

United States
Circuit Court of Appeals
For the Ninth Circuit. 10

LUMBERMENS TRUST COMPANY, a Corpora-
tion,

Appellant,

vs.

THE TOWN OF RYEGATE, a Municipal Corpo-
ration,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the
District of Montana.

FILED

AUG 22 1931

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
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S. V. STEWART and JOHN G. BROWN,
Helena, Montana,

Attorneys for Plaintiff and Appellant.

Messrs. JOHNSTON, COLEMAN and JAMES-
SON, Billings, Montana,

Attorneys for Defendant and Appellee.

[1*]

In the District Court of the United States in and for
the District of Montana.

No. 224.

LUMBERMENS TRUST COMPANY, a Cor-
poration,

Plaintiff,

vs.

THE TOWN OF RYEGATE, MONTANA, a
Municipal Corporation,

Defendant.

BE IT REMEMBERED, that on December
31st, 1926, a complaint was duly filed herein, being
in the words and figures following to wit: [2]

*Page-number appearing at the foot of page of original certified
Transcript of Record.

In the District Court of the United States in and
for the District of Montana, Billings Division.

LUMBERMENS TRUST COMPANY, a Cor-
poration,

Plaintiff,

vs.

THE TOWN OF RYEGATE, MONTANA, a
Municipal Corporation,

Defendant.

COMPLAINT.

The plaintiff for cause of action against the de-
fendant complains and alleges:

I.

That the plaintiff was at all of the times herein
mentioned and referred to, and yet is, a corpora-
tion duly organized and existing under and by
virtue of the laws of the State of Oregon and a
compliance therewith, having its principal place of
business in the city of Portland in said state.

II.

That the defendant, the Town of Ryegate was
at all the times herein mentioned and referred to
and yet is a municipal corporation and body politic,
situated in Golden Valley County, Montana, and
duly organized and existing under and by virtue of
the laws of the State of Montana and a compliance
therewith.

III.

That on or about December 30, 1919, the Town

Council of the Town of Ryegate, for the purpose of supplying the town and its residents with water for municipal and private use, passed a resolution of intention to create a special improvement district known as Special Improvement District No. 4, which said resolution is designated as Resolution No. 10 of said town, a copy of which is hereto attached, marked Exhibit "A" and [3] hereby made a part of this complaint.

IV.

That on January 1st, 1920, the notice set out in and required to be published by said resolution of intention, was published in the said Town of Ryegate, as required by said resolution and the laws of the State of Montana.

V.

That thereafter, and on or about February 11, 1920, a resolution known as Resolution No. 14 of said Town, was passed by the Town Council thereof, creating said Special Improvement District No. 4, which improvement district was to all intents and purposes coextensive with the boundaries of said town, and that in said Resolution No. 14, the general character of the improvement to be made is described in the same words as in Exhibit "A" hereto attached.

VI.

That the true object and purpose of each and all of said foregoing proceedings was the establishment and installation in and for the Town of Ryegate of a complete waterworks, and a complete waterworks

system, consisting of reservoir, pumping plant, mains, and all other connections and appliances necessary for a complete system for the supplying of water for municipal purposes to said town and water to the inhabitants thereof, all within the powers of said town.

VII.

That when the said town of Ryegate called for bids for the construction of said waterworks system, all in manner and form as required by law, the Security Bridge Company, a corporation was the successful bidder therefor, and said town prepared to and later did enter into a written contract with said Security Bridge Company for the construction of said waterworks system [4] as contemplated by the creation of the Special Improvement District and the plans of the defendant town's engineer.

VIII.

That in connection with said resolution and proceedings it was intended and contemplated that the said Town of Ryegate should issue negotiable evidence of the debt in the form of Special Improvement District Bonds to evidence the obligation to pay for the construction of said waterworks system, and after due and legal proceedings had been had to authorize the issuance of the same, an issue of such negotiable bonds in single bonds of the par value of five hundred dollars each, and in the total sum of \$45,602.42 was accomplished. That hereto attached and made a part hereof, being marked Exhibit "B," is a true and correct copy of one of said bonds, which save and except as to amounts and

dates of maturity is a true and correct copy of all of said bonds.

IX.

That prior to the time the town entered into its contract for the construction of said waterworks system the officers and councilmen of said town deemed it to be the best interest of the town and its taxpayers and inhabitants to endeavor to persuade said contractor to accept the special improvement bonds that were authorized and would be issued under the proceedings before herein referred to as payment on said contract, and said defendant town and its officers and inhabitants being desirous of completing the installation of said waterworks importuned and prevailed upon said Security Bridge Company to take and accept said special improvement district bonds for the construction of said waterworks system, and in payment on said contract as the work would be completed and accepted and the said Security Bridge Company did upon such request and importuning take and [5] accept the defendant town's special improvement district bonds aforesaid as an evidence of the payments due on its construction contract. Said bonds were thereafter duly signed and sealed by the proper officers of said defendant town and by them issued and delivered to the Security Bridge Company from time to time upon the defendant town's engineer's estimates as the work was completed and accepted.

X.

That the said Security Bridge Company was a

construction company with no facilities or capacity for handling bonds in lieu of cash and it was necessary for said Security Bridge Company to at once arrange for the sale of said bonds in order to obtain the money to purchase supplies and materials and pay the labor necessary for the construction of the said waterworks desired by the defendant town, all of which facts were well known to the defendant town and its officers.

XI.

That the Security Bridge Company, as plaintiff is informed and believes and therefore alleges, with the knowledge of the defendant town and its officers, did negotiate with this plaintiff for the sale of said bonds, and plaintiff did become the purchaser thereof, and as such holder became possessed of all the rights, privileges and claims which the Security Bridge Company might have, or hold, or be entitled to, under and by virtue of its contract with the said defendant town and its faithful performance of the terms and conditions thereof and acceptance of the work therein contemplated by said defendant.

XII.

That in accordance with its agreement of purchase this plaintiff did, from time to time as the same were issued for completed and accepted work, purchase the said bonds from the [6] Security Bridge Company, and did thus furnish all of the money that was used to build and furnish to the defendant town and its inhabitants the waterworks

plant which was constructed in and for the said defendant town. That by purchase plaintiff became and yet is the owner and holder before maturity and for value and without notice of any imperfection in said bonds, or any thereof, or claims against the same of the bonds issued by the defendant town covering this Special Improvement District No. 4, all in the total sum of \$45,602.42, together with 6% interest thereon according to the terms and conditions of said bonds and each thereof.

That said bonds were duly issued and delivered to this plaintiff on the dates and of the number and in the amounts as follows: May 29, 1920, all the general bonds referred to in the amount of \$15,000.00.

July 28th, 1920, Bonds No. 1 to 6, inclusive, in the amount of \$3,000.00

August 11th, 1920, Bonds No. 7 to 19, inclusive, in the amount of \$6,500.00

August 25th, 1920, Bonds No. 20 to 27, inclusive, in the amount of \$4,000.00

September 8th, 1920, Bonds No. 28 to 53, inclusive, in the amount of \$13,000.00

October 13th, 1920, Bonds No. 54 to 78, inclusive, in the amount of \$12,500.00

November 24th, 1920, Bonds No. 79 to 91, inclusive, in the amount of \$6,602.42.

XIII.

That said waterworks system was constructed, received and accepted and is now and has been used by the defendant town and the inhabitants

thereof continuously since its completion and acceptance. That said defendant town and the inhabitants thereof now have and are using and receiving the income and benefits from valuable property totally and wholly built and constructed from moneys of this plaintiff had and received, and used by said [7] defendant town and its officers for such public purpose, all of which moneys so had and used being evidenced by said bonds before herein referred to.

XIV.

That the defendant paid the interest maturing and becoming due upon said bonds on January 1st, 1922, but thereafter refused and still continues to refuse to pay any interest thereon or on account thereof, and has totally and wholly failed to pay and has declared its intentions of never paying the principal sum due upon said debt evidenced by said bonds, or any part thereof, and has repudiated *in toto* said debt and its obligation to pay the same, so that there is now due, owing and unpaid on the same the total sum of \$45,602.42 on account of principal thereof, and the further sum equivalent to 6% interest thereon from January 1st, 1922, unto this date, being the interest at the rate agreed to and which plaintiff alleges is a reasonable rate of interest in the State of Montana for moneys had, received and used. That the defendant continues to refuse to pay said claim and has repudiated said debt and obligation *in toto* notwithstanding repeated demand has been made for payment thereof.

XV.

That this action is an action entirely between a citizen and resident of the State of Oregon and a citizen and resident of the State of Montana and the amount involved exceeds the sum of \$3,000.00 exclusive of interest and costs.

WHEREFORE, plaintiff prays judgment against the defendant for the sum of \$45,602.42, together with interest thereon at the rate of 6% per annum from this date until paid, and for the further sum of \$13,680.72, being accrued interest on said principal obligation from January 1st, 1922, until this time, and for its costs of suit herein expended.

STEWART & BROWN,
Attorneys for the Plaintiff,
Helena, Montana. [8]

State of Montana,

County of Lewis and Clark,—ss.

John G. Brown, being first duly sworn according to law, deposes and says:

That he is one of the attorneys for the plaintiff in the above-entitled action and that he makes this verification for and on behalf of the plaintiff by reason of the fact that there is no officer or agent of said corporation in the county of Lewis and Clark wherein affiant resides and this complaint is verified. I have read the foregoing complaint, know the contents thereof and the matters and things therein stated are true to the best of my knowledge, information and belief as such attorney.

JOHN G. BROWN.

Subscribed and sworn to before me this 31st day of December, 1926.

[Seal]

R. L. HILLIS,

Notary Public for the State of Montana, Residing at Helena, Montana.

My commission expires 1-5-1927. [9]

EXHIBIT "A."

RESOLUTION No. 10.

A RESOLUTION DECLARING IT TO BE THE INTENTION OF THE TOWN COUNCIL OF THE TOWN OF RYEGATE, MONTANA, TO CREATE SPECIAL IMPROVEMENT DISTRICT No. 4 IN THE TOWN OF RYEGATE, MONTANA, FOR THE PURPOSE OF CONSTRUCTING PIPES, HYDRANTS AND HOSE CONNECTIONS FOR IRRIGATING APPLIANCES AND FIRE PROTECTION WITHIN THE TOWN OF RYEGATE, MONTANA.

BE IT RESOLVED BY THE COUNCIL OF THE TOWN OF RYEGATE, MONTANA:

Section 1. That the public interest and convenience require, and it is deemed necessary to order and create, and the Town Council of the Town of Ryegate, Montana, intends to order and create, a Special Improvement District, with the number, the boundaries and the character of the improvements to be made as hereinafter set forth:

Section 2. That it is the intention of the Town Council of the Town of Ryegate, Montana, to create and establish in said town a special improvement dis-

trict for the purpose of making special improvements upon and along that portion of Railway Avenue, Second Avenue and the alley between Third and Fourth Avenues, and the Alley between Fourth Avenue and the avenue next north of Fourth Avenue, from Harkins Street on the West and the street next east of Second Street on the East, including all avenues, streets and alley intersections.

Section 3. That the number of said Special Improvement District is hereby designated as "Special Improvement District No. 4 of the Town of Ryegate, Montana."

Section 4. That the boundaries of said Special Improvement District are hereby declared to be as follows:—

Beginning at the intersection of the center line of Harkins Street with the center line of the avenue next north of Fourth Avenue, running thence southerly along said center line of Harkins Street to its intersection with the center line of the alley lying between Railway Avenue and Second Avenue, and running through Blocks 23, 24 and 12 in said Town of Ryegate, running thence easterly along the center line of said alley with the west line extended of Lots 1 and 12, in Block 12, of said Town of Ryegate, running thence southerly along the west line extended of said Lots 1 and 12, in said Block 12, to its intersection with the southern boundary of the right-of-way of the Chicago, Milwaukee and St. Paul

Railway Company, running thence easterly along said southern boundary of the right-of-way of the Chicago, Milwaukee and St. Paul Railway Company to its intersection with the center line of the street next east of Second Street extended, running thence northerly along the center line extended of the street next east of Second Street to its intersection with the center line of Fourth Avenue, running thence westerly along the center line of Fourth Avenue to its intersection with the east line extended of Lots 7 and 6, in Block 14, of said Town of Ryegate, running thence northerly along said east line extended of Lots 7 and 6 in Block 14, of said Town of Ryegate, to the intersection of said line with the center line of the [10] avenue next north of Fourth Avenue, running thence westerly along the center line of the avenue next north of Fourth Avenue to the point of beginning.

The above described area embraces lots 1 to 12 inclusive, in Block 18; Lots 1 to 12 inclusive in Block 17, Lots 1 to 12 inclusive in Block 16; Lots 1 to 12 inclusive in Block 15; Lots 6 and 7 in Block 14; Lots 1 to 12 inclusive in Block 19; Lots 1 to 12 inclusive in Block 20; Lots 1 to 12 inclusive in Block 10; Lots 1 to 12 inclusive in Block 9; Lots 1 to 12 inclusive in Block 8; Lots 1 to 12 inclusive in Block 7; Lots 1 to 6 inclusive in Block 22; Lots 1 to 6 inclusive in Block 21; Lots 1 to 6 inclusive in Block 3; Lots 1 to 6 inclusive in Block 2; Lots 1 to 6 inclu-

sive in Block 1; Lots 1 to 6 inclusive in Block 23; Lots 1 to 6 inclusive in Block 24; Lots 1 to 6 inclusive and Lot 12 in Block 12; Lots 1 to 18 inclusive in Block 4; Lots 1 to 14 inclusive in Block 5; Lots 1 to 18 inclusive in Block 6; and all of the Chicago, Milwaukee and St. Paul Railway Company's right-of-way between the west line extended of Lots 1 and 12, in Block 12, and the center line extended of the street next east of Second Street; all of the school block and Park site.

Section 5. That the Town Council hereby finds and determines that the contemplated improvement is of more than local or ordinary public benefit and that all real estate situated in said district will be especially benefited and affected by such improvement, and the property included within the boundaries of said district it is hereby declared to be the property to be assessed for the cost and expense of making said improvement.

