Avenue,	Oakland Avenue.	
WAVERLY STREET,	Palisade Avenue,	Central Avenue.	
PROSPECT STREET,	Palisade Avenue,	Central Avenue.	
RESERVOIR AVENUE,	Palisade Avenue,	Webster Avenue.	
NESBITT STREET,	Booraem Avenue,	Reservoir Avenue.	
ABBETT STREET,	Booraem Avenue,	Ferry Street.	
BOORAEM AVENUE,	Palisade Avenue,	Central Avenue.	
CUNEO PLACE,	Palisade Avenue,	Ogden Avenue.	
PALISADE AVENUE,	Prospect Street,	City Line.	40
BOWERS STREET,	Palisade Avenue,	Ogden Avenue.	
OGDEN AVENUE,	Ferry Street,	Franklin Street.	
OGDEN AVENUE,	Griffith Street,	Congress Street.	
HOBSON STREET,	Palisade Avenue,	Ogden Avenue.	
NORTH STREET,	Summit Avenue,	Central Avenue.	
GRAHAM STREET,	Central Avenue,	Nelson Avenue.	
PATERSON STREET,	Pierce Avenue,	Boulevard.	
BOWERS STREET,	Summit Avenue,	Central Avenue.	
COLUMBIA AVENUE,	Zabriskie Street,	Thorne Street.	
MANHATTAN AVENUE,	Central Avenue,	Sanford Place.	
SHERMAN PLACE,	Sanford Place,	Boulevard.	
CARLTON AVENUE,	Summit Avenue,	Germania Avenue.	
BEACON AVENUE,	Summit Avenue,	Boulevard.	
HURON AVENUE,	St. Paul's Avenue,	Van Winkle Avenue.	
SKILLMAN AVENUE,	St. Paul's Avenue,	Hopkins Avenue.	
COTTAGE STREET,	Summit Avenue	Boulevard.	
VAN REIPEN AVENUE,	Summit Avenue	Boulevard.	

Exhibit P. 2.

PAVONIA AVENUE,	Summit Avenue	Boulevard.
BACOT STREET,	Pavonia Avenue,	Magnolia Avenue.
BALDWIN AVENUE,	Newark Avenue,	St. Pauls' Ave.
COURT HOUSE PLACE,	Oakland Avenue,	342' east of Baldwin Avenue.

Bergen District:

	STREET:	FROM:	TO:
10	MAGNOLIA AVENUE	Tonnele Avenue,	P. R. R.
	GARRISON AVENUE,	Tonnele Avenue,	Stuyvesant Ave.
	ROMAINE AVENUE,	Sip Avenue,	Stuyvesant Ave.
	PAVONIA AVENUE,	Westside Avenue,	Giles Avenue.
	DE KALB AVENUE,	Boulevard,	Westside Avenue.
	HIGHLAND AVENUE,	Bergen Avenue,	Westside Avenue.
	VAN REYPEN STREET,	Highland Avenue,	Sip Avenue.
	ACADEMY STREET,	Van Reypen Street,	Bergen Square.
	BERGEN SQUARE,	
	SMITH STREET,	Bergen Avenue East,	
	VROOM STREET,	Van Reypen Street,	Gray Street.
	GLENWOOD AVENUE,	Bergen Avenue,	Westside Avenue.
	BALDWIN AVENUE,	Summit Avenue,	Montgomery St.
	MERCER STREET,	Bergen Avenue,	Summit Avenue.
	BOLAND STREET,	Montgomery Street,	Fairmount Ave.
	BRITTON STREET,	Montgomery Street,	Fairmount Ave.
	FAIRMOUNT AVENUE,	Boland Street,	Boulevard.
20	FREEMAN AVENUE,	Duncan Avenue,	Cemetery.
	REED STREET,	Bergen Avenue,	Monticello Ave.
	FAIRVIEW AVENUE,	Monticello Avenue,	Westside Ave.
	JEWETT AVENUE,	Monticello Avenue,	Westside Ave.
	KENSINGTON AVENUE,	Boulevard.	Westside Ave.
	GIFFORD AVENUE,	Bergen Avenue,	Westside Ave.
	BENTLEY AVENUE,	Bergen Avenue,	Westside Ave.
	HARRISON AVENUE,	Bergen Avenue,	Westside Ave.
	DELAWARE AVENUE,	Communipaw Avenue,	County Park.
	OLEAN AVENUE,	Communipaw Avenue,	County Park.
	BELVIDERE AVENUE,	Communipaw Avenue,	County Park.
	CRESCENT AVENUE,	Communipaw Avenue,	Clinton Avenue.
	BERGEN AVENUE,	In Front of Armory.	
	PARK STREET,	Communipaw Avenue,	Astor Place.
	CLINTON AVENUE,	Bergen Avenue,	Westside Avenue.
	ROOSEVELT AVENUE,	Westside Avenue,	Mallory Avenue.
30	LEXINGTON AVENUE,	Bergen Avenue,	Mallory Avenue.
	CLENDENNY AVENUE,	Bergen Avenue,	Westside Avenue.
	UNION STREET,	Ocean Avenue,	Westside Avenue.
	ATLANTIC STREET,	Ocean Avenue,	Bergen Avenue.
	OAK STREET,	Ocean Avenue,	Bergen Avenue.
	FORREST STREET,	Jackson Avenue	Bergen Avenue.
	BOYD AVENUE,	Bergen Avenue,	Boulevard.
	WILLIAMS AVENUE,	Westside Avenue,	Mallory Avenue.
	VIRGINIA AVENUE,	Bergen Avenue,	Mallory Avenue.
	KEARNEY AVENUE,	Westside Avenue,	N. & N. Y. R. R.
	EGE AVENUE,	Westside Avenue,	Mallory Avenue.
	CLARKE AVENUE,	Westside Avenue,	Mallory Avenue.
	MORTON PLACE,	Bergen Avenue,	Boulevard.
	YALE AVENUE,	Westside Avenue,	Mallory Avenue.
	ORIENT AVENUE,	Boulevard,	Halstead Street.
	GRANT AVENUE,	Ocean Avenue,	Westside Avenue.
40	CLAREMONT AVENUE,	Randolph Avenue,	Boulevard.
	CARTERET AVENUE,	Ocean Avenue,	Arlington Avenue.