Section 6. That the character of the improvements to be made in said Special Improvement District is hereby declared to be as follows: The construction of pipes, hydrants and hose connections for irrigating appliances and fire protection; all of which improvements are to be made in accordance with the plans and specifications to be prepared by the Engineer of the Town of Ryegate and to be adopted by the Council of said town, and which plans and specifications will then be on file in the office of the Town Clerk, and to which reference is hereby made and by such reference are made a part

hereof to all intents and purposes the same as though said plans and specifications were fully set forth and incorporated at length in this Resolution.

Section 7. That the approximate estimate of the cost and expenses of constructing said improvements is the sum of Twenty-eight Thousand Three Hundred Fifty Dollars (\$28350.00) for the entire district.

Section 8. That all the cost and expense incurred in the construction and making of such improvements shall be paid by Special Improvement District Bonds, with interest coupons attached; such bonds shall be drawn in substantially the form provided by law in such cases and shall be drawn against "Special Improvement District Fund No. 4," hereafter to be ordered and created, and that the entire cost and expense of said improvement shall be paid by said Special Improvement District. The entire ~~district~~, cost of said improvements shall be assessed against the entire district, each lot or parcel of land within said improvement district to be assessed for that part of the whole cost of said improvements which its area bears to the entire area of said district, exclusive of streets, avenues, alleys [11] and public places.

Section 9. That said assessments shall be paid in equal annual installments and are hereby extended over a period of ten years and said payments shall constitute a fund to be known as "Fund of Special Improvement District No. 4" and it is hereby ordered that said Special Improvement District Bonds shall be issued against such fund, the

denomination and maturity dates of such bonds to be fixed by a Resolution to be hereafter adopted.

Section 10. That on Wednesday, the 11th day of February, 1920, at the regular place of meeting of the Town Council, the Farmers and Merchants State Bank, in the Town of Ryegate, Montana, at eight o'clock P. M., the Council of the Town of Ryegate, Montana, will hear objections and protests, at which time and place any person or persons who are owners, or agents of owners, of any lot or parcel of land within said Special Improvement District, who shall, within fifteen days after the first publication of the notice of the passage of this Resolution, have delivered to the Town Clerk of the Town of Ryegate a protest in writing against the proposed work or improvements, or against the extent or creation of the district to be assessed, or both, shall have the right to appear in person or by counsel and show cause, if any there be, why said district should not be created or why the improvements herein mentioned should not be made.

Section 11. The following notice of the adoption of this Resolution shall be published in the Ryegate Weekly Reporter, a weekly newspaper published in the Town of Ryegate, Montana, on the 1st day of January, 1920, to-wit:

(Here appears notice in full, a true printed copy of which is annexed to the affidavit of Charles H. Allan at Page 7 of this transcript.)

The Clerk is hereby directed to mail a copy of the foregoing notice to every person, firm or corporation, or to the agent of such person, firm or corporation, having property within the proposed district,

at his last known address, upon the date of the first publication of said notice.

PASSED by the Council of the Town of Ryegate, Montana, and APPROVED By the Mayor, this 30th day of December, 1919.

R. C. CURRIE,
Mayor.

Attest: J. A. BROWN,
Town Clerk. [12]

EXHIBIT "B."

DISTRICT No. 4.

UNITED STATES OF AMERICA,
STATE OF MONTANA.

BOND.

Bond No. ————— \$500.00
Interest 6 per cent. per annum, Payable Annually.
Special Improvement District Coupon Bond Issued by the Town of Ryegate, Montana.

THE TREASURER OF THE TOWN OF RYEGATE, MONTANA, will pay to the bearer on the 1st day of January, 1930, the sum of Five Hundred (\$500.00) Dollars, as authorized by Resolution No. 14, as passed on the 17th day of February, 1920, creating Special Improvement District No. 4, for the construction of the improvements and the work performed as authorized by said Resolution to be done in said District, and all laws, resolutions and ordinances relating thereto, in payment of the contract in accordance therewith.

The principal and interest of this bond are payable at the office of the Town Treasurer of Ryegate,

Montana. This bond bears interest at the rate of six per cent. (6%) per annum from the date of its maturity as expressed herein until the date called for redemption by the Town Treasurer. The interest on this bond is payable annually, on the 1st day of January in each year, unless paid previous thereto, and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the Mayor and Town Clerk.

This bond is payable from the collection of a special tax and assessment, which is a lien against the real estate within said Improvement District as described in said Resolution No. 14 as well as in Resolution No. 10 passed and adopted December 30th, 1919.

This bond is redeemable at the option of the Town of Ryegate at any time there are funds to the credit of said Special Improvement District Fund for the redemption thereof, and in the manner provided for the redemption of the same; provided, however, that the date of payment shall not be later than the maturity date hereinabove contained.

IT IS HEREBY CERTIFIED AND RECITED,
That all things required to be done precedent to the issuance of this bond have been properly done, happened and been performed in the manner prescribed by the laws of the State of Montana relating to the issuance thereof.

Dated at Ryegate, Montana, this — day of _____, 1920.

TOWN OF RYEGATE, MONTANA,

By W. H. NORTHEY,

Mayor.

Attest: J. A. BROWN,

Town Clerk. [13]

Registered at the office of the Town Treasurer of Ryegate, Montana, this — day of _____, 1920.

_____,

Town Treasurer.

COUPON.

\$30.00

Coupon No. —

On the first day of January, 192—, the Treasurer of the Town of Ryegate, Montana, will pay to the bearer the sum of Thirty Dollars, at the office of said Treasurer in Ryegate, Montana, out of the funds of Special Improvement District No. 4, being the interest then due on Bond No. — of said Special Improvement District; provided, however, that if said bond, together with accrued interest thereon to the date called for its redemption, has theretofore been paid under the option reserved in said bond, then this coupon shall be null and void.

W. H. NORTHEY,

Mayor.

J. A. BROWN,

Town Clerk.

Filed Dec. 31, 1926. [14]

THEREAFTER, on August 10th, 1927, answer was duly filed herein in the words and figures following, to wit: [15]

[Title of Court and Cause.]

ANSWER.

Defendant makes this its answer to the complaint of plaintiff herein:

1. Admits the allegations of Paragraphs I and II of said complaint.

2. Admits that resolution number ten of the Town of Ryegate was passed on December 30, 1919; denies that it was passed for the purpose of supplying the Town of Ryegate and its residents with water for municipal or private use; alleges that said resolution was passed for the purpose of construction of pipes, hydrants and hose connection with irrigating appliances and fire protection, as set out in section six of said resolution; admits that Exhibit "A," attached to said complaint, is a correct copy of said resolution number ten except that the words "to the intersection of said center line of said alley" were omitted after the words "center line of said alley" in section four of said resolution, and before the words "with the west line extended of Lots 1 and 12."

3. Admits the allegations of Paragraph IV of said complaint.

4. Admits that on February 17, 1920, a resolution known as number fourteen of said town was passed by the Town Council [16] thereof, creating said special improvement district number four;

admits that the general character of the improvements to be made is described in said resolution in the same words as in Exhibit "A" attached to the complaint herein; denies that said improvement district number four was, to all intents or purposes, coextensive with the boundaries of the Town of Ryegate.

5. Denies that the true object or purpose of each or all of said proceedings was the establishment or installation in or for the Town of Ryegate of a complete waterworks or a complete waterworks system consisting of reservoir, pumping plant, mains or all other connections or appliances necessary for a complete system for the supplying of water for municipal purposes to said town, or water to the inhabitants thereof; alleges that about the time said improvement district was so created the Town of Ryegate issued and sold bonds of said town for the par value of \$15,000.00, for the purpose of securing the money necessary to pay a part of the cost of installation of a water system for said town.

6. Admits that when said town called for bids for the construction of a waterworks system and the improvements for which said special improvement district number four was created, as hereinbefore alleged, the Security Bridge Company was the successful bidder therefor, and that in fact it was the only bidder for such work; admits that a written contract was entered into with said Security Bridge Company for the construction of said waterworks system, and the improvements for which said special improvement district number four was created.

7. Denies that it was intended or contemplated that defendant should issue negotiable evidence of the debt in the form of special improvement district bonds to evidence the obligation to pay for the construction of said waterworks system; alleges that it was intended and contemplated by defendant and said Security Bridge Company that the proceeds derived from the sale of the aforesaid [17] bonds of the Town of Ryegate of the par value of \$15,000.00, would be used in payment of cost of construction of said waterworks system, and that the balance of said cost of construction of said system, and of the improvements to be constructed in said special improvement district number four, as set out in the aforesaid resolutions numbered ten and fourteen, was to be paid by the issuance and delivery to said contractor, the said Security Bridge Company, or bonds of said special improvement district number four, which, it was agreed between defendant and said Security Bridge Company, would be accepted by it, at the par value of said bonds, in payment of balance due on such work; admits that bonds of said district in the sum of \$45,602.42 were so issued and alleges that the same were delivered by the defendant to said contractor, Security Bridge Company, and that they were by it accepted in full settlement and payment of the balance due it under its said contract with the Town of Ryegate, after allowing said town credit for proceeds of sale of the aforesaid general bonds of said town paid by it to said contractor; admits that Exhibit "B" attached to said complaint is a true and correct copy of one of said improvement district bonds, and that except

as to amounts and dates of maturity, it is a true and correct copy of all of said improvement district bonds.

8. Alleges that at and prior to the time said contract was entered into between defendant and said Security Bridge Company, it was known by both said town and said contractor that the bonds of said special improvement district could not be sold for a discount of not more than ten per cent, as required by the laws of Montana, and it was then known and understood between said town and said contractor that said special improvement district bonds would be issued by said town and accepted by said contractor at par value in payment of work done under said contract; denies that said town, or any of its officers or inhabitants, ever importuned said Security Bridge Company to take or accept said special improvement district [18] bonds, as alleged in Paragraph IX of the complaint, but alleges in that connection that said Security Bridge Company solicited said work and was anxious to do the same, and to accept in payment thereof, said special improvement district bonds, in so far as the proceeds of sale of said general bonds would not pay for such construction; denies that said Security Bridge Company, upon request or importuning of the Town of Ryegate, or any of its officials, or otherwise, accepted said special improvement district bonds as an evidence of the payments due on said construction contract, but alleges that said special improvement district bonds were issued by defendant, and accepted by said contractor, in payment of the

amounts due under said contract; admits that said special improvement district bonds were issued by the proper officials of defendant and delivered to Security Bridge Company from time to time upon estimates of the defendant's engineer, and alleges that, as so issued and delivered, they were accepted by said Security Bridge Company as actual payment of said estimates.

9. Defendant denies that it has any knowledge or information sufficient to form a belief as to whether said Security Bridge Company had no facilities or capacity for handling bonds in lieu of cash, or that it was necessary for said Security Bridge Company to at once arrange for the sale of said bonds in order to obtain the money to purchase supplies or materials or to pay the labor necessary for the construction of said waterworks system, and denies that the defendant, or any of its officers, knew that said Security Bridge Company would have to arrange for sale of said improvement district bonds, as alleged in Paragraph X of said complaint.

10. Denies that the defendant, or any of its officers, had any knowledge, until long after said contract was completed, that said Security Bridge Company did negotiate with plaintiff for the sale of said bonds, or that plaintiff did become the purchaser thereof; denies that plaintiff ever became possessed of any rights, privileges [19] or claims, which the Security Bridge Company might have or hold, or be entitled to under or by virtue of its said contract with the defendant, or of its faithful performance of the terms or conditions thereof, or acceptance of the work therein contemplated by said defendant.

11. Denies that it has any knowledge or information sufficient to form a belief as to whether there was any agreement of purchase between plaintiff and said Security Bridge Company of the bonds in question, or that the plaintiff did purchase the same from time to time, as the same were issued, or that plaintiff did furnish all, or any part, of the money that was used to build or furnish to the defendant town, or its inhabitants, the said waterworks system, or the improvements for which said special improvement district was created; denies that it has any knowledge or information sufficient to form a belief as to whether plaintiff became, or is, the owner or holder of any of said special improvement district bonds, before maturity, or for value; denies that plaintiff ever became the holder or owner of any of said bonds without notice of any imperfection in said bonds or any of them; admits that said bonds were issued and delivered to Security Bridge Company approximately upon the dates and of the numbers and in the amounts as alleged in Paragraph XII of said complaint; save and except as hereinbefore admitted, qualified or specifically denied, defendant denies each and every allegation of Paragraph XII of said complaint.

12. Admits that said waterworks system, and the improvements provided for and specified in the resolution of intention, and the resolutions creating said special improvement district number four, as hereinbefore alleged, was constructed, received and accepted, and is now, and at all times since its acceptance has been, used by the defendant and some

of the inhabitants thereof; denies that said defendant, or its inhabitants, now have or are using or receiving the income or benefits from valuable property [20] totally and wholly built or constructed from moneys had or received from plaintiff, or that were built or constructed in whole or in part from any moneys had or received from plaintiff; denies that this defendant used any moneys had or received by it from plaintiff for the construction of said waterworks system, or the improvements contemplated in, or provided for by the creation of said special improvement district number four; and denies that defendant ever had or received or used any moneys from plaintiff evidenced by the aforesaid bonds.

13. Denies that the defendant ever paid any interest maturing or becoming due upon any of said special improvement district bonds; alleges that the interest thereon to January 1, 1922, was paid out of assessments levied upon the property included in said special improvement district number four, and not otherwise; denies that defendant has ever refused to pay any interest on said special improvement district bonds for the reason that the defendant is not liable thereon and has never been requested to pay the same; admits that the defendant has not paid any part of the interest or principal of said special improvement district bonds, and does not intend to ever pay the same or any part thereof; denies that said bonds are a debt of defendant, or that there is any obligation on the part of defendant to pay the same or any part thereof; denies that there

is now due or owing from defendant to plaintiff the said sum of \$45,602.42, or any part thereof, or interest thereon at six per cent per annum from January 1, 1922, or interest whatever; admits that interest at the rate of six per cent per annum is a reasonable rate of interest in the State of Montana; admits that defendant now refuses to pay any part of said alleged claim, but denies that defendant has ever repudiated said debt or obligation, and denies that the aforesaid bonds are the debt or obligation of said defendant.

14. Admits the allegations of Paragraph XV of said [21] complaint.

15. Denies that said bonds are negotiable.

16. Alleges that on February 17, 1920, the Town Council of the Town of Ryegate adopted and passed, and the Mayor of said town approved, Resolution Number 14 of the town of Ryegate creating said special improvement district number 4, a copy of which resolution, marked Exhibit "A," is hereunto annexed and made a part of this answer.

17. Alleges that on June 9, 1920, the Town Council of the Town of Ryegate passed and adopted, and the Mayor of said town approved, Ordinance Number 28 of the Town of Ryegate, which provides the manner and method of assessment and paying cost of improvements in said special improvement district number 4, copy of which said ordinance is hereunto annexed, marked Exhibit "B" and hereby made a part of this answer.

18. Alleges that on June 9, 1920, the Town Council of the Town of Ryegate passed and adopted,

and the Mayor of said town approved, Ordinance Number 29 of the Town of Ryegate, authorizing the execution, issuance and delivery of the bonds in question in payment of the work and improvements in special improvement district number 4 of the Town of Ryegate, a copy of which ordinance is hereunto annexed, marked Exhibit "C" and hereby made a part of this answer.

19. That under the aforesaid resolutions and ordinances, the bonds in question were payable only out of assessments to be levied upon the real property in said special improvement district number 4, and not otherwise, and were and are not general obligations of the Town of Ryegate nor an indebtedness of the Town of Ryegate, nor payable out of the general funds of the Town of Ryegate.

20. Save and except as hereinbefore specifically admitted, qualified or denied, defendant denies generally each and [22] every allegation, and all of the allegations of said complaint.

II.

For its first affirmative defense, defendant alleges that when the contract for the construction of the water system for the Town of Ryegate and the improvements specified in the resolutions creating special improvement district number 4 of the Town of Ryegate was entered into on April 26, 1920, the outstanding and unpaid indebtedness of the Town of Ryegate was \$15,584.87; that the assessed value of all property in the Town of Ryegate was then \$577,005.00; that there was then no money in the

general fund of the Town of Ryegate out of which the bonds in question could be paid, nor were the same payable out of the current revenues of said Town of Ryegate; that the assessed value of all property in the Town of Ryegate for the year 1920 was the sum of \$420,006.00; that on the dates on which the bonds in question were issued and delivered, the general indebtedness of the Town of Ryegate, and the amounts of money in the general fund of said town were as follows, to wit:

Date	General Indebtedness	Amount of Money in General Fund of Said Town
July 28, 1920	\$15,965.36	\$ 93.53
August 11, 1920	16,669.29	127.53
August 25, 1920	16,615.14	129.17
September 8, 1920	16,877.98	148.17
October 13, 1920	16,953.89	78.20
November 24, 1920	17,180.35	60.70;

that on December 31, 1926, when this action was instituted, the assessed value of all property in the Town of Ryegate was the sum of \$375,949.00; that at that time the general indebtedness of the Town of Ryegate was the sum of \$19,462.07; that the moneys then in the general fund of the Town of Ryegate was the sum of \$494.08; that said bonds never were payable out of the current revenues of said town, and that if the said bonds of special improvement district number 4 of the Town of Ryegate, amounting to the sum of \$45,602.42 were held to be [23] general obligations of the Town of Ryegate the same and each of said bonds would be and are unconstitutional, invalid and void for that the amount of said bonds and each of them, added to

the then general indebtedness of said town would be and are greatly in excess of the constitutional and statutory limit of indebtedness which said town might then or may now incur.

III.

For its second affirmative defense, defendant alleges that it is informed and believes and therefore states the fact to be that plaintiff purchased the bonds in question at eighty per cent of the face value of said bonds and paid therefor the sum of \$36,481.94, and no more.

IV.

For its third separate defense defendant alleges:

1. That when the Town Council of the Town of Ryegate decided to create special improvement district number four for the purpose of constructing and installing the improvements mentioned and specified in said Resolutions Numbered Ten and Fourteen, the said Town Council employed special counsel of especial skill and experience in bond matters, and particularly in municipal bonds, to prepare the necessary resolutions and ordinances in connection with the creation of special improvement district numbered four, the issuance of the bonds of said district which are the subject of this action, and in supervising all of the proceedings of the Town Council of the Town of Ryegate in connection therewith, for the sole purpose of having all of its proceedings in connection with said bond issue done strictly in accordance with the laws of Montana, and so as to make certain, if possible, that

such bond issue should be legal and valid, and that the said Town Council did everything that it was advised by such special counsel was necessary and proper to make said bond issue a legal and valid obligation of said special improvement district number 4. [24]

2. That the Security Bridge Company did not rely upon said proceedings being had under the advice and direction of special counsel so employed by the Town Council of the Town of Ryegate, but had all of said proceedings with reference to the creation of special improvement district number four, and the issuance of its bonds, passed upon by counsel for said Security Bridge Company, who were of more than ordinary skill and experience in investigating the legality of bond issues and especially the validity of bond issues of special improvement districts under the laws of Montana, and that in purchasing the general bonds of the Town of Ryegate, as herein alleged, and in agreeing to accept said special improvement district bonds at par value in payment of work under its said contract with the Town of Ryegate, said Security Bridge Company relied wholly upon the advice of its counsel; that in so accepting said special improvement district bonds said Security Bridge Company well knew that the Town of Ryegate was not liable for the payment of any part of said bonds, either principal or interest, and accepted said bonds well knowing that it would have to rely entirely upon payment of assessments on real property in said special improvement district

number four for the payment of said bonds, both principal and interest.

3. Defendant is informed and believes and therefore states the fact to be that when plaintiff purchased said special improvement district bonds from Security Bridge Company, it did so knowing that the Town of Ryegate was not liable for the payment of either principal or interest of any of said bonds, and did so without relying upon any statements of any officer of the Town of Ryegate, and did rely solely upon the advice of its counsel, lawyers skilled in examination of proceedings with reference to the legality of bond issues, and purchased said bonds solely upon the advice of its counsel that the proceedings had with reference to the issuance of said special improvement district bonds were legal and that said [25] bonds were valid and binding obligations of said district.

V.

For its fourth affirmative defense, defendant alleges:

1. That the first attempt made by the Town Council of the Town of Ryegate to levy assessments upon the property in said special improvement district number four to pay interest and principal of said special improvement district bonds, was made in the year 1921, and the first alleged assessment therefor was made payable on or prior to November 30, 1921.

2. That in the month of January, 1922, Mike Belec, a property owner in said special improve-

ment district number four, together with a large number of other property owners in said district, began various suits in the District Court of the Fifteenth Judicial District of the State of Montana, in and for the County of Golden Valley, against the Town of Ryegate, and the County Treasurer of Golden Valley County, Montana, in which county the said Town of Ryegate is located, for the purpose of enjoining and restraining said Town of Ryegate and said County Treasurer, from the collection of any assessments so attempted to be levied upon property in said special improvement district number four, for the payment of any part of the principal or interest of any of said special improvement district bonds, and alleged in their complaints in such suits; that the only description set out in said resolutions numbered ten and fourteen, as to the character of the work to be done and improvements to be made, was "the construction of pipes, hydrants, and hose connections for irrigating appliances and fire protection," which said general language gave no definite information to the lot owners in said special improvement district number four as to the specific character, extent or nature of the contemplated improvements and did not include the payment of the cost of installation of any general waterworks system for the Town of Ryegate; that when said resolution of intention number ten was passed and approved there were no plans and specifications on file or available for [26] examination by lot owners showing the nature or character of improvements to be made un-

der said resolution of intention; that the whole cost of improvements made under said resolutions in said special improvement district number four greatly exceeded the sum of \$1.50 per lineal foot plus the cost of the pipe laid in said district, which total cost was in excess of the limit prescribed by law; that no notice of any kind was given of the letting of the contract for construction of said improvements in said special improvement district number four, and when the same was let the contract price therefor amounted to \$52,829.35, whereas the estimated cost thereof amounted to the sum of \$28,350.00; that in addition to said contract price other payments were made by the Town Council of said town to the contractor and for engineering work so that the total cost of making such improvements was the sum of \$57,619.22; that the contract price and the actual cost of making such improvements was and is wholly out of proportion to the value of said improvements to the Town of Ryegate, or to the property included within said district; that when said contract was let it was impossible to sell the bonds or warrants of said special improvement district at par; that no purchaser therefor could be found; that those facts were then well known to the Mayor and Town Council of said town; that the contractor took the bonds of said special improvement district number four in payment of its contract price and claimed extras in connection with the installation of said improvements; that in so doing it allowed for a considerable discount on said bonds and added such dis-

count to its bid for such work; that because thereof the cost of said work was greatly increased over what it would have been if said bonds had been sold at the par value thereof; that when the bid of said contractor was accepted the Mayor and the Town Council of said town had knowledge of said facts, and that such proceedings were had in said suits that judgments and decrees were duly given, made and entered therein holding that all such assessments were null [27] and void and enjoining restraining the Town of Ryegate and said County Treasurer from collecting or attempting to collect any such assessments.

3. That plaintiff herein was advised of the commencement of each and all of said suits, and employed special counsel to assist counsel for the Town of Ryegate in defending said suits; that no appeal was taken from any of said judgments or decrees; and that said judgments and decrees have long since become final judgments and decrees as to the legality of said bond issue of such special improvement district.

WHEREFORE, defendant having fully answered said complaint demands judgment that plaintiff take nothing by this action and that defendant do have and recover of and from plaintiff its costs and disbursements herein.

JOHNSTON, COLEMAN & JOHNSTON,

By W. M. JOHNSTON,

Attorneys for Defendant.

State of Montana,
County of Yellowstone,—ss.

W. M. Johnston, being first duly sworn, deposes and says:

That he is one of the attorneys for the defendant in the above-entitled cause; that he makes this verification for and on behalf of defendant for the reason that no officer of defendant is now in Yellowstone County, Montana, where affiant resides and makes this affidavit; that he has read the foregoing answer and knows the contents thereof, and that the matters and things therein stated are true to the best of his knowledge, information and belief.

W. M. JOHNSTON.

Subscribed and sworn to before me this 8th day of August, 1927.

[Seal]

W. J. JAMESON, Jr.,

Notary Public for the State of Montana, Residing at Billings.

My commission expires Aug. 10, 1928. [28]

EXHIBIT "A."

RESOLUTION No. 14.

A RESOLUTION CREATING SPECIAL IMPROVEMENT DISTRICT NO. 4 OF THE TOWN OF RYEGATE, MONTANA, FOR THE PURPOSE OF CONSTRUCTING PIPES, HYDRANTS, AND THE HOSE CONNECTIONS FOR IRRIGATING AP-

PLIANCES AND FIRE PROTECTION
WITHIN THE TOWN OF RYEGATE, MON-
TANA.

WHEREAS, the Town Council of the Town of Ryegate, duly and regularly passed and adopted Resolution No. 10 on the 30th day of December, 1919, which said Resolution is now on file in the office of the Town Clerk of the Town of Ryegate, Montana, and to which reference is hereby made; and

WHEREAS, said Town Council of said Town caused a Notice of its passage and adoption of said Resolution of Intention to be published in the Ryegate Weekly Reporter, a weekly newspaper published in the Town of Ryegate, Montana, in the manner and form and during the period of time as required by law and has also caused the town clerk of said town on the first day of January, 1920, that being the date of the first publication of Notice, to mail to each and every person, firm or corporation, or a known agent thereof, having property within the proposed District, to the last known address of such person, firm or corporation, or agent, a notice of the passage and adoption of said resolution, giving them notice of the intention of the Town Council to create such Special Improvement District for the purposes therein mentioned and giving them full, due and timely notice as is required by law, which said Notices so published and mailed described the character of the improvement proposed to be made in said district, the estimated cost thereof and setting the time and place for the hearing of

protests against the creation of said proposed District and the making of said improvement and which said Notices also contained a reference to the number of said Resolution of Intention, giving the boundaries of the said proposed District and all other necessary particulars; and

WHEREAS, the Town Council having on the 11th day of February, 1920, met in regular session at the time and place fixed [29] and mentioned in said Resolution of Intention and in said Notices for the hearing of protests against the creation of said proposed District and against the making of said proposed improvement and such regular meeting of the Town Council having been regularly adjourned to this 17th day of February, 1920, and the Council having fully heard and considered all such protests, NOW THEREFORE,

BE IT RESOLVED BY THE COUNCIL OF
THE TOWN OF RYEGATE MONTANA:

Section 1. That the said Town Council has and does hereby FIND AND DETERMINE that the protests and each of them made against the creation of such proposed Improvement District and against the making of said improvement be and the same are hereby over-ruled and denied and that the Town Council deems itself to have acquired jurisdiction to Order the proposed improvement.

Section 2. That there be and there hereby is created a Special Improvement District to be known and designated as "special Improvement District No. 4 of the Town of Ryegate, Montana" and that the general character of the improvements to be

made in said District as follows, to-wit: The construction of pipes, hydrants, and hose connections for irrigating appliances and fire protection; all of which improvements are to be made in accordance with the plans and specifications to be prepared by the Engineer of the Town of Ryegate and to be adopted by the Council of said Town, and which plans and specifications will then be on file in the office of the Town Clerk to which reference is hereby made and by such reference are made a part hereof, to all intents and purposes the same as though said plans and specifications were fully set forth and incorporated at length in this resolution.

Section 3. That the boundaries of said special improvement District No. 4 shall be and the same are hereby declared to be the same as are described in the foregoing mentioned Resolution No. 10, to which reference is hereby made for a particular description [30] thereof.

Section 4. That the Town Council hereby makes reference to Resolution No. 10 declaring its intention to create the District hereby created, which said resolution is for all purposes hereby referred to for further particulars.

Passed by the Council of the Town of Ryegate, Montana and approved by the Mayor this 17th day of February, 1920.

R. C. CURRIE,
Mayor.

(Seal)

Attest: J. A. BROWN,
Town Clerk. [31]

EXHIBIT "B."

ORDINANCE No. 28.