*Exhibit P. 3.**Greenville District:*

STREET:	FROM:	TO:	
MYRTLE AVENUE,	Ocean Avenue,	Garfield Avenue.	
BAYVIEW AVENUE,	Arlington Avenue,	Jackson Avenue.	
BIDWELL AVENUE,	Ocean Avenue,	Jackson Avenue.	
ARMSTRONG AVENUE,	Ocean Avenue,	Van Cleef St.	
DWIGHT STREET,	Van Cleef Street,	Jackson Avenue.	
DWIGHT STREET,	Ocean Avenue	Garfield Avenue.	
VAN CLEEF STREET.	Dwight Street,	Stegman Street.	
DANFORTH AVENUE,	Ocean Avenue	Garfield Avenue.	
BERGEN AVENUE,	Myrtle Avenue,	Boulevard.	10

Lafayette District:

STREET:	FROM:	TO:	
LAFAYETTE STREET,	Monitor Street,	Van Horne Street.	
VAN HORNE STREET,	Communipaw Avenue,	Maple Street.	

EXHIBIT P. 3.

ASPHALT STREETS.

UNDER GUARANTEE.

20

STREET:	FROM:	TO:	
BERGEN AVENUE,	Communipaw Avenue,	Fairmount Avenue.	
NEWARK AVENUE,	Warren Street,	Brunswick Street.	
BOWERS STREET,	Summit Avenue,	Boulevard.	
BIDWELL AVENUE,	Jackson Avenue,	Bergen Avenue.	
MONTICELLO AVENUE,	Communipaw Avenue,	Fairmount Avenue.	
FAIRMOUNT AVENUE,	Bergen Avenue,	East side of Monticello Avenue.	
GARRISON AVENUE,	De Kalb Avenue,	Stuyvesant Avenue.	
FAIRVIEW AVENUE,	Monticello Avenue,	Fairmount Avenue.	
COLUMBIA AVENUE,	South side of Thorne Street,	South Side of North Street.	
BELMONT AVENUE,	Bergen Avenue,	Boulevard.	
BROWN PLACE,	Garfield Avenue,	Princeton Avenue.	30
MONITOR STREET,	Communipaw Avenue,	Johnston Avenue.	
ENOS PLACE,	Sip Avenue,	Newkirk Street.	

40

Exhibit P. 4.

EXHIBIT P. 4.

LIST OF
MACADAM STREETS IN JERSEY CITY.STREETS MARKED WITH CHECK ARE STILL UNDER
GUARANTEE.

10		APPROXIMATE DISTANCE:
	PEARSALL AVENUE,	Old Bergen Road to Ocean Avenue, 580'.
	ORIENT AVENUE,	Bergen Avenue to Jackson Avenue, 900'.
	DUNCAN AVENUE,	Bergen Avenue to Boulevard, 950'.
	PAMRAPO AVENUE,	Old Bergen Road to Boulevard, 1400'.
	MAGNOLIA AVENUE,	Waldo Avenue to Penn. Railroad, 550'.
	BARTHOLDI PLACE,	Ocean Avenue to Boulevard, 530'.
	OLD BERGEN ROAD,	Danforth Avenue to Gates Avenue, 2150'.
	OLD BERGEN ROAD,	Gates Avenue to Thompson Street, 750'.
	HENRY STREET,	Waldo Avenue to Chestnut Avenue, 500'.
	LINDEN AVENUE,	Old Bergen Road to Boulevard, 1050'.
	LINDEN AVENUE,	Princeton Avenue to Ocean Avenue, 1200'.
	TUERS AVENUE,	Newkirk Street to Vroom Street, 750'.
	RESERVOIR AVENUE,	Central Avenue to Webster Avenue, 960'.
	PRINCETON AVENUE,	Brown Place to Cator Avenue, 1800'.
20	GREENVILLE AVENUE,	Old Bergen Road to Boulevard, 1100'.
	DANFORTH AVENUE	Old Bergen Road to Boulevard, 1020'.
	PEARSALL AVENUE,	Princeton Avenue to Ocean Avenue, 1200'.
	CATOR AVENUE,	Old Bergen Road to Hudson Boulevard, 700'.
	FULTON AVENUE,	Garfield Avenue to Bergen Avenue, 2700'.
	WINFIELD AVENUE,	Ocean Avenue to Princeton Avenue, 1150'.
	LEMBECK AVENUE,	Princeton Avenue to Old Bergen Road, 1100'.
	ORIENT AVENUE,	Ocean Avenue to Jackson Avenue, 900'.
	STEVENS AVENUE,	Ocean Avenue to Boulevard, 2000'.
	CATOR AVENUE,	Ocean Avenue to Old Bergen Road, 1200'.
	McADOO AVENUE,	Old Bergen Road to Rutgers Avenue, 1000'.
	VAN NOSTRAND AVENUE,	Ocean Avenue to Garfield Avenue, 680'.
	McADOO AVENUE,	Boulevard to Spring Street, 1950'.
	WARNER STREET,	Boulevard to Rutgers Avenue, 1150'.
	RUTGERS AVENUE,	Cator Avenue to Warner Avenue, 1000'.
	STEGMAN STREET,	Van Cleef Street to Jackson Ave., 950'.
	CATOR AVENUE,	Boulevard to Fowler Avenue, 500'.
30	WINFIELD AVENUE,	Old Bergen Road to Boulevard, 1100'.
	NEPTUNE AVENUE,*	Old Bergen Road to Boulevard, 1200'.
	VAN NOSTRAND AVENUE,	Ocean Avenue to Bergen Avenue,* 2000'.
	MANHATTAN AVENUE,	Boulevard to Tonnele Avenue, 1150'.
	TONNELE AVENUE,	Hopkins Avenue to County Road,
	VAN REIPEN AVENUE,	P. R. R. to Tonnele Avenue, 600'.
	BRYANT PLACE,	Van Reipen Avenue to P. R. R. tracks, 200'.
	FLORENCE STREET,	Montgomery Street to Bright Street, 1000'.
	CLERK STREET,	Myrtle Avenue to C. R. R. of N. J., 2070'.
	ARMSTRONG AVENUE,	Ocean Avenue to Garfield Avenue, 720'.
	CHAPEL AVENUE,	New York Bay to Garfield Avenue, 500'.
	GARFIELD AVENUE,	Merritt Street to Seaview Avenue,
	WEBSTER AVENUE,	North Street to Jersey City Line,

Exhibit P. 5—P. 6.

EXHIBIT P. 5.
 MAP OF JERSEY CITY.
 MAP NOT PRINTED.

EXHIBIT P. 6.
 CERTIFICATE OF INCORPORATION
 OF THE
 CLINTON CONTRACTING COMPANY.

10

We, the undersigned, for the purpose of forming a corporation in pursuance of an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations," (Revision of 1896) and the various acts amendatory thereof and supplemental thereto, do make, record and file this certificate. 20

FIRST. The name of the Corporation is CLINTON CONTRACTING COMPANY.

SECOND. The location of its principal office in the State of New Jersey is No. 308 Charles Street, West Hoboken, N. J., and the name of the agent therein and in charge thereof and upon whom process against the corporation may be served is Joseph Murphy. 30

THIRD. The objects for which and for each of which the corporation is formed are:

To take contracts for cellar excavations, street improvements, to build sewers, streets, roads, railroads, bridges, factories, water works, buildings of all kinds, and to own, acquire, lease, hold and work quarries, mines, manufacturing plants of every kind, nature and description, and to take all kinds of contracts for public or private improvements of every kind anywhere. 40

Exhibit P. 6.

In Furtherance, and not in limitation, of the general powers conferred by the laws of the State of New Jersey, and of the objects and purposes as herein above stated, it is hereby expressly provided that the Company shall have also the following powers, that is to say:

10 (a) To do any or all things herein set forth as objects, purposes, powers or otherwise, to the same extent and as fully as natural persons might or could do, and in any part of the world, as principals, agents, contractors, trustees or otherwise.

(b) To conduct its business in all its branches and have one or more offices, and ultimately to hold, purchase and convey real and personal property, both within and without the State of New Jersey, and in all other States, Territories and
20 Colonies of the United States, and in all foreign countries and places.

(c) To manufacture, purchase or otherwise acquire, hold, own, sell, assign and transfer, invest, trade, deal in and deal with goods, wares and merchandise and property of every class and description, and to do both mining and manufacturing of any kind.

(d) To purchase or otherwise acquire, to hold,
30 own, maintain, work, mine, develop, to sell, convey, or otherwise dispose of, without limit as to amount, within or without the State of New Jersey, and in any part of the world, real estate and real property, and any interest and right therein.

(e) To acquire the good will, rights and property of all kinds, and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock of this corporation, bonds or
40 otherwise.

Exhibit P. 6.

(f) To apply for, obtain, register, purchase, lease, or otherwise acquire, and to hold, own, use, operate, introduce and sell, assign, or otherwise dispose of, any and all trademarks, trade names and distinctive marks, and all inventions, improvements and processes used in connection with or secured under Letters Patent of the United States or elsewhere, or otherwise, and to use, exercise, develop, grant licenses in respect of, or otherwise turn to account any such trademarks, patents, licenses, concessions, processes and the like, or any such property, rights and information so acquired, and with a view to the working and development of the same, to carry on any business, whether mining, manufacturing or otherwise, which the corporation may think calculated directly or indirectly to effectuate these objects.

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(g) To hold, purchase, or otherwise acquire, to sell, assign, transfer, mortgage, pledge, or otherwise dispose of shares of the capital stock, bonds or other evidences of indebtedness created by any other corporation or corporations, and while the holder of such stock to exercise all the rights and privileges of ownership, including the right to vote thereon, to the same extent as a natural person might or could do.

(h) To purchase, lease, exchange, hire or otherwise acquire, any and all rights, privileges, permits or franchises suitable or convenient for any of the purposes of its business, to erect and construct, make and improve, or aid or subscribe towards the construction, making and improvement of mills, factories, storehouses, buildings, roads, docks, piers, wharves, houses for employees and others, and works of all kinds; and in conjunction with and in furtherance of the general business and purposes of the corporation, as above described, to construct,

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Exhibit P. 6.

lease, own, operate or sell a railroad or railroads, or both, in any State or country other than the State of New Jersey, subject to the laws of such other State or country.

10 (i) To guarantee the payment of dividends or interest on any shares, stocks, debentures or other securities issued by, or any other contract or obligation of, any corporation whenever proper or necessary for the business of this corporation in the judgment of its Directors.

(j) To make and enter into contracts of any sort and kind with any individual, firm, association, corporation, private, public, or municipal, body politic, and with the government of the United States, or of any State, Territory or Colony thereof.

20 (k) To do all and everything necessary, suitable or proper for the accomplishment of any of the purposes or attainment of any one or more of the objects herein enumerated, or which shall at any time appear conducive or expedient for the protection of the corporation, either as holders of or interested in any property, and in general to carry on any business, whether manufacturing, mining or otherwise.

30 It is the intention that the objects, purposes and powers specified and clauses contained in this Third paragraph shall, except where otherwise expressed in said paragraph, be nowise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this charter, but that the objects, purposes and powers specified in each of the clauses of this paragraph shall be regarded as independent objects, purposes and powers.

40 FOURTH. The amount of the total authorized Capital Stock of the corporation is One hundred

Exhibit P. 6.

thousand dollars, divided into One thousand shares of the par value of one hundred dollars each. The amount of Capital Stock with which the Company will begin business is One thousand dollars.

FIFTH. The names and Post Office addresses of the incorporators and the number of shares subscribed for by each (the aggregate of which, to wit, one thousand dollars, is the amount of Capital Stock with which the Company shall begin business) are as follows: 10

Name.	Post Office Address.	No. of Shares.	
George Limouze,	43 Columbia Terrace, Weehawken, N. J.	8	
Joseph Murphy,	308 Charles St., West Hoboken, N. J.	1	
John F. Murphy,	308 Charles Street, West Hoboken, N. J.	1	20

SIXTH. The duration of the Company shall be unlimited.