PROVIDING THE MANNER AND METHOD OF ASSESSMENT AND PAYMENT OF THE COST AND EXPENSE OF MAKING AND INSTALLING THE IMPROVEMENTS IN SPECIAL IMPROVEMENT DISTRICT No. 4 OF THE TOWN OF RYEGATE, MONTANA.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF RYEGATE, MONTANA:

Section 1. That the entire cost and expense of making and installing the improvements in Special Improvement District No. 4 of the Town of Ryegate, Montana, shall be paid by said entire district, each lot or parcel of land within said district to be assessed for that part of the whole cost of said improvements which its area bears to the area of the entire district, exclusive of streets, alleys and public places. The work and improvements to which this ordinance relates are more particularly described in Resolution No. 10 passed by the Town Council of said Town of Ryegate, on December 30, 1919; the plans and specifications for which said work and improvements are now on file in the office of the Town Clerk of said Town, and reference to which plans and specifications is hereby expressly made.

Section 2. That the entire cost and expense of making and installing said improvements shall be

paid in ten (10) equal annual installments, and bonds therefor are to be drawn against the fund of said Special Improvement District No. 4, and made payable exclusively from said fund. Such bonds shall be in the denomination of One Hundred (\$100.00) Dollars each, or some multiple thereof. Said assessments shall be paid in ten (10) equal annual installments, and the payments thereof is hereby extended over a period of ten years from and after the completion and acceptance of said improvements. All moneys derived from the collection of said improvements shall constitute a fund to be known as "FUND OF SPECIAL IMPROVEMENT DISTRICT No. 4."

Section 3. All ordinances and parts of ordinances, resolutions and parts of resolutions, in conflict or inconsistent with this ordinance, are hereby repealed. [32]

Passed and adopted by the Town Council and approved by the Mayor this 9th day of June, 1920.

Approved: W. H. NORTHEY,
Mayor.

(Seal)

Attest: J. A. BROWN,
Town Clerk. [33]

EXHIBIT "C."

ORDINANCE No. 29.

AUTHORIZING THE EXECUTION, ISSUANCE AND DELIVERY OF COUPON BONDS IN PAYMENT FOR THE WORK AND IMPROVEMENTS IN SPECIAL IMPROVEMENT DISTRICT No. 4 OF THE

TOWN OF RYEGATE, MONTANA, AND
PRESCRIBING THE FORM, DENOMINA-
TION AND MATURITY DATE OF SUCH
BONDS.

WHEREAS, on February 17th, 1920, the Town Council of the Town of Ryegate, Montana, passed and finally adopted Resolution No. 14, creating Special Improvement District No. 4 in said Town of Ryegate, for the purpose of installing pipes, hydrants and hose connections for irrigating appliances and fire protection within said Town of Ryegate; and

WHEREAS, it is provided in the resolutions, ordinances and proceedings heretofore passed and had by said Town Council in connection with the creation of said Special Improvement District, that payment for said work and improvement shall be made by Special Improvement District Bonds to be issued against said District; all of which more fully appears from the resolutions and ordinance heretofore passed and adopted by said Town Council, and from the minutes of the meetings of said Town Council, and from the minutes of the meetings of said Town Council, reference to all of which is hereby expressly made:

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF RYEGATE, MONTANA:

Section 1. That for the purpose of providing the necessary funds with which to pay for the work and improvements in Special Improvement District No. 4 of the Town of Ryegate, Montana, including

engineering expenses and all other incidentals, there shall be executed and issued negotiable coupon bonds of said special improvement district No. 4, in the principal sum of ——— Dollars, such bonds to be ——— in number, and numbered consecutively from 1 to ———, both inclusive. Such bonds shall be redeemable at the option of the Town at any time there are funds to the credit of said Special Improvement District No. 4 for the redemption thereof.

[34] Each of said bonds shall bear interest at the rate of six per cent (%) per annum from the date of its registration, interest payable annually on January 1st of each year, and interest coupons in the form hereinafter provided shall be attached to each of said bonds, said bonds shall be issued, dated and delivered from time to time as may be necessary in payment for the work and improvements in said District, as the work progresses, and upon estimates to be furnished by the engineer in charge of the said work.

Section 2. That the denomination of each bond issued in payment for the work and improvements in said Special Improvement District No. 4 be, and the same is hereby, fixed at the sum of Five Hundred (\$500.00) Dollars, provided, however, that the last bond to be so issued shall be in the sum as shall represent the balance due for said work and improvements less than Five Hundred Dollars (\$500.-00).

Section 3. That the maturity date and time of payment of each and all of said bonds shall be the 1st day of January, 1930, subject, however, to re-

demption as provided in the form of bond in this ordinance hereinafter contained.

Section 4. That each of said bonds shall be substantially in the following form:

DISTRICT No. 4.

UNITED STATES OF AMERICA,
STATE OF MONTANA.

BOND.

Bond No. ————— \$500.00.
Interest 6 per cent per annum, Payable Annually.
Special Improvement District Coupon Bond Issued by the Town of Ryegate, Montana.

THE TREASURER OF THE TOWN OF RYEGATE, MONTANA WILL PAY TO THE BEARER ON THE 1st DAY OF JANUARY, 1930, the sum of Five Hundred (\$500.00) Dollars, as authorized by Resolution No. 14, as passed on the 17th day of February, 1920, creating Special Improvement District No. 4, for the construction of the improvements and the work performed as [35] authorized by said Resolution to be done in said District, and all laws, resolutions and ordinances relating thereto, in payment of the contract in accordance therewith.

The Principal and Interest of this bond are payable at the office of the Town Treasurer of Ryegate, Montana. This bond bears interest at the rate of six per cent (6%) per annum from the date of its maturity as expressed herein until the date called for redemption by the Town Treasurer. The interest on this bond is payable annually, on the 1st day

of January in each year, unless paid previous thereto, and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the Mayor and Town Clerk.

This bond is payable from the collection of a special tax or assessment, which is a lien against the real estate within said improvement district as described in said Resolution No. 14, as well as in Resolution No. 10, passed and adopted December 30th, 1919.

This bond is redeemable at the option of the Town of Ryegate at any time there are funds to the credit of said Special Improvement District Fund for the redemption thereof; and in the manner provided for the redemption of the same; Provided, however, that the date of Payment shall not be later than the maturity date hereinabove contained.

IT IS HEREBY CERTIFIED AND RECITED, That all things required to be done precedent to the issuance of this bond have been properly done, happened and been performed in the manner prescribed by the laws of the State of Montana, relating to the issuance thereof.

Dated at Ryegate, Montana, this — day of —, 1920.

TOWN OF RYEGATE, MONTANA,

By W. H. NORTHEY,

Mayor.

Attest: J. A. BROWN,

Town Clerk. [36]

Registered at the office of the Town Treasurer of Ryegate, Montana, this — day of —, 1920.

_____ ,

Town Treasurer.

Section 5. That the interest coupons to be attached to each of said bonds shall be substantially in the following form:

COUPON.

\$30.00

Coupon No. —.

On the first day of January, 192—, the Treasurer of the Town of Ryegate, Montana, will pay to the bearer the sum of Thirty Dollars, at the office of said Treasurer in Ryegate, Montana, out of the funds of Special Improvement District No. 4, being the interest then due on Bond No. — of said Special Improvement District; provided, however, that if said bond, together with accrued interest thereon to the date called for its redemption, has heretofore been paid under the option reserved in said bond, then this coupon shall be null and void.

W. H. NORTHEY,

Mayor.

J. A. BROWN,

Town Clerk.

Section 6. That each of said bonds shall be signed by the Mayor and Town Clerk of said Town of Ryegate and be impressed with the corporate seal of said Town, and each of said interest coupons shall bear the engraved facsimile signatures of said Mayor and Town Clerk, and said officers are hereby authorized and directed to cause said bonds

and coupons to be prepared and to execute the same for and on behalf of said Special Improvement District No. 4 in accordance with the proceedings heretofore had in connection with the creation of said District.

Section 7. That a continuing direct annual tax in the form of a special assessment be, and the same is hereby levied upon all the taxable real estate within the boundaries of said Special [37] Improvement District No. 4 in said Town of Ryegate, in addition to all other taxes and assessments thereon, which said special assessment shall be in an amount sufficient to pay the interest on said bonds as the same becomes due and to discharge the principal of said bonds at the maturity thereof.

Section 8. That all money derived and received from the collection of said special assessment shall be deposited by the Town Treasurer to the credit of Special Improvement District No. 4 of said Town of Ryegate, and the same shall be paid out by the Town Treasurer for no purpose other than in payment of the principal and interest of said bonds.

Section 9. This ordinance shall take effect and be in full force from and after the date of its passage and approval. All ordinances and parts of ordinances in conflict or inconsistent with this ordinance are hereby repealed.

Passed by the Town Council and approved by the Mayor this 9th day of June, 1920.

Approved:

W. H. NORTHEY,

Mayor.

(Seal)

Attest: J. A. BROWN,

Town Clerk. [38]

State of Montana,
County of Yellowstone,—ss.

Orpha Kregness, being first duly sworn, deposes and says: That she is informed and believes and therefore states the fact to be that Messrs. Stewart & Brown, whose address is Helena, Montana, are the attorneys for the plaintiff in the above-entitled cause; that Johnston, Coleman & Johnston, of Billings, Montana, are the attorneys for the defendant in said cause; that there is regular communication by mail between Billings, Montana, and Helena, Montana; that on August 8, 1927, she deposited in the postoffice at Billings, Montana, in an envelope securely sealed, with postage thereon prepaid, and addressed to "Messrs. Stewart & Brown, Attorneys at Law, Helena, Montana," a true and correct copy of the foregoing answer.

ORPHA KREGNESS.

Subscribed and sworn to before me this 8th day of August, 1927.

[Notarial Seal] W. M. JOHNSTON,
Notary Public for the State of Montana, Residing
at Billings.

My commission expires April 21, 1929.

Filed Aug. 10, 1927. [39]

THEREAFTER, on September 17, 1927, reply was duly filed herein in the words and figures following, to wit: [40]

[Title of Court and Cause.]

REPLY.

Comes now the above-named plaintiff and replying to the answer of the defendant herein on file admits, denies and alleges:

I.

Admits the allegations of new matter set forth in Paragraphs 2 and 5 and all of the allegations of Paragraphs 16, 17 and 18 of said answer.

II.

Admits that the special improvement district bonds were issued by said town at par value in payment of work done under said contract, and that the Security Bridge Company had solicited said work and agreed to take the proceeds from the general bonds of said city and the proceeds of, or the bonds of said special improvement district as evidence of the obligation owing for such construction work.

III.

Generally denies each, every and all of the affirmative allegations and allegations of new matter set forth in said answer not herein specifically admitted or denied.

Replying to the separate and affirmative defenses [41] contained in said answer plaintiff admits, denies and alleges as follows:

I.

Denies that defendant has any knowledge or information sufficient to form a belief as to the allegations contained in the first paragraph of the first affirmative defense (denominated II in the answer) and therefore denies the same.

II.

Generally denies each and every and all of the allegations of said first and second affirmative defenses not herein specifically admitted or denied.

III.

Denies that this plaintiff has any knowledge or information sufficient to form a belief as to the allegations of Paragraph 1 of the third separate defense, and therefore denies each and all of the same.

IV.

Admits that said Security Bridge Company had its own counsel investigate the legality of the bond issues of the defendant.

V.

Generally denies each and every and all of the other allegations of Paragraph 2 of said third separate defense.

VI.

Generally denies each, every and all of the other allegations of said third separate defense not herein specifically admitted or denied.

VII.

Admits the allegations of Paragraph 1 of the fourth affirmative defense. Admits that in the

month of January, 1922, one Mike Belec, and other property owners began various suits in the District Court of the Fifteenth Judicial District of the [42] State of Montana in and for the County of Golden Valley against the Town of Ryegate and against the Treasurer of Golden Valley County, Montana, for the purpose of enjoining and restraining the said Town of Ryegate and said County Treasurer from the collection of any assessments to be levied upon property in special improvement district number 4 for the payment of principal and interest of said special improvement district bonds.

Denies that this plaintiff has any knowledge or information sufficient to form a belief as to the contents of said complaints in said actions and the allegations therein contained. Admits that in such proceedings judgments and decrees were duly made and entered, but denies that this plaintiff has any knowledge or information sufficient to form a belief as to the extent and character of such judgments and decrees, save and except that they have prevented the collection of said principal and interest upon such special improvement district bonds.

VIII.

Generally denies each and every and all of the allegations of said fourth affirmative defense not herein specifically admitted or denied.

IX.

Generally denies each, every and all of the affirmative allegations and allegations of new matter and of

separate or affirmative defenses in said answer contained which have not been heretofore specifically admitted or denied.

WHEREFORE, having fully replied to defendant's answer the plaintiff prays as in its complaint set forth and demanded.

STEWART & BROWN,
Attorneys for Plaintiff. [43]

State of Montana,
County of Lewis and Clark,—ss.

John G. Brown, being first duly sworn according to law, deposes and says:

That he is one of the attorneys for the plaintiff in the above-entitled action and that he makes this verification for and on behalf of the plaintiff by reason of the fact that there is no officer or agent of said corporation in the County of Lewis and Clark wherein affiant resides and this reply is verified. I have read the foregoing reply, know the contents thereof and the matters and things therein stated are true to the best of my knowledge, information and belief as such attorney.

JOHN G. BROWN.

Subscribed and sworn to before me this 15th day of September, 1927.

[Seal] R. L. HILLIS,
Notary Public for the State of Montana, Residing
at Helena, Montana.

My commission expires 1-5-1930.

Filed Sept. 17, 1927. [44]

THEREAFTER, on July 16th, 1928, stipulation as to trial and facts was duly filed herein, being in the words and figures, as follows, to wit: [45]

[Title of Court and Cause.]

STIPULATION AS TO TRIAL AND FACTS.

It is hereby stipulated by and between the parties above named as follows:

I.

That a trial by jury in the above-entitled cause is hereby waived by the parties.

II.