SEVENTH. The following provisions for the regulation of the business and the conduct of the affairs of the Company are hereby established:

The corporation may use and apply its surplus earnings, or accumulated profits authorized by law to be reserved, to the purchase or acquisition of property, and to the purchase or acquisition of its own Capital Stock from time to time, to such extent and in such manner and upon such terms as its Board of Directors shall determine, and neither the property nor the Capital Stock so purchased and acquired, nor any of its Capital Stock taken in payment or satisfaction of any debt due to the corporation, shall be regarded as profits for the purposes of declaration or payment of dividends, unless 30 40

Exhibit P. 6.

otherwise determined by a majority of the Board of Directors, or a majority of the stockholders.

10 The corporation, in its by-laws, may prescribe the number necessary to constitute a quorum of the Board of Directors, which number may be less than a majority of the whole number, and may by its general by-laws provide the date for the payment of dividends.

20 The Board of Directors shall have power without the assent or vote of the stockholders to make, alter, amend or rescind the by-laws of the corporation, to fix the amount to be reserved as working capital, to authorize and to cause to be executed mortgages and liens upon the real and personal property of the corporation; and from time to time to sell, assign, transfer or otherwise dispose of any or all of the property of the corporation, but no such sale of all the property shall be made except pursuant to the vote of at least two-thirds of the Board of Directors.

30 The Board of Directors from time to time shall determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account or book or document of the corporation, except as conferred by statute or authorized by the Board of Directors, or by a resolution of the stockholders.

40 The Board of Directors shall have power to hold its meetings, to have one or more officers, and to keep the books of the corporation (except the stock and transfer books) outside of the State of New Jersey at such places as may be from time to time designated by them.

Exhibit P. 6.

And we do hereby associate ourselves into a corporation and further respectively agree to all the provisions of the foregoing certificate, and to take and pay for the number of shares of stock hereinbefore set forth and accordingly have hereunto set our hands and seals, this 26th day of March, 1913.

GEORGE LIMOUZE. [L. s.] 10
 JOSEPH MURPHY. [L. s.]
 JOHN F. MURPHY. [L. s.]

In the presence of

WM. F. BURKE.

STATE OF NEW JERSEY, }
 COUNTY OF HUDSON. } ss.

BE IT REMEMBERED that on this 26th day of March in the year one thousand nine hundred and thirteen, before me a Master in Chancery of New Jersey, personally appeared George Limouze, Joseph Murphy, John F. Murphy, who I am satisfied are the persons mentioned in and who executed the foregoing certificate and I having first made known to them and each of them the contents thereof they did severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed. 20 30

WM. F. BURKE,
Master in Chancery of New Jersey.

Exhibit P. 6.

RECEIVED in the Clerk's Office of the County of Hudson on the 5th day of April, A. D. 1913, and recorded in Book of Clerks Record.

JOHN F. CROSBY,
Clerk.

10 ENDORSED:

“FILED AND RECORDED Apr 7 1913

DAVID S. CRATER,
Secretary of State.”

STATE OF NEW JERSEY

20 DEPARTMENT OF STATE.

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, do here Certify that the foregoing is a true copy of the Certificate of Incorporation of Clinton Contracting Company, and the endorsements thereon, as the same, is taken from and compared with the original filed in my office on the Seventh day of April, A. D. 1913, and now remaining on file and of record therein.

30 IN TESTIMONY WHEREOF, I have hereunto
[L. s.] set my hand and affixed my Official Seal at Trenton, this Thirty-first day of May, A. D. 1916.

THOMAS F. MARTIN,
Secretary of State.

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*Opinion.***Opinion.**

(Filed June 30, 1916).

New Jersey Supreme Court.

JUNE TERM, 1916.

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JAMES DEVLIN AND WILLIAM
T. S. CRICHFIELD,
Prosecutors,

vs.

MAYOR AND ALDERMEN OF JERSEY
CITY AND THE CLINTON CON-
TRACTING COMPANY,
Defendants.

Certiorari.

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Argued June 19th, 1916; Decided June 30th, 1916.

Before Justices Swayze, Minturn and Kalisch.

Gilbert Collins and George S. Hobart, for pro-
secutor.J. Emil Walscheid, for Clinton Contracting
Company.*Per Curiam:*

30

We think the contract must be treated as a
single contract for repairs to various streets.
In such a contract much must necessarily be left
to the judgment and direction of the city authori-
ties, such as the streets to be paved. No doubt
this opens the door to favoritism but we have
no right to assume that the selection of the
streets to be repaired at any particular time will
be governed by any consideration except the
public need.

40

Opinion.

The extent of the obligation under the maintenance bond will depend on the amount of work done and we see no valid objection on this score. All bidders seem to have had the same chance.

10 In repair work of this kind it is probably impossible to state accurately all the work that may be required, such as the depth of binder on the asphalt pavements and the grade to which the bituminous concrete pavement is to be brought.

We think the conditions on which bidders were required to bid were stated as definitely as was probably practicable and that there should be judgment for the defendants.

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Rule for Affirmance.

Rule for Affirmance.

(Filed July 5, 1916).

NEW JERSEY SUPREME COURT.

JAMES DEVLIN AND WILLIAM
T. S. CRICHFIELD,
Prosecutors,

vs.

THE MAYOR AND ALDERMEN OF
JERSEY CITY AND THE CLIN-
TON CONTRACTING COMPANY,
Defendants.

10

On Certiorari.

*Rule for
Judgment.*

The Court having inspected the proceedings returned with the certiorari in this cause, the reasons assigned for reversal, and heard the arguments of counsel thereon, and considered the same, do order that the said proceedings be in all things affirmed with costs.

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A true copy.

WM. C. GEBHARDT,
Clerk.

Entered July 5th, 1916.

30

On motion of

JOHN MILTON, Esq.,
Attorney for Defendant,
Mayor and Aldermen of Jersey City.

J. EMIL WALSCHEID, Esq.,
Attorney for Defendant,
Clinton Contracting Company.

40

New Jersey Court of Errors and Appeals

JAMES DEVLIN and WILLIAM T.
S. CRICHFIELD,

Prosecutor-Appellants,

vs.

THE MAYOR AND ALDERMEN OF
JERSEY CITY and THE CLINTON
CONTRACTING COMPANY,

Defendant-Respondents.

*On Appeal
from
Supreme
Court.*

Brief of Defendant, the Clinton Contracting Company-

Statement-

This is an appeal from a judgment of the Supreme Court affirming an award of a municipal contract brought up on certiorari.

The writ reviews an award of contract for the repair of streets in Jersey City by resurfacing with bituminous concrete. The award was made by the Commissioners of Jersey City after competitive letting to defendant, Clinton Contracting Company, as the lowest bidder. In this competition the prosecutor, William T. S. Crichfield, and another, the Uvalde Asphalt Paving Company, took part. Defeated in the competition, Crichfield induced the prosecutor Devlin, a real estate owner of Jersey City, to join him in making out this writ on the ground that the specifications upon which he bid furnished no common standard for bidding in that they failed to furnish certain items of information which he now believes ought to be contained therein.

The specifications do not give the names or location of the streets to be repaired. This is due to the fact that the commissioner in charge of the Department of Streets has an appropriation insufficient in amount to repair all the streets of Jersey City and desires to use his money in making such repairs as will, during the summer of 1916, appear to be most needed. (Case, p. 44, fol. 1; case, p. 116, fol. 10-30.)

The whole contract expires by time limitation on November 30, 1916. (Case, p. 30, fol. 10.)

While the streets are not named the quantity of the work to be done is *fixed* as follows:

“The following is a statement of the *quantity of work to be done*. The names of the streets to be resurfaced will be determined upon by the director of streets and public improvements. The selection of the streets, however, *will not affect the quantity of work to be done under the contract*.

“Estimate of civil engineer *and prices* to be considered and taken as one hundred (100%) per cent. of the standard. Quantities to be more or less.”

Resurfacing

Macadam

Roadways abt. 50,000 sq. yards,

@ \$1.10

\$55,000.00

Resurfacing

Asphalt

Streets in-
cluding

taking up

and re-

moval of

present

binder and

asphalt abt. 8,700 sq. yds. @ 1.25

10,875.00

Manhole		
heads re-		
set abt. 50 sq. yds. @ 2.00		100.00
Water gate		
boxes re-		
set abt. 25 sq. yards, @ \$2.00		50.00
Curbstone		
set in con-		
crete abt. 500 lin. ft., @ .25		125.00
Curbstone		
reset		
(without		
concrete) abt. 100 lin. ft. @ .06		6.00
Belgian		
pavement		
in gutters		
upon		
Macadam		
streets		
only abt. 200 sq. yards. @ .30		\$60.00
Rebuilt Re-		
ceiving		
Basin abt. 1 sq. yd. @ \$30.00		30.00
New Receiv-		
ing Basin		
and con-		
nection		
complete abt. 1 sq. yd. @ 85.00		85.00
Total		<u>\$66,331.00</u>

(Case, pp. 25-26).

Upon the *quantities* and *prices* thus fixed as a *standard*, bidders were required to state "a single fixed percentage of the one hundred (100%) per cent. standard above quoted for which they will *furnish* the materials and *do* all the work comprehended" (case, p. 27, fol. 50) in

the specification. * * * and the per cent. so stated formed the basis upon which payment was to be made.

Upon the quantities and prices thus fixed *as a standard*, bids were received from:

The Uvalde Asphalt Paving Co.	109% of the Standard (Case, p. 17, fol. 30)
William T. S. Crichfield	92% of the Standard (Case, p. 11, fol. 20).
Clinton Contracting Co.	82% of the Standard (Case, p. 6, fol. 30).

A contract was thereupon awarded Clinton Contracting Co. and it is the award of this contract which Mr. Crichfield assails through this writ.

There is no claim made by the prosecutors that the specifications present a case of favoritism or that the award is the result of any fraudulent combination with the successful bidders or that the successful bidder was possessed of any information which could not have been procured by the prosecutor Crichfield.

The other unsuccessful bidder—the Uvalde Asphalt Paving Company—by whom the prosecutor Crichfield is employed, has not complained or has it aided in the prosecution of this suit by testimony or otherwise.

—James Devlin, who joined with Crichfield in prosecuting this writ, is nothing more than a figurehead for the prosecutor Crichfield. He is the owner of certain real estate rented by him to Uvalde Asphalt Paving Co. and knows Crichfield as general superintendent of this company (case, p. 84). He met Mr. Crichfield at his office one morning at the latter's request when the latter explained this specification and told him it was not fair (case, p. 85, fol. 30).

This meeting took place in the office of Uvalde Asphalt Paving Co. (case, p. 86, fol. 30). It was before the contract was awarded (case, p. 88, fol. 10). Mr. Crichfield then said, "If I do want to start a suit, will you be one of the prosecutors?" To which Devlin assented (case, p. 89, fol. 30), and they agreed—*before* the award of the contract—that if he (Crichfield) chose to start certiorari proceedings in this case, *after* the award of contract, that he (Devlin) would be one of the prosecutors (case, p. 90, fol. 1), Devlin understood that this would not cost him anything and that Mr. Crichfield would stand the expenses (case, p. 86, fol. 10) and the first time Mr. Devlin met any member of the firm of Collins & Corbin, his counsel in this cause, was when Crichfield took him there to sign an affidavit in the cause (case, p. 84, fol. 20-40).

These prosecutors, after bidding and losing in this case *for the first time*, set up the claim that no intelligent bid could be submitted under these specifications because the streets to be repaired were not named; that as a result nobody could calculate the effect of traffic conditions, the distance of the haul, nor the quantity of broken stone necessary to fill out depressions on macadam streets or the quantity of new stone which might be required for that purpose, or the price to be paid thereof. And also that the specifications are uncertain in that they do not provide for a grade for the repaired pavement; do not fix quantity or price of asphaltic binder to be used and provide for a bond guaranteeing maintenance of the pavement for ten years without fixing any amount in which this bond shall be issued.