That the following matters may be considered by the Court as facts admitted in evidence for all purposes in this action.

a. That the allegations of Paragraphs I, II, IV, and XV of the complaint are true.

b. In 1919 the Town of Ryegate, the county seat of Golden Valley County, was desirous of installing a water system, but because of the small assessed value of all property within its corporate limits it could not legally and constitutionally issue sufficient general bonds to cover the entire cost of such installation. It did issue general bonds of the Town of Ryegate in the sum of \$15,000.00 and on December 30th, 1919, passed a resolution of intention to create and establish improvement district known as Special Improvement District No. 4, and Exhibit "A" attached to the complaint herein, is, except as to an immaterial matter, a true and correct

copy of the [46] resolution so passed and said district was created for the purpose of raising additional funds over and above the \$15,000.00 general bonds necessary to pay for said water system and improvements specified in such resolution.

c. On Feb. 17th, 1920, said town passed and the Mayor thereof approved Resolution No. 14, a true copy of which is attached to the answer herein, marked Exhibit "A" thereto.

d. The map initialed and marked Exhibit 1 filed with this agreed statement correctly portrays the boundaries of the town and its additions, the boundaries of said improvement district and location of water mains and street or city hydrants of said water system. The unplatted area shown within the boundaries of the town and its additions on said map is liable for the payment of all taxes levied for town purposes, the same as though it were platted; said map also portrays the location of certain public buildings in said town. The only buildings belonging to the Town of Ryegate as a municipal corporation are the pumping station of said water system and a small frame building used to store fire equipment, said building and equipment having a value not to exceed \$1,000.00.

e. The true object and purposes of the passage and approval of said resolution and the issuance of said general and special improvement district bonds was the establishment and installation in and for the Town of Ryegate, and for a portion of its inhabitants of a complete waterworks and a complete waterworks system consisting of reservoir, pump-

ing plant, mains, and all other connections and appliances necessary to have a complete system for the supplying of water for municipal purposes to said town, and water to a portion of the inhabitants thereof and for the purpose set out in said resolutions.

f. That when the said Town of Ryegate called for bids [47] for the construction of said waterworks system and the improvements specified in said resolutions, the Security Bridge Company was the successful bidder therefor and a written contract was thereupon entered into between said town and said Security Bridge Company for the construction of said waterworks system and the improvements specified in said resolution, a true and correct copy of which contract is hereto annexed and marked Exhibit 2.

g. For the purpose of paying for said waterworks system and the improvements specified in said resolution, said town issued its general bonds in the sum of fifteen thousand dollars and bonds of said Special Improvement District No. 4 in the sum of forty-five thousand six hundred two dollars and forty-two cents; that Exhibit "B" attached to the complaint herein is a true and correct copy of one of said special improvement district bonds which, save and except as to amounts and dates of maturity, is a true and correct copy of all of said bonds.

h. On April 14, 1920, W. P. Roscoe, as an officer of the Security Bridge Company, purchased said general bonds of said town at par and accrued interest and said Security Bridge Company agreed to accept and did accept said general bonds and

said special improvement district bonds in the sum of forty-five thousand six hundred two dollars and forty-two cents in payment of the costs of installation of said waterworks system and the improvements specified in said resolution and that said improvement district bonds were issued and delivered to said Security Bridge Company, or upon its order, from time to time as the work progressed and upon the estimates of the engineer of said town as said work was completed and accepted.

i. That said Security Bridge Company was a construction corporation without funds for investment purposes and it was necessary for said company to at once arrange for the sale of [48] said bonds in order to obtain the money necessary to purchase supplies and materials and to pay the labor necessary for the construction of said waterworks and the improvements specified in said resolution.

j. The Security Bridge Company sold said general and improvement district bonds to plaintiff herein at 85% of the par value thereof, the plaintiff paying said Security Bridge Company the sum of thirty-eight thousand seven hundred sixty-two dollars and six cents for said improvement district bonds.

k. That while said contract disclosed that said bonds were taken at par as the consideration in the construction contract, they were in accordance with a prior agreement between plaintiff and the Security Bridge Company sold by the Security Bridge Company to the plaintiff herein at a price of 85% of the par value thereof.

1. From time to time, after said improvement district bonds were issued for completed and accepted work, plaintiff purchased and accepted said bonds at 85% of their par value with accrued interest from said Security Bridge Company and did thus by the purchase of said district and said general bonds furnish to Security Bridge Company all the money used by it to build and complete said waterworks system and the improvements specified in said resolutions, that plaintiff became the purchaser of said bonds for value before maturity and is now the owner and holder thereof and that said general and improvement district bonds were issued and delivered by said town to said Security Bridge Company, or delivered to the plaintiff, at the request of said Security Bridge Company, upon the dates, of the number and in the amounts set out in paragraph twelve of the complaint herein.

m. Said water system and improvements specified in said resolution were so constructed and accepted and the said [49] town has been and yet is receiving the income from said system and improvements, and said town and such of the inhabitants thereof as live within the limits of said district now have and are using said water system and improvements.

In further amplification of this paragraph "m" the facts are that there are:

(1) Thirty business houses within said improvement district and none without.

(2) Public buildings consisting of public school, courthouse, four churches, postoffice in one of said

business houses, Milwaukee Railway Station, school gymnasium and a shack used as fire hall, all within said special improvement district, there being no similar buildings in said town outside of said improvement district.

(3) Sixty-one residences within said improvement district.

(4) Thirteen residences, two warehouses, a small substation of the Montana Power Company outside of the limits of said improvement district but within the fire protection of said water system by reason of the fire apparatus owned by said town but used for fire protection only as to such residences and structures.

(5) There are twenty-two residences and two county warehouses in the Town of Ryegate situated outside of the limits of said special improvement district which cannot use said water system and improvements or equipment for fire protection, or for any other purposes as the same was installed.

(6) Said town has operated said water system and said improvements since their installation and has received therefrom total gross income as follows, each year of its operation thereof:

1921	\$211.33	
1922	978.53	[50]
1923	721.16	
1924	980.95	
1925	811.70	
1926	1092.68	
1927	749.18	

Total gross receipts \$5,545.53.

(7) The charges against said water department, water system and improvements during the same years are as follows:

Cash paid on warrants issued with interest thereon	\$5,539.28
Warrants outstanding	1,504.03

The interest accruing on said general bond issue of \$15,000.00 is paid out of a levy of 7½ mills each year upon all of the property within the Town of Ryegate and its additions, which levy has not been quite sufficient to pay such accruing interest. None of such general bonds have been paid.

The interest which matured on said improvement district bonds up to January 1, 1922, was paid by the Town of Ryegate out of assessments levied upon the lots in said district in accordance with said resolutions, but no part of said interest was paid out of any general or special fund of said town. Six per cent is a reasonable rate of interest in the State of Montana.

n. On October 16, 1920, the town clerk of the Town of Ryegate at the request of Security Bridge Company forwarded bonds numbered fifty-four to seventy-eight inclusive for five hundred dollars each a total par value of twelve thousand five hundred dollars of said Special Improvement District No. 4 to plaintiff and on November 26, 1920, at the request of Security Bridge Company said town clerk forwarded to plaintiff bonds of said Special Improvement District No. 4, numbered from seventy-nine to ninety-one inclusive of the par value of six thousand six hundred two dollars and

forty-two cents and that plaintiff remitted to Security Bridge Company 85% of the par value of said bonds with accrued interest.

o. All of the allegations of Subdivision II of defendant's [51] answer, being defendant's first affirmative defense, are admitted to be true excepting the clause "nor were the same payable out of the current revenues of said town of Ryegate" and excepting the clause "that said bonds were never payable out of the current revenues of said town," and excepting all of that portion of said Subdivision II which reads as follows: "and that if the said bonds of special improvement district number 4 of the Town of Ryegate, amounting to the sum of \$45,602.42 were held to be general obligations of the town of Ryegate the same and each of said bonds would be and are unconstitutional, invalid and void for that the amount of said bonds and each of them, added to the then general indebtedness of said town would be and are greatly in excess of the constitutional and statutory limit of indebtedness which said town might then or may now incur." None of the exceptions above noted are admitted.

p. All of the allegations of Paragraph one of Subdivision IV of defendant's answer being defendant's third separate defense are admitted.

q. All of the allegations of Paragraph 2 of said Subdivision IV are admitted except the following allegations "and that in purchasing the general bonds of the Town of Ryegate, as herein alleged, and in agreeing to accept said special improvement district bonds at par value in payment of work un-

der its said contract with the Town of Ryegate, said Security Bridge Company relied wholly upon the advice of its counsel.”

r. It is further admitted that plaintiff purchased said special improvement district bonds from Security Bridge Company with the knowledge that they were special improvement district bonds and with full knowledge of the laws of Montana governing the issuance of such bonds, the powers of the defendant with reference thereto and the methods provided and authorized for the payment thereof. [52]

s. It is admitted that in the month of January, 1922, Mike Belec and other property owners began various suits (see reference thereto in Subdivision V of defendant's answer), and that made a part of this statement of agreed to facts by being attached hereto, marked Exhibits 3, 4, 5 and 6 are, except for formal parts, true copies of the complaint, answer, reply and decree respectively in said suit.

That similar suits were filed by a number of other persons similarly entitled to sue with similar pleading and decree. That this plaintiff had its own counsel associated in the defense and trial of those actions. That no appeal was ever taken from said judgment and decrees.

t. In none of the minutes of the town council of the Town of Ryegate does the name of plaintiff, as purchaser of said general bonds of the Town of Ryegate or of said special improvement district bonds appear. Neither does plaintiff's name appear in any of said minutes, records or

files in any connection whatever, except in copies of letters of the town clerk remitting some of said bonds to plaintiff at the request of Security Bridge Company, as hereinbefore set forth.

Upon the trial of this cause, both plaintiff and defendant may offer evidence by depositions or otherwise upon all issues raised by the pleadings herein not covered by or included in this agreed statement of facts, and the cause may be submitted to the court upon the admissions in the pleadings, this statement of facts and the evidence introduced upon the trial of the cause, but no evidence shall be introduced by either party to this action upon any disputed question of fact which is covered by the foregoing statement of facts.

Signed and dated July 13, 1928.

JOHNSTON, COLEMAN & JOHNSTON,
Attorneys for Defendant.
STEWART & BROWN,
Attorneys for Plaintiff. [53]

EXHIBIT No. 2.

CONTRACT.

THIS AGREEMENT, made and entered into the 26th day of April in the year ONE THOUSAND NINE HUNDRED TWENTY, by and between the TOWN OF RYEGATE, MONTANA, of the first part, and THE SECURITY BRIDGE COMPANY, a corporation of Billings, Montana, of the second part.

WITNESSETH, that the said party of the second part has agreed, and by these presents does

agree with the said party of the first part, for the considerations herein mentioned and contained, and under the penalty expressed in a bond bearing even date with these presents and hereto attached, to furnish at his own proper cost and expense, all the necessary material and labor, except as herein specifically provided, and to excavate for and build in a good, firm, substantial and workmanlike manner, before the first day of October, A. D. 1920, the water mains, pumping plant, and reservoir indicated on the plans now on file in the office of the Town Clerk, and the connections and appurtenances of every kind complete, of the dimensions, in the manner and under the conditions herein specified, and has further agreed that the Engineer shall be and is hereby authorized to inspect or cause to be inspected the materials to be furnished and the work to be done under this agreement and to see that the same conform to plans and specifications.

The party of the second part hereby further agrees that he will furnish the Town with satisfactory evidence that all persons who have done work or furnished material under this agreement, and are entitled to a lien therefor under any law of the State of Montana, have been fully paid or are no longer entitled to such lien, and in case such evidence be not furnished as aforesaid, such amount as the party of the first part may consider necessary to meet the lawful claims of the persons as aforesaid shall be retained from the money due the party of the second part under [54] this

agreement until the liabilities aforesaid may be fully discharged and the evidence thereof furnished.

The said party of the second part further agrees that within ten days of notification of award of contract he will execute a bond in the sum of Twenty-five Thousand Dollars (\$25000.00) satisfactory to the Town Council, for the faithful performance of this contract, conditioned to indemnify and save harmless the said Town of Ryegate, Montana, its officers and agents, from all suits or actions of every name or description brought against any of them for or on account of any injuries or damages received or sustained by any party or parties, by or from the said party of the second part, its servants or agents, in the construction of said work, or by or in consequence of any negligence in guarding the same, or any improper materials used in the construction, or by or on account of any commission of the said party of the second part or its agents in the performance of this agreement, and for the faithful performance of this contract in all respects by the party of the second part, and the said party of the second part hereby further agrees that so much of the moneys due, under and by virtue of this contract, as shall be considered necessary by the said town of Ryegate, may be retained by the said party of the first part until all such suits or claims for damages as aforesaid shall have been settled, and the evidence to that effect furnished to the satisfaction of the town.

The said party of the first part hereby agrees to pay and the said second party agrees to receive the following prices as full compensation for furnishing all materials, labor, tools and equipment used in building and constructing and completing said water system, in the manner and under the conditions heretofore specified, and full compensation for all loss or damage arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen obstructions or difficulties which may be encountered in the prosecution of the same, and for all [55] expenses incurred by or in consequence of the same, and for all expenses incurred by or in consequence of the suspension or discontinuance of the said work, and for well and faithfully completing the same and the whole thereof, according to plans and specifications and the requirements of the engineer under them, to-wit:

For furnishing all material, tools and labor and in every way completing in a first class workman-like manner the proposed water system in the Town of Ryegate, Montana, according to plans and specifications therefor on file in the office of the Town Clerk, and any special instructions that may be given from time to time during the construction of the work.

Per linear foot for four inch cast iron water pipe complete including the necessary excavation, backfill and all valves and specials according to plans and specifications.

Price in words.

Price in figures.

Two Dollars and Fifty Five Cents. \$2.55

Per linear foot for six inch cast iron water pipe complete including the necessary excavation, back-fill and all valves and specials according to plans and specifications.

Price in words.

Price in figures.

Three Dollars and Sixty Cents \$3.60

Per linear foot for eight inch cast iron water pipe complete including the necessary excavation, back-fill and all valves and specials according to plans and specifications.

Price in words.

Price in figures.

Five Dollars and Five Cents \$5.044

For hydrants complete in place including auxiliary valve and all necessary excavation and back-fill according to plans and specifications.

Price in words.