The Law.

We agree with the statement of the law as set out in the brief of the appellant and that this case must be tested by the principles laid down in the cases there cited. We contend, however, that an application of those principles to the facts in the case at bar must lead to an affirmation of the judgment below.

Argument.

Point I.

The specifications establish a common standard and permit fair and open competition.

Prosecutors advance but one cause for reversal, namely—that the specifications do not establish a standard for bidding and prevent fair and open competition; under that head they present six specific objections.

It is settled that a municipality may contract—within the scope of its power—as *freely as an individual* unless statutory restrictions limit the mode of exercising the power, and that in the absence of such restrictions, a municipality need not submit its contract to competition based upon specifications or without specifications.

Shaw v. Trenton, 49 N. J. L., 339, p. 341.

McGovern v. Trenton, 57 N. J. L., 580.

Schefbauer v. Karney, 57 N. J. L., 588, at p. 601.

The statutory restrictions affecting the contract at bar are found in Chapter 342, Laws 1912, p. 593.

This act provides that a contract for doing of work such as is covered by this contract shall be awarded to the lowest responsible bidder.

The Court of Errors in *Case v. Trenton*, 76 N. J. L., 696, said of a statute requiring the award of contract to the lowest bidder, that "The purpose of the statute requiring competitive bidding is that each bidder, actual or possible, shall be put upon the same footing."

And in *Johnson v. Atlantic City*, 85 N. J. L., 146, the Supreme Court in speaking of the act adopted in 1912 held that its provisions were satisfied when "all who bid in response to the invitation shall be presented with the *same data*, comprehending plans, method of construction, length of time allowed, etc."

While in *Schwitzer v. Board of Education*, 79 N. J. L., 342, the Supreme Court at p. 345, in dealing with an objection that specifications were so indefinite that they did not protect the interests of the city, said, "Our examination satisfies us that bidders were duly informed by the specification as to the *nature, quality and quantity* of the materials to be furnished and the work to be done, *and that the same information was furnished to all*. This, we think, resulted in intelligent and competitive bidding and in a binding contract."

If, then, the specifications in this case, independent of any uncertainty that may appear therein are such that they gave *equal* opportunity to all bidders, actual or possible, if all received the *same data*, and were placed *upon an equal footing* the result must be that the specifications are good, within the statutory limitation, and meet the requirements thereof.

The prosecutors make no claim that the successful bidder had information beyond that which Mr. Crichfield received or that which any other prospective bidder might have received,

nor is there any claim of fraud. The only claim advanced by the prosecutors is that there are *uncertainties* in the specifications which prevented Mr. Crichfield from putting in a bid *with that degree of certainty* as to results which *he* thinks he ought to have had in bidding; and the whole case rests solely upon the testimony of Mr. Crichfield after he submitted a bid in *good faith* and lost the contract in a fair and open competition.

Mr. Crichfield presented his bid, upon the assumption that he would use the asphalt plant of the Uvalde Asphalt Company located on Green street in the city of Jersey City (p. 53, fol. 10). This plant is the *only* plant of its kind in the city of Jersey City. It is the plant *nearest* to the work covered by this contract and the work cannot be done without a plant (p. 51, fol. 1-20). He was therefore in a more favorable position so far as plant location and haul are concerned than the successful bidder. The plant of the successful bidder in turn is located on the Hudson River some four and one-half miles north of the northerly line of the city of Jersey City (p. 52, fol. 20). Mr. Crichfield has been in the asphalt business for a great number of years, has laid many asphalt bituminous concrete pavements in Hudson county and in Jersey City generally and is familiar with that industry in all its phases in Jersey City (p. 51, fol. 1-10).

The matters which Mr. Crichfield now complains of he did not call to the attention of the Board of Commissioners of Jersey City before bidding, although he knows that the city is run by the Board of Commissioners (p. 56, fol. 40; p. 57, fol. 1).

The specifications distinctly provide the *quantity* of work to be done, and just as distinctly

provide the *different materials* to be used (p. 25, fol. 30); the nature, quality and quantity of the work is therefor laid down. It is true that the prospective bidder is warned that the director of streets will thereafter determine the names of the streets to be improved, but he is also told that *the selection of the streets shall not affect the quantity of work to be done under the contract* (p. 25, fol. 30). Since the requirement of the act is that all bidders shall be placed upon the same footing, it seems to us that a statement of the quantity of the work to be done and of the material to be used—and when that work has reference to streets, the names of which can be ascertained upon inquiry, *and were so ascertained* by the prosecutors—as will appear from an examination of Exhibits P. 2, 3 and 4—amply complies with the requirement of the law. Legislative acts of this kind are adopted solely to protect the public interest and a specification which does that should be held good, even though there may be uncertainties therein which increase the hazard taken by bidders or make it more difficult to submit bids.

But even though defendants be in error in the contention thus far advanced, it is their further contention that the objections to the specifications are both false and frivolous. We will now examine the merits of these objections in the order of their presentation by the prosecutors.

The prosecutors first object:

(a) That the failure to name the streets to be improved prevented Mr. Crichfield from examining the condition of the pavement thereon or the amount of traffic using the same.

Since the pavement is to be removed wherever the work is to be done, the condition of the pave-

ment to be removed seems to be of little consequence; the amount of traffic using the pavement appears also to be but of slight moment in calculating a proposal for the work in hand.

Mr. Crichfield in testifying about traffic conditions, says, "Jersey City has a population of two hundred sixty-five to two hundred seventy thousand people and *as a general rule* its traffic is reasonably heavy *throughout the entire city except* in the outskirts; many of the streets have a much heavier traffic; *through arteries*" p. 44, fol. 30).

It would thus appear that the general traffic condition of Jersey City is a *constant quantity*, excepting in the outskirts, where there is probably no serious traffic, and on those streets which constitute through arteries where traffic is heavy. There is no claim in this case that any of the streets possibly involved are through arteries, nor are any of the streets in the outskirts of Jersey City, so far as the evidence goes. This being so, how easy it should have been for Mr. Crichfield with his knowledge of Jersey City and of the asphalt industry, to place into his bid *a factor covering the item of traffic*. But according to Mr. Crichfield the method of figuring this traffic *is more or less of a guess*. It must be determined to the best of one's judgment by observing traffic conditions (p. 71, fol. 30) and Mr. Crichfield *did not undertake definitely to figure traffic into his bid*, as will appear from his testimony.

On the other hand, according to Mr. Murphy, who figured the successful bid, the amount of traffic makes but very little difference in the cost of maintaining the pavement (p. 119, fol. 30). According to records kept by the chief engineer of Brooklyn for one hundred miles of

streets for from six to ten years inclusively, it is *three cents per square yard* and according to the experience of Mr. Murphy this is true (p. 120, fol. 1-20). Undoubtedly Mr. Crichfield's experience is as great as that of Mr. Murphy. Undoubtedly he knows of the reports of the engineer of the city of Brooklyn and the reports of other municipal engineers upon the same topic; and undoubtedly he also knows that *three cents per square yard is a proper figure to use in calculating a proposal of this kind*. Whether he knows or not, the testimony of Mr. Murphy that it is a proper figure stands uncontradicted in the case.

The prosecutors next object:

(b) That the specifications provide for a contract and bond guaranteeing the payment to be in good condition during and at the end of ten years from the date of its completion and acceptance without stating the amount of such bond or giving any information whereby the amount of such bond might be determined.

The language of the specifications upon this subject is: "The contractor will be required to enter into a contract and bond guaranteeing the bituminous concrete pavement to be in good condition during and at the end of ten years from the date of its completion and acceptance."

Mr. Crichfield erroneously *assumes* that the bond of a surety company is required. There is nothing in the specification which requires a surety company bond.

Mr. Crichfield next contends that there is nothing to indicate the amount of the bond and that he could not calculate his insurance premium upon the maintenance bond.

It is the contention of defendants that a bond conditioned *in the language of the specification* without mentioning *any amount* by way of penalty would be a proper and legal bond, that such a bond would bind the obligors to the condition of keeping the pavement in good condition during and at the end of ten years from the date of its completion and acceptance, and is really the only bond which can be properly offered under the specification.

It is not necessary that a bond contain a penal amount in order to make it valid.

A bond is defined as a deed in writing to pay a sum of money *or to do some other act* and any deed in writing which legally binds a party to do a certain thing may be called a bond. 5 Cyc. 729.

And a contract of guarantee may therefor be in the shape of a bond.

14 Amer. & Eng. Encyclopedia of Law, 2nd Ed. 1131.

As in all other contracts, no particular form of words is necessary to constitute a guarantee or a bond. A paper writing under seal whereby the successful bidder and some other obligor bind themselves or guarantee that "the bituminous concrete pavement to be laid under the contract will be in good condition during and at the end of ten years from the date of its completion and acceptance" would be a proper bond and would be enforceable.

5 Cyc. 730.

Nor is there anything uncertain about such a bond.

And it would be enforceable without penalty expressed therein.

Connor v. Harlan, 130 Mass., 265.

Jenkins v. Stetson, 9 Allan (Mass. 128).

The failure to fix a penalty in a bond is to make the bond commensurate with the condition.

5 Cyc. 734.

Conceding now for the sake of argument that a surety company bond is required and assuming that Mr. Crichfield is bound to pay \$1.875 per thousand per annum for a surety company maintenance bond (p. 47, fol. 20) there should be no difficulty in figuring the amount of his maintenance bond. Mr. Crichfield bid ninety-two per cent. of the standard for resurfacing macadam roadways and for resurfacing asphalt streets. These two items together, at the standard fixed, amount to \$65,875.00. Mr. Crichfield bid ninety-two per cent. of these figures. If ninety-two per cent. of the foregoing figures constitutes one hundred per cent. of the work which he was called upon to maintain under his contract, it is easy to calculate the amount of a one hundred per cent. bond based upon the total failure of his work.

The prosecutors next object:

(c) "That the specifications do not state the amount or the depth of the binder to be used in asphalt streets and no means were afforded to bidders to determine the amount or depth of such binder."

Mr. Crichfield agrees that it was *absolutely impossible* to give the amount or depth of such binder *until the old wearing surface is removed from the street* (p. 54, fol. 20). Mr. Murphy, who figured the successful bid, also agrees to this. Mr. Crichfield further agrees that every other contractor who bid on the work was affected as he was in relation to this binder (p. 55, fol. 1). But Mr. Crichfield complains that he ought to have had an opportunity to bid by

the cubic yard for this binder and that the engineer should have stated some fictitious quantity and should have placed a price therein instead of adding it into the bituminous concrete upon which a bid was solicited, and that then it would have been immaterial to him whether the engineer had put in one cubic yard, or a million cubic yards (p. 60, fol. 30). In other words, Mr. Crichfield is of the opinion that if a fictitious quantity had been fixed in the specification for the binder, and he had been allowed to figure upon that fictitious quantity, that he could have intelligently inserted a price for binder into his bid.

It should be noted in this connection that the specifications themselves provide for two standards; one for bituminous concrete laid on old asphalt streets, *which includes this binder*, the other for bituminous concrete laid upon macadam streets which has no such binder; the standard upon asphalt streets is \$1.25, the standard upon macadam streets is \$1.15. The specifications for bituminous concrete are alike on both kinds of streets except for this item of binder. *It is the contention of the defendants that this difference in standard in itself protects a bidder as to the uncertainty of this binder item.* Then again, Mr. Crichfield, even though a fictitious quantity of binder mentioned in the specifications would have protected him, could have secured that very protection by figuring upon *just such a fictitious quantity* even though not mentioned in the specification. Clinton Contracting Company did so protect itself, as appears from the testimony of Mr. Murphy. He testifies that in calculating his bid *he allowed for binder at the rate of five cents per square foot for all of the binder material*; that this is based upon

his best experience of what is necessary for average depressions, and protects him (p. 105, fol. 1-20).