Price in figures.

One Hundred Seventy Four Dollars Forty Cents. \$174.70

Per cubic yard excavation at reservoir site including disposition of surplus material according to plans and specifications. [56]

Price in words.

Price in figures.

Three Dollars Seventeen Cents. \$3.17

Per cubic yard for concrete in reservoir including forms, and reinforcing according to plans and specification.

Price in words.

Price in figures.

Thirty Seven Dollars Fifty Cents. \$37.50

For equipment for reservoir including roof, ladder, overflow, and floor drain according to plans and specifications.

Price in words.	Price in figures.
Fourteen Hundred Twenty Five Dollars.	\$1425.00

Per cubic yard for excavation for well including the disposal of surplus material according to plans and specifications.

Price in words.	Price in figures.
Two Dollars and Seventy Five Cents.	\$2.75

Per cubic yard for concrete in place in well and pump house foundation, pump pit and floor according to plans and specifications.

Price in words.	Price in figures.
Forty Dollars.	\$40.00

For shallow well pumping equipment complete, including pump, motor valves, switchboard and all electrical equipment, according to plans and specifications.

Price in words.	Price in figures.
Twenty Five Hundred Twenty Five Dollars.	\$2525.00

For pump house complete according to plans and specifications.

Price in words.	Price in figures.
Sixteen Hundred Twenty Five Dollars.	\$1625.00

Per cubic yard for excavating rock encountered

in trench, pump pit and well in addition to above prices.

Price in words.	Price in figures.
Three Dollars.	\$3.00

And the said party of the second part further agrees that it will not assign, transfer or sub-let the aforesaid work or any [57] portion thereof, (with the exception of contracts for materials and tools) without the written consent of the Town Council, and that any assignment, transferring or sub-letting without such written consent shall in every case be absolutely void.

It is further agreed by the party of the second part that the payments by the party of the first part shall be as provided for in the specifications.

The provisions herein contained shall bind the parties hereto and their heirs, administrators, successors and assigns.

IN WITNESS WHEREOF The Town of Ryegate, party of the first part, has caused these presents to be sealed with its corporate seal and to be signed by its Mayor and Town Clerk, and said party of the second part has hereunto set its hand on the 15th day of May, A. D. 1920.

TOWN OF RYEGATE.

By W. H. NORTHEY, Mayor.

Party of the Second Part.

By H. C. HARKNESS,

Secty.

(Seal)

Attest: J. A. BROWN,

Town Clerk.

State of Oregon,
County of Multnomah,—ss.

I hereby certify that the above is a full, true and correct copy of the Original Contract.

In testimony whereof I have hereunto set my hand and notarial seal this 18th day of February, 1927.

ANNE McNAB,

Notary Public for Oregon.

My commission expires Feb. 25, 1929. [58]

EXHIBIT No. 3.

In the District Court of the Fifteenth Judicial District of the State of Montana in and for the County of Golden Valley.

MIKE BELECZ, IDA GRAMS, BERT BELDING, L. F. LUBELY, GEORGE A. COPE, H. C. STILGER, ISABEL CURRIE, R. C. CURRIE, JOSEPH H. KOLMAN, MARTHA J. BROYLES, SARAH G. SNYDER, PHYLINDA C. REDISKE, W. J. EDSON, HENRY G. JACOBSON, STATE BANK OF RYEGATE, J. B. GREGG, GOLDEN VALLEY COUNTY ABSTRACT COMPANY, L. P. ALBRECHT, G. M. BABCOCK, EVANGELICAL LUTHERAN CHURCH OF RYEGATE, M. W. WAUGH, L. W. MARQUARDT, WILLIAM E. STOKES, HENRY THIEN, THE ROMAN CATHOLIC BISHOP OF GREAT

FALLS, Sometimes Known as MATHIAS C. LENIHAN, Bishop of Great Falls, a Corporation Sole, FRED WYMAN, THE HILBERT-THIEN COMPANY, FRANCES THIEN, RYEGATE CREAMERY COMPANY, CHARLOTTE GRAMS, A. D. LINDERMAN, ESTATE OF P. A. HILBERT, Deceased,

Plaintiffs,

vs.

THE TOWN OF RYEGATE, Montana, and W. O. WOOD, as County Treasurer of Golden Valley County, Montana,

Defendants.

COMPLAINT.

Plaintiffs complain and allege:

1. That the defendant, the Town of Ryegate, is and at all of the times hereinafter mentioned was, a municipal corporation and body politic, duly organized and existing under and by virtue of the laws of the State of Montana, and situated in Golden Valley County, Montana.

2. That the defendant, W. O. Wood, is now and during the year 1921, was the duly elected, qualified and acting treasurer of said County, and the proper person to whom payment should be made of taxes and assessments levied on behalf of the said Town of Ryegate.

3. That the plaintiffs, State Bank of Ryegate, Golden Valley County Abstract Company, The Roman Catholic Bishop of Great Falls, sometimes

known as Mathias C. Lenihan, Bishop of Great Falls, a corporation sole, the Hilbert-Thien Company, Evangelical Luthern Church of Ryegate and Ryegate Creamery Company are now and at all of the times hereinafter mentioned have been corporations organized, existing and doing business under and by virtue of the laws of Montana. [59]

4. That the plaintiffs are now and at all of the times hereinafter mentioned have been the owners of the various tracts of land hereinafter set forth, as belonging to them, and that all of said tracts of land are embraced in the description of Special Improvement District No. 4 in the said Town of Ryegate, hereinafter described.

5. That on or about December 30, 1919, the Town Council of the Town of Ryegate, passed a resolution of intention to create a special improvement district known as Special Improvement District No. 4, which said resolution is designated as Resolution No. 10 of said town, a copy of which is hereunto attached, marked Exhibit "A" and hereby made a part of this complaint.

6. That on January 1, 1920, the notice set out in and required to be published by said resolution of intention, was published in the said Town of Ryegate.

7. That thereafter, and on or about February 11, 1920, a resolution known as Resolution No. 14 of said Town, was passed by the Town Council thereof, creating said Special Improvement District No. 4, and that in said Resolution No. 14, the general character of the improvement to be made is de-

scribed in exactly the same words as in Exhibit "A" hereto attached.

8. That the object and purpose of each and all of the foregoing proceedings was the establishment and installation in the said Town of Ryegate of complete water works and a complete water works system, consisting of reservoir, pumping plant, mains and all other connections and appliances necessary for a complete system for the furnishing of water to the inhabitants of said town; that thereafter a contract was made for the construction and installation of such system and the same was constructed and installed.

9. That thereafter, for the purpose of paying for said improvements, a resolution was passed by the Town Council of said Town, known as Ordinance No. 28, providing the method and manner of [60] assessment and payment of the cost and expense of making and installing the improvements in said Special Improvement District No. 4, by which resolution it was provided that each lot or parcel of land within said District was to be assessed for that part of the whole cost of said improvements which its area bore to the area of the entire district, exclusive of streets, alleys and public places, and which resolution further provided for the issuance of the bonds of said District to be retired out of the fund derived from said assessment when paid; that by Ordinance No. 29 passed by the Town Council of said Town, the issuance of such bonds was authorized, and the amount thereof and form of bond, together with other details in connection therewith, were fixed and determined.

10. Thereafter, the Town Council of said Town, by its Resolution, No. 20, provisionally passed on August 22, 1921, and finally passed and adopted by the Town Council of said Town in the month of September, 1921, purported to levy and assess a tax and special assessment against all the real property in said Special Improvement District No. 4, including the property of these plaintiffs, to defray the cost of said improvements, in which Resolution it was recited that the total cost thereof was \$45,-602.42. Plaintiffs are informed and believe and therefore state the fact to be that the notice of the resolution levying such assessment, to the effect that the same was on file in the office of the Town Clerk and stating the time and place at which objections to the final adoption of said resolution would be heard, was not published as required by law; that the property owned by each of the plaintiffs herein and the total amount so attempted to be assessed against the same, exclusive of interest, is as follows, to wit: [61]

Owner	Description	Amount of Tax.
Mike Belec, z,	Lots 5 and 6, block 1,	\$340.10
	Lot 1, block 5,	136.10
Ida Grams,	Lot 3, block 9,	170.10
Bert Belding,	Lots 10, 11 & 12, Blk. 17,	510.30
L. F. Lubeley,	Lots 1, 2 & 3, Blk. 15,	510.30
	Lots 7, 8 & 9, Blk 16,	510.30
George A. Cope,	Lots 4 and 5, block 22,	340.20
H. C. Stilger,	Lots 3 and 4, Block 21,	340.20
Isabel Currie,	Lots 9 and 10, Block 8,	340.20
R. C. Currie,	South 100 feet of Lots 5 & 6, block 2,	243.00
Joseph H. Kilman,	Lots 4 and 5, block 12,	340.20
Martha J. Broyles,	Lot 4, block 24,	170.10
	<hr/>	<hr/>
	Lots 5 and 6, block 3,	340.20
	<hr/>	<hr/>
Sarah G. Snyder,	Lots 7, 8 and 9, Blk. 15,	510.30

Owner	Description	Amount of Tax.
Phylinda C. Rediske,	Lots 9 and 10, Blk. 9,	340.20
W. J. Edson,	Lots 4, block 8,	170.10
Henry G. Jacobson,	Lots 7, 8 & 9, Blk. 18,	510.30
State Bank of Ryegate,	Lots 13 & 14, Blk. 5,	159.20
J. B. Gregg,	Lots 11 & 12, block 9,	340.20
Golden Valley County Abstract Company,	of lots 15 to 18, Blk. 4,	48.60
L. P. Albrecht,	Lot 1 of block 1,	170.10
Evangelical Lutheran Church of Ryegate,	Lot 12, block 19,	170.10
G. M. Babcock,	Lot 12, Block 7,	170.10
M. W. Waugh,	Lot 6, block 24,	170.10
L. W. Marquardt,	West ½ of lot 2 and lot 3, Blk. 22,	255.20
William E. Stokes,		
Roman Catholic Bishop of Great Falls,	Lots 10, 11 & 12, block 10,	510.30

Owner	Description	Amount of Tax.
The Hilbert Thien Company,	Lots 10, 11 and 12, Blk. 10,	510.30
	Lot 2, block 5,	136.10
	Lot 9 in block 10,	170.10
[62]		
Henry Thien,	Lot 6, block 15,	170.10
Fred Wyman,	Lot 1, block 2	170.10
	_____ of lots 15 to 18, block 4,	121.50
	Lots 1, 2 & 3, block 6,	510.30
	Lots 1 and 2 in block 7,	340.20
	Lot 1 in block 8,	170.10
	Lot 4 in block 16,	170.10
	Lot 6 in block 22,	170.10
Frances Thien,	Lots 7, 8 and 12, block 5,	238.80
Ryegate Creamery Company	South 50 ft. of lots 7 to 10, block 6,	121.50
Charlotte Grams,	_____	_____
A. D. Linderman,	Lot 2, block 24,	170.10
Estate of P. A. Hillbert, deceased,	Lot 3 in block 3,	170.10
	Lots 3 and 4, block 5,	159.20
	Lot 9, block 20,	170.10

11. That the resolution of intention hereto attached and marked Exhibit "A" did not contain any sufficient description of the general character of the improvements to be made as required by law in this,—that the only description used was: "the construction of pipes, hydrants and hose connections for irrigating appliances and fire protection," which said general language gave no definite information to plaintiffs and others within the district as to the specific character, extent or nature of said improvement; that there was nothing in said description advising the plaintiff and others in the district that a waterworks system or a system of mains was contemplated or would be installed and that the character of the improvement described in said notice included only pipes, hydrants and hose connections for irrigating appliances and fire protection, and did not include waterworks or a general waterworks system or system of mains, or reservoir, or pumping plant, which was in fact contemplated, and was thereafter constructed and installed; that the improvements described in the notice were entirely different and much less extensive than the improvements that were actually made; [63] that said description recited that said improvements were to be made in accordance with plans and specifications to be prepared, which said plans and specifications were not then prepared and were not on file or available for the examination of these plaintiffs or any other property owners within said district; that the notice as published and the resolution purporting to create said

district, were defective in the same particulars as in this paragraph recited, in failing to describe the character of the improvement, and that for the reasons herein stated the said Town Council of the Town of Ryegate did not at any time acquire any jurisdiction to create said improvement district or to proceed with the installation or construction of said mains, and that all subsequent proceedings were and are void and of no effect.

12. That the whole cost of said improvements so assessed as hereinbefore alleged, far exceeds the sum of \$1.50 per lineal foot plus the cost of the pipe so laid of the entire length of the water mains laid in said district and that said total cost is in excess of the limit prescribed by law.

13. That no notice of any kind was given of the letting of the contract for said improvement, and when the same was let the contract price therefor amounted to \$52,829.35, whereas the estimated cost amounted to \$28,350; that in addition to said contract price, other payments have been made by the Town Council of said Town to the contractor and for engineering work, so that the total cost of making such improvements is the sum of \$57,619.22 and that both the contract price agreed upon and the actual cost of making such improvements is wholly out of proportion to the value of said improvements to the said Town or to the property included within said district.

14. That plaintiff is informed and believes and therefore states, that at the time said contract was let, it was impossible to sell the bonds or warrants of said Special Improvement District at [64]

par; that no purchaser therefor could be found; that these facts were then well known to the Mayor and Town Council of said Town; that the contractor took the bonds of said District in payment of its contract price and claimed extras in connection with the installation of said improvements; that in so doing, it allowed for a considerable discount on said bonds and added such discount to its bid for said work; that because thereof, the cost of said work was greatly increased over what it would have been if said bonds had been sold by said town council at the par value thereof, and that at the time said contract was entered into and the bid of said contractor accepted, the Mayor and Town Council of said Town had knowledge of all of the aforesaid facts.