But since it is conceded that nobody could possibly tell the amount of binder necessary prior to the removal of the asphalt surface in the course of the performance of the contract, does this not in itself show that the bidders in this case were *at least* upon an equal footing in relation to this matter?

The prosecutors next object:

(d) "That the specifications required the asphalt wearing surface and binder to be brought to the proper grade, but they do not state what was the proper grade, nor afford to bidders means of determining same."

Mr. Crichfield in relation to this matter testifies:

"Q You know that the city has established grades for all its streets, don't you?

A Yes.

Q You know that those grades which the city has thus established are obtainable by you?

A Every city has established a grade of street.

Q I am asking about the city of Jersey City?

A I am, too.

Q You know that every street in the city of Jersey City has its established grade?

A That is very true; I suppose they have. (p. 61, fol. 10).

Q What is the required grade?

A I assume the required grade is the grade established by the city of Jersey City in this street.

Q Why do you assume that?

A I think it is a correct assumption on my part." (P. 63, fol. 10).

Mr. Crichfield's own testimony clearly indicates what must be apparent to every one; that in repairing these streets by resurfacing the same it was the intention to maintain them at the established grades, that the contractor was to lay his bituminous concrete including binder where necessary to these grades and that when he had thus laid the yardage called for by the specifications his work was performed.

The prosecutors next object:

(e) "The specifications, so far as they relate to existing macadam or stone foundations, specify that old or new broken stone may be used in filling up depressions, but do not state the extent of these depressions, nor any means whereby bidders might determine the same, give no information as to the quantity of broken stone required for the purpose, make no provision for determining the quantity of new stone that may be required, or the price to be bid therefor, nor give to bidders any information whereby such facts might be determined."

The section of the specifications criticised read as follows: "The existing macadam or stone foundation shall be thoroughly swept and scarified with picks or by a suitable machine in order to bring the same to the new concrete as established by the engineer. Old and new broken stone may be used in filling up depressions in the roadway and the same shall be spread or mixed with clay or other suitable filler as directed by the engineer" (p. 28, fol. 30).

This clause applies *only* to macadam streets. In these macadam streets the ~~curbs~~ ^{gutters} are laid with

Belgian blocks. The macadam pavement *must* be removed to give place to the bituminous concrete pavement and the bituminous concrete pavement *must* join the ^{gutter} curb at a level with the top surface of the ~~curb~~ ^{gutter}. The bituminous concrete pavement *must* be at least *two and one-half inches deep* below the upper surface of the roadway and below the upper surface of the adjacent ^{gutter} curb stones. Mr. Murphy, who calculated the successful bid, traveled all over the macadam streets of Jersey City and found therein the usual condition in macadam streets; namely, that they are *high in crown along the center line* for the purpose of shedding water to the sides. Having examined these streets, he came to the conclusion that *no new stone would be necessary* and that after he had scarified these roadways to a level of at least two and one-half inches below the upper surface of the ^{gutter} curb stones at the sides, *he would have enough loose and broken stone not only to fill in all depressions, but that he would have material left* which he would have to cart away. The fact that these streets are thus crowned is not contradicted by Mr. Crichfield, nor is the fact that if they are thus crowned the scarification of the same will produce sufficient materials to fill up any depression without the purchase of new stone, contradicted. In fact, it seems self-evident *that the substitution of a bituminous concrete pavement two and one-half inches thick for an ordinary macadam pavement will and must yield sufficient broken stone and filler to make the purchase of broken stone to be used merely to fill in depressions absolutely unnecessary.* This is due to the fact, as Mr. Murphy explains, that a bituminous concrete pavement is laid more flat and without crown in the center, while a macadam pavement is always

laid with crown and arch so as to enable the water to shed therefrom more rapidly. For this reason do we contend that this objection is trivial and not well founded.

In conclusion, it is the contention of this defendant that Mr. Crichfield as an unsuccessful bidder, has nothing to complain of upon this writ of certiorari and that Mr. Devlin as the representative of the people of Jersey City is complaining of something which can only be to the advantage of the people of Jersey City, and that therefor as to him also, the proceeding should be affirmed.

Mr. Crichfield says that he submitted his bid in good faith and that if he had been awarded the contract he would have performed the same; that the bid which he submitted was based upon his experience as a contractor, his knowledge of prices, and that he calculated his bid to the best of his ability, and that in figuring his bid he figured upon a *small* profit, but that he could not tell the amount of his profit, not knowing the amount of new stone to be required on old macadam, of the quantity of binder required on old asphalt streets, and not knowing the premium on his bond (p. 56, fol. 10-40); *that he did not protect himself against loss*, but that he was protected against probable loss *by the Clinton Contracting Company getting the lowest bid* (p. 55, fol. 10). He wants the court to understand that his bid might have yielded him a profit, but probably would have yielded him a loss, *and that the bid of the Clinton Contracting Company, being so much lower than his, must result in the performance of the contract at a loss to Clinton Contracting Company*. This also is the result objected to by the prosecutor Devlin.

The only standing of Crichfield rests upon his right to have his bid accepted; the only thing that Crichfield can legally object to is the failure of the municipality to accept his bid. This right, of course, does not exist where he is not the lowest bidder.

Devlin as a taxpayer has a different standing. He is the representative in theory of the taxpaying interests of the city, and can complain of everything which injuriously affects their interests. But the bid which he is attacking is a *low bid* and is one *which is to the advantage of the municipality* in that if the testimony of the prosecutor is to be believed, *the work will be done at a loss to Clinton Contracting Company*. In other words, the taxpaying prosecutor is objecting that the work is being done too cheaply. If that is so, he has suffered no injury and cannot complain.

Atlantic Gas & Water Co. v. Atlantic City, et al., 73 N. J. L., 360.

In the case just cited which seems to us to be very similar to the one at bar, the third reason advanced for the reversal of the proceeding was that the specifications were uncertain. The court, however, held that neither taxpayer or bidders had a right to complain of municipal action clearly in the interest of the taxpayers.

It is respectfully submitted that the judgment brought up for review be affirmed with costs.
Dated, November 21, 1916.

J. EMIL WALSCHEID,

*Attorney for and of Counsel with
Clinton Contracting Company,
Defendant.*