15. That before the time fixed in said Resolution No. 10 for hearing objections and protests to the creation of said Special Improvement District No. 4, written protests thereto were made and filed by the owners of a majority in area of the lots and parcels of land within said District No. 4. Among the lot owners so protesting was the Chicago, Milwaukee & St. Paul Railway Company, the owner of a large amount of land within the said district; that prior to the hearing upon the creation of said Special Improvement District No. 4, said Chicago, Milwaukee & St. Paul Railway Company withdrew its protest to the creation of said district, thereby leaving protests from the owners of an insufficient number of lots to defeat the creation of said district, and that plaintiff is informed and believes, and therefore states the fact to be that said Chicago,

Milwaukee & St. Paul Railway Company was induced to withdraw its said protest by the payment to it of \$2500.00, which sum of money was furnished, provided and paid by certain parties who were greatly interested in having said improvements made, including the contractor who secured the contract for making such improvements.

16. That by reason of the facts stated in paragraphs 11 to 15, inclusive, in this complaint, the levy of any and all assessments [65] against the said property of plaintiffs in said district was and is, illegal and void.

17. That one-tenth of all of the taxes and assessments so attempted to be levied against the aforesaid property of these plaintiffs was by the resolution aforesaid, to be paid on or before November 30, 1921; that if not so paid, the same was to become delinquent on December 1, 1921, and a ten per cent penalty added thereto because of such delinquency; that none of the plaintiffs herein has paid any part of said alleged tax and assessment against his or its said property for the year 1921; that the said Town of Ryegate is now advertising said property for sale for the non-payment of the taxes and assessments which it claims should have been paid thereon in November, 1921; that if not restrained by order and decree of this court, the defendants will sell all of the aforesaid property belonging to plaintiffs for the non-payment of the aforesaid installments thereon for the year 1921, and thus cloud the title to plaintiff's said lands; that if plaintiffs were to pay said alleged taxes each year under protest and then bring suit against the defendants to re-

cover the taxes and assessments so paid, it would result in a great multiplicity of suits; that plaintiffs have no plain, speedy and adequate remedy at law for the wrongs herein complained of and that great and irreparable damage and injury will be done to plaintiffs and each of them, if said defendants are not enjoined and restrained from selling any portion of the aforesaid lands, because of the non-payment of any of said alleged taxes and assessments.

WHEREFORE, plaintiffs demand judgment:

That a decree of this court be entered adjudging and decreeing the aforesaid taxes and assessments null and void;

That the defendants herein be enjoined and restrained from selling any of the aforesaid property of these plaintiffs on account of the non-payment of said alleged taxes and assessments thereon for the year 1921; that their agents, servants, attorneys, employes [66] and successors be enjoined and restrained from selling any portion of said described lands for the non-payment of any installment of said alleged taxes and assessments for any year hereafter;

That in case any of said property should be sold by said defendants or either of them, for the non-payment of said installments of such alleged taxes and assessments for the year 1921, before the final determination of this suit, that the said defendants, their agents, servants, attorneys, employes and successors be enjoined and restrained from issuing any tax deed to the purchaser of said lots or any part thereof at such sale.

That said defendants, their agents, servants, attorneys, employrs and successors be enjoined and restrained from in any way or manner attempting to collect any portion of said alleged taxes and assessments.

That plaintiffs may have such other and further relief as to the court may seem just and equitable, and that they may recover their costs and disbursements herein incurred.

D. AUGUSTUS JONES,
JOHNSTON, COLEMAN & JOHNSTON,
By W. M. JOHNSTON,
Attorneys for Plaintiffs.

(Duly verified.) [67]

EXHIBIT No. 4.

ANSWER.

Come now the defendants in the above-entitled cause and, answering the complaint of plaintiffs herein allege:

I.

They admit the averments of paragraphs 1, 2, 3, 4, 5, 6, 7, 9 and all that portion of paragraph 10 excepting that part thereof beginning with the words "Plaintiffs" in the last line on page 3 and concluding with the words "law" in line five on page 4.

II.

They specifically deny the averments of paragraphs 8, 11, 12, 13, 14, 15 and 16.

III.

Answering the averments of paragraph 17 of said

complaint, the defendants admit all the averments thereof excepting that portion beginning with the words "that plaintiffs" in the last line on page 8 and continuing to the end of the paragraph, as to which they deny the same.

Further answering said complaint and as a special defense, the defendants allege:

I.

That notice of the passage of the resolution of intention to create said Special Improvement District No. 4 was actually published in one issue of the Ryegate Reporter, a weekly newspaper printed and published in the Town of Ryegate, said publication having been made on the 1st day of January, 1920, as required by law.

II.

That the plaintiffs did not at any time within sixty days from the date of the awarding of the contract for the construction of the improvements referred in said complaint, file with the said Clerk of the Town or Ryegate a written notice specifying in what respect [68] the said acts were irregular, erroneous, or invalid, or in what manner their property would be damaged by the making of said improvements, and did not in writing make any objections to any act or proceeding in relation to the making of said improvements; and these defendants now allege that the plaintiffs have thereby waived all the objections which they now urge in their said complaint and upon which their cause of action is based.

WHEREFORE, the defendants having answered the complaint of the plaintiffs herein, now pray that they may take nothing by their cause of action and that the defendants may have judgment against them for their costs and disbursements herein.

STUART McHAFFIE,
NICHOLS & WILSON,
By EDMUND NICHOLS,
Attorneys for Defendants.

(Duly verified.) [69]

EXHIBIT No. 5.

REPLY.

Plaintiffs make this their reply to the answer of defendants herein:

1. Admit the allegations contained in paragraphs one and two of defendants' Special Defense, except that they deny that they waived any objections to the irregular, erroneous and invalid acts of the officials of the Town of Ryegate complained of in the complaint herein.

2. Save and except as hereinbefore specifically admitted or denied, plaintiffs deny generally each and every allegation of new matter in said answer.

WHEREFORE, plaintiffs demand judgment as prayed for in their complaint.

D. AUGUSTUS JONES,
JOHNSTON, COLEMAN & JOHNSTON,
By W. M JOHNSTON,
Attorneys for Plaintiffs.

(Duly verified.) [70]

EXHIBIT No. 6.

DECREE.

This cause came on for trial February 6, 1923, before the Court, sitting without a jury, a jury having been expressly waived by counsel for the respective parties. D. Augustus Jones, Esq., and Johnston, Coleman & Johnston appeared as attorneys for plaintiffs, and Stuart McHaffie, Esq., and Nichols and Wilson appeared as attorneys for the defendants. Evidence was introduced on behalf of both plaintiffs and defendants and the cause was thereupon submitted to the Court.

Thereafter and on June 27, 1924, the Court made and filed its Findings of Fact and Conclusions of Law herein, which, omitting title of Court and cause, are as follows, to-wit:

“FINDINGS OF FACT.

1. That the defendant Town of Ryegate is, and was, at all times referred to in the proceedings, a Municipal corporation, organized and existing under and by virtue of the laws of Montana, and situated in the county of Golden Valley, Montana, and that the defendant W. O. Wood, was, during the times referred to in the proceedings, the duly elected, qualified and acting treasurer of said Golden Valley County, and the officer to whom the assessments hereinafter referred to were paid.

2. That the plaintiffs were at all of the times referred to in the proceedings herein, the owners of the

various lots and tracts of land described in plaintiffs' complaint as belonging to said plaintiffs, all of which property was and is embraced within the limits of Special Improvement District No. 4 in the said Town of Ryegate.

3. That on the 30th day of December, 1919, the town Council of the Town of Ryegate, duly passed resolution of intention number 10, for the creation of special improvement district No. 4 within said Town of Ryegate, a copy of which said resolution as adopted is attached to the plaintiffs's complaint and marked Exhibit "A" and that notice of such [71] resolution was duly published as required by law, and that thereafter on the 11th day of February, 1920, resolution number 14, creating said special improvement District No. 4 was duly passed by the Town Council of said Town of Ryegate.

4. That the character of the improvements as set out in said resolution of intention and also in said resolution No. 14 was "the construction of pipes, hydrants, and hose connections for irrigating appliances and fire protection." That the actual improvement sought to be installed as a result of said proceedings and which was actually installed by said town was a complete water works and water system consisting of reservoirs, pumping plant, mains and fire hydrants constituting a complete system for the furnishing of water to the inhabitants of said town That said improvement was installed and constructed by Security Bridge Company, a corporation, under one contract, which contract was entered into upon the award of said work to said Security

Bridge Company, which said award was made upon bid filed in response to notice to contractors given in pursuance of resolutions numbers 10 and 14, referred to above. That the notice to contractors and the plans and specifications covering said work and contract itself all refer to and call for the construction of a complete water system consisting of the elements above described.

5. That after the contract for said water system was let, the Town Council of the Town of Ryegate by appropriate action provided the mode of assessment for the payment of said improvement and assessed each parcel of land within the district for that part of the entire cost of the improvement which its area bore to the entire area of said district, exclusive of streets and alleys, and that the total amount assessed against each of the plaintiffs herein is correctly set forth in their complaint herein. That the assessment so made against the property in said district was for the purpose of retiring the bonds of said district to the amount of \$45,602.42, which said bonds under the provisions of said contract with said [72] Security Bridge Company, were to be accepted and were in fact issued and accepted in payment for said improvement to the extent of forty-five thousand six hundred two and 42/100 dollars.

6. That the plans and specifications for the improvements actually made were delivered to the Town Clerk ten days or two weeks before April 13, 1920, but were not presented to the Town Council or approved by the Town Council of Ryegate until

April 13, 1920, one day before bids were received for the construction of the improvements called for by said plans and specifications.

7. That the total amount of pipe used in said construction was 8271 feet of four inch pipe, 2726 feet of six inch pipe and 841 feet of eight inch pipe, and that the cost of said pipe so used was not in excess of Seventeen Thousand Seven Hundred Twenty-six and $47/100$ dollars. (\$17,726.47.)

8. That the said contractor, Security Bridge Company, in making its bid took into consideration the fact that the bonds issued in payment would have to be sold at a discount and it was known to the Town Council of the Town of Ryegate at the time the contract for said improvement was let that the bid of said contractor was made upon that basis and with the expectation and understanding that said bonds would be disposed of at a discount and with the knowledge that the bid was higher than it would have been had it been provided that payment was to be made in cash.

9. That no notice of any kind was ever given to the property owners in Improvement District No. 4 or to anyone else of the letting of the contract for the construction of the improvements made under the aforesaid plans and specifications.

10. That the cost of installation of improvement made, which the Town Council of the Town of Ryegate attempted to assess against the property included in Special Improvement District No. 4 was the sum of \$45,602.40; whereas, the estimated cost of such improvements was \$28,350.00. [73]

11. That there are no sprinkling, or parking, or boulevard districts in the Town of Ryegate, and never have been.

12. That the plaintiffs L. F. Lubeley, Isabel Currie, W. J. Edson, Henry G. Jacobson, State Bank of Ryegate, Henry Thien, Fred Wyman and the Hilbert-Thien Company within sixty days of the letting of the contract to construct the improvements in question, made and filed their written protests and objections thereto, setting up the grounds relied upon by plaintiff in this action, and that none of the other plaintiffs herein filed any protest or objection whatsoever.

13. That the improvement actually installed as a result of the proceedings hereinbefore referred to was a different improvement from that described in resolutions 10 and 14 in that the improvement actually installed was an entire and complete water system, whereas the improvement described in the resolution of intention was the construction of pipes, hydrants, and hose connections for irrigating appliances and fire protection.

14. That within the time fixed by the resolution of intention for the creation of Special Improvement District No. 4, written protests were made and filed by the owners of a majority in area of the lots and parcels of land within said District No. 4; that among the land owners so protesting was the Chicago, Milwaukee & St. Paul Railway Company, the owner of a large amount of land within said District; that prior to the hearing upon said protests, interested citizens of the Town of Ryegate agreed to

raise a fund of \$2500.00 and to pay the same to the Chicago, Milwaukee & St. Paul Railway Company so as to reduce its assessment to the sum of \$6,000.00, for installation of both a water system and sewer system in the town of Ryegate, as it was informed by the parties so agreeing to raise and pay said sum of money, and that on account of said agreement, the said Chicago, Milwaukee and St. Paul Railway Company withdrew its protest to the formation and creation of Special Improvement District No. 4; that by so doing an insufficient number of protests were left on file to defeat the creation of said district. [74]

From the findings of Fact the Court makes the following Conclusions of Law.

CONCLUSIONS OF LAW.

1. That the Town Council of the Town of Ryegate never at any time acquired jurisdiction to create an improvement district for the installation of a water system or of an improvement of the kind actually installed, and that the installation of said system was without authority and all of the proceedings with reference thereto were and are null and void and of no effect.

2. That the cost of said system as installed was in excess of the cost allowed by law, to-wit: \$1.50 per lineal foot of pipe laid, plus the cost of pipe and the assessment imposed upon the tax payers within said district was and is for that reason illegal.

3. That the Town Council of the Town of Ryegate in awarding the contract for said improvement

knew that the contract price was increased by reason of the fact that the bonds issued in payment therefor would have to be disposed of at less than par and knew that the bid would have been a lower bid and the contract price lower if the bonds could have been sold at par, and that for this reason the proceedings of the Council in letting said contract were null and void

4. Plaintiffs are entitled to an injunction restraining the defendants, their agents, servants, attorneys, employees, or successors from in any way or manner attempting to collect any portion of the alleged assessments against the property of any of said plaintiffs situate in Special Improvement District No. 4 of the Town of Ryegate.

5. Let Decree be drawn in accordance with these Findings and Conclusions.

Dated this 27 day of June, A. D. 1924.

GEO. A. HORKAN,

Judge." [75]

WHEREFORE, by reason of the law and the premises aforesaid, IT IS ORDERED, ADJUDGED AND DECREED:

That all taxes and assessments levied and assessed upon property situate in Special Improvement District No 4 within the Town of Ryegate, in Golden Valley County, Montana, to pay for special improvements therein under resolution of intention No. 10 for the creation of said district, and under resolution No. 14 of said town creating said Special Improvement District No. 4, which are the subject of this action, are null and void; that the defendants

are, and each of them is hereby enjoined and restrained from selling any of the property of plaintiffs herein, described in the complaint herein, on account of the nonpayment of any of said alleged taxes and assessments imposed because of the creation of said district and the construction of improvements therein; that if any of said property has been sold for the nonpayment of any of such taxes or assessments, the defendants, their agents, servants, attorneys, employees and successors are, and each of them is, hereby enjoined and restrained from issuing any tax deed to the purchaser of any of said lots or property, or any part thereof.

That the said defendants, their agents, servants, attorneys, employees and successors are, and each of them is, hereby enjoined and restrained from in any way or manner attempting to collect any portion of said alleged taxes and assessments;

That the lots and property referred to herein, the taxes and assessments against which, on account of the creation of said district and construction of improvements therein, are hereby declared to be null and void and the collection of which is hereby restrained, are particularly described as follows, to-wit:

Lots 5 and 6, block 1; lot 1 of block 5; lot e of block 9; lots 10, 11 & 12 of block 17; lots 1, 2 & 3 of block 15; Lots 7, 8, & 9 of Block 16; Lots 4 and 5 of block 22; Lots 3 and 4 of block 21; lots 9 and 10 of block 8; south 100 feet of lots 5 and 6 in block 2; lots 4 and 5 of block 12; lot 4 of block 24; lots 5 and 6 of block 3; lots

7, 8, [76] and 9 of block 15; Lots 9 and 10 of Block 9, lot 4 of Block 8; Lots 7, 8, and 9 of Block 18; lots 13 and 14 of Block 5; Lots 11, and 12 of Block 9; Lots 15 to 18 of Block 4; lot 1 of block 1; lot 12 of block 19; lots 7 and 8 of block 5; lot 12 of block 7; lot 6 of block 24; West half of lot 2 and lot 3 of block 22; lots 10, 11 and 12 of block 10; lot 2 of block 5; lot 6 of block 15; lot 12 of block 5; lot 1 of block 2; north 50 feet of lots 15 to 18 in block 4; lots 1 and 3 of block 6; lots 1 to 6 of block 7; lots 1, 11, and 12 of block 8; lot 4 of Block 16; lot 6 of block 22; lots 1, 2, and 3 of block 17; Lots 7 and 8 of Block 20; South 50 feet of lots 7 to 10 of Block 6; Lots 3, 4, 5 and 6 of block 18; Lots 7, 8, 9, 10 and 11 of Block 19; lots 5 and 6 of block 23; lot 2 of block 24; lot 3 of block 3; lots 3 and 4 of block 5; Lot 9 of Block 10; and Lot 9 of Block 20.

Done in open court this 8th day of July, 1924.

GEO. A. HORKAN,

Judge.

Filed July 16, 1928. [77]

THEREAFTER, on December 11th, 1929, the cause herein was tried to the Court, the record of trial being in the words and figures as follows, to wit: [78]

[Title of Court and Cause.]

TRIAL.

This cause came on regularly for trial to the Court this day without a jury, a jury trial having been expressly waived by written stipulation of the parties filed herein on July 16, 1928. Messrs. Stewart and Brown appeared for the plaintiff and Messrs. Johnston, Coleman and Jameson appeared for the defendant.

Thereupon the agreed statement of facts filed herein on July 16, 1928, and the depositions of John D. Neale and W. P. Briggs, as witnesses for plaintiff, were read in evidence. Thereupon W. P. Roscoe was sworn and examined as a witness for the plaintiff and certain documentary evidence introduced, whereupon plaintiff rested.

Thereupon Henry Thien, G. H. Corrington, C. H. Parizek, W. H. Northey and B. Mellen were sworn and examined as witnesses for the defendant, and certain documentary evidence introduced, whereupon the defendant rested.

Thereupon Henry Thien and W. P. Roscoe were recalled in rebuttal and Mr. Hastings was sworn and examined as a witness for plaintiff in rebuttal, whereupon the evidence closed and the cause was submitted to the Court and taken under advisement, the plaintiff being granted twenty-five days from this day and the defendant twenty-five days thereafter in which to submit and file briefs and proposed findings.

Entered in open court this 11th day of December, 1929.

C. R. GARLOW,
Clerk. [79]

THEREAFTER, on May 14, 1931, the court rendered its decision herein, said decision being in the words and figures as follows, to wit: [80]

[Title of Court and Cause.]

DECISION.

The purpose of this action is to establish a liability against the Town of Ryegate, Golden Valley County, Montana, on an implied contract for the balance due on the construction of a water supply system, which otherwise would have been paid from bonds issued by a special improvement district of that town, had the entire issue not been declared illegal and void, after the water supply system had been fully constructed. The facts appear herein and in an agreed statement and testimony taken at the trial, which was before the court without a jury, according to written stipulation of counsel for the respective parties.

Proceedings were begun by the town counsel for the creation of the special improvement district in 1919, followed by the usual bond issue and commencement of work by the contractor, the Security Bridge Company, the predecessor of plaintiff. It appears from the resolutions adopted by the town that the character of the improvements were to be:

“the construction of pipes, hydrants, and hose connections for irrigating appliances and fire protection.” That pursuant thereto the improvements actually installed consisted of waterworks and a water system of reservoirs, pumping plant, mains and fire-hydrants, for the furnishing of water to the inhabitants of the town. To provide for the payment of the improvements the town council assessed each parcel of land within the district for that part of the entire cost which its area bore to the entire area of the improvement district, exclusive of streets and alleys. That the assessment so made against the property in said district was for the purpose of retiring the bonds of the district in the amount of \$45,602.42. [81]

No notice was ever given to the property owners in the district of the letting of the contract for the construction of the improvements. The cost of improvements which the town attempted to assess against the property in the district was the sum above mentioned, whereas the estimated cost was only \$28,350.00. Within the time allowed after letting the contract protests and objections were filed.

Plaintiff claims that under Section 6, of Article 13, of the Constitution of the State of Montana, and subdivision 64 of section 5039 of the Revised Codes of Montana of 1921, that the Town of Ryegate had general authority to procure a water supply and construct a complete waterworks system and therefore contends that since the city had general power and authority to do the work and construct the im-

provements embraced in the special improvement district in question, although it had no authority to resort to the special improvement district plan to make the improvements and although bonds used in payment of the work were illegal and void, nevertheless, the town, having the general power to make such improvements, and having received and retained the benefit of the improvements and the construction thereof, it is liable as upon an implied contract, and the delivery of void warrants did not amount to payment, and also, that a contract may be illegal and void, yet if the corporation has the general power to do the thing agreed upon, but has done it in an irregular manner, or even in violation of some common-law rule, or statutory inhibition, yet if it has received the benefit and the contract was not immoral, unjust or inequitable, it is liable upon the implied contract.

The defendant states the proposition of law as follows: "The general question presented by this action is whether or not a city or town in Montana is liable upon any theory for the debt represented or evidenced by the bonds of a special improvement district which by their terms are made payable from a special fund derived from special assessments upon and against the property embraced within that district." If this question should receive an affirmative answer, then the further question arises whether the Town of Ryegate can be held [82] liable in this instance in view of Section 6 of Article 13 of the Constitution of Montana. In commenting on the foregoing statement of the issue of law involved

plaintiff contends that the town never acquired jurisdiction to create a special improvement district and that the bonds issued were by the court declared to be invalid, after the contract, for which the bonds were delivered, had been fully performed. Not all the bonds representing the entire consideration for the works were declared invalid; only those of the special improvement district. Fifteen Thousand Dollars of the consideration was paid through an issue of the general bonds of the town, and the remainder by the issue of special improvement district bonds.

It seems clear that because of the constitutional inhibition the town was unable lawfully to contract for the installation of a water system without the approval of the taxpayers. It found that it could lawfully issue \$15,000.00 in bonds as a direct obligation and no more, consequently the town counsel by appropriate resolution and with apparent authority undertook the establishment of a special improvement district for the purpose of creating a bonded indebtedness against the property lying within the boundaries of such district to raise the money necessary to install the works hereinbefore described which were to be located in the special improvement district. It appears that the improvement district embraced the greater part of the town including the principal business and residential sections. By resorting to these two methods the town secured a waterworks system, such as was provided by contract, and has used the same for several years without paying for it, except the pay-

ment of \$15,000 in bonds of the town. The town apparently set about to accomplish in a lawful manner indirectly what it could not lawfully do directly without an election and favorable majority vote. Unquestionably there is a general obligation to do justice resting upon cities as well as upon natural persons, and while plaintiff cannot now recover upon the contract the question remains can it lawfully recover from the town as on an implied contract for money had and received. Can the town be compelled to assume as a general obligation the indebtedness contracted with the special [83] improvement district and secured by an issue of bonds upon property lying wholly within the district. Irrespective of what the general result has been here, does the law permit the plaintiff to recover from the town when it or its predecessor accepted the bonds of the special improvement district, enforceable against the property of the district for the amount now claimed from the town itself. Plaintiff claims to have no recourse against the property of the district because of a decision of the state court, from which no appeal was taken, declaring the bonds of the district illegal and void. According to the record counsel representing the bondholders took part in the trial of the issues there involved.

Whether it be held, as contended by plaintiff, that there was no grant of power under the statute conferred upon the municipality to install and pay for a waterworks system, as provided in chapter 56 of Part IV, Political Code of Montana (1921),

or not, there is certainly enough in the language of that chapter to lead the members of the average town council to believe that they had the authority to create a special improvement district for the purpose of installing the aforesaid waterworks within the district and paying for it by the issuance of bonds of that district. The Security Bridge Company and plaintiff could have subjected these bonds and proceedings to the closest scrutiny of counsel before accepting them, and could have rejected them if they were issued without authority of law, or if they found that their invalidity consisted in a failure to comply with the requirements of a valid statute.

If in this instance the proper officers had been authorized to enter into the contract on the part of the town, after submitting the question to a vote of the taxpayers as required by law and receiving favorable action thereon, there would be no question whatever as to the liability of the town, irrespective of any mere oversight or irregularity in conducting the proceedings.

Paragraph 64 of Section 5039 of the Political Code of Montana (1921) provides that a city or town council shall have power to contract an indebtedness on behalf of the city or town for the construction of a waterworks system supplying the city or town after the proposition has been submitted to the vote of the taxpayers affected thereby and [84] the majority vote cast in favor of the improvement. The other method is by the creation of a special improvement district under chapter 56

of Part IV of the same code. This was the plan adopted by the town for the balance of the necessary funds, and it failed, but its failure was not discovered until after the receipt of the money and the construction of the system. Section 6 of Article XIII of the Constitution of the State of Montana provides a debt limit for cities and towns. Rye-gate had exceeded its constitutional limit of indebtedness. From the authorities and statutes cited by plaintiff it seems that a complete water supply system for an entire city or town cannot be constructed under the special improvement district plan embracing only a part of the city or town and charging up the total cost to the property included therein, and benefited thereby, for such an arrangement manifestly would be an injustice to the residents of the district, but where the cost of a certain part of the works has been accurately figured in correct proportion to the cost of the whole system and constructed and paid for under the special improvement plan an entirely different question is presented and one which does not seem to conflict with the general payment plan for a water system by the other method. But here a complete system was not attempted to be constructed at the expense of the taxpayers of this particular improvement district. The town itself became directly liable for part of the indebtedness; it assumed apparently as much of the debt as could be done without exceeding the constitutional limit and without being obliged to go to the expense of submitting the question to a vote of the taxpayers. Surely the "water-

works, water mains and extension of water mains” along the lots, blocks and parcels of land in the special improvement district as provided in said chapter 56 may be a benefit to the property and persons served—a special benefit to the property and a general benefit to the town at large. Plaintiff attempts to make a distinction between “water-works” and “water systems” but there appears to be no authority for it in the law and decisions of Montana. On the question of a recovery for money had and received many cases have been cited, but one, that of *Rogers vs. City of Omaha*, 107 N. W. 214, 215, seems to have been relied upon as a sustaining authority by both [85] sides; there the court held: “There is a clear distinction between contracts outside of the powers conferred upon municipal corporations and contracts within the general scope of the powers conferred, but which have been irregularly exercised. Contracts falling entirely outside of the powers delegated to the corporation are absolutely null and void and no right of action against the corporation can be founded upon them.” Reference is then made to the rule as stated by Dillon on municipal corporations: “A municipal corporation as against persons who have dealt with it in good faith and parted with value for its benefit can not set up mere irregularities in the exercise of power conferred, as for example, its failure to make publication in all the required newspapers of a resolution involving the expenditure of moneys.” But in the instant case we are not dealing with a mere irregularity but with an express

constitutional requirement in the following language: "No city, town, township or school district shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding three per centum of the value of the taxable property therein * * * and all bonds or obligations in excess of such amount given by or on behalf of such city, town, township or school district shall be void, unless the legislative assembly extend the debt limit mentioned by authorizing municipalities to submit the question to a vote of the taxpayers affected thereby for the purpose of constructing a sewerage system or to procure a supply of water * * *." (Sec. 6, Article XIII of Constitution of Montana.) Counsel for plaintiff is undoubtedly correct in asserting that when acting in its proprietary capacity a city or town will be more readily held liable than in its governmental, but that is far from admitting that it would be liable here for that reason unless it appeared that an irregularity in procedure was involved instead of the violation of a constitutional provision. Had the bonds of the improvement district been held valid, no good reason appears why payment of both issues could not have been made under the present laws of Montana relating to general taxes and assessments in special improvement districts.

The Supreme Court of Washington, in *Comfort vs. Tacoma*, 142 [86] Wash. 251, said, in speaking of a similar issue of bonds by a special improvement district, "Countless numbers of these bonds

were purchased by persons unskilled in such matters who failed to grasp the fact that the obligations which the bonds represented were not legally those of the city, but were restricted to the particular fund created by the assessment * * * the creation of a special fund to which the bond holders are restricted in itself negatives the idea of a general indebtedness upon the part of the city.”

The leading case relied upon in *Bell vs. Kirkland*, 113 N. W. 271, that of *Moore vs. Mayor*, 73 N. Y. 238, seems to be easily distinguishable from the facts here; there the action was to recover a balance due upon a contract made by the corporation of the City of New York, by the Croton Aqueduct Board and Robert Jardine, plaintiff's assignor for the paving of 8th Avenue, from 42nd to 58th Sts. “The contract was entered into, under the terms of, and pursuant to a resolution adopted by the boards of councilmen and aldermen of the city and approved by the Mayor of the city. * * * This resolution provided for the improvement at the expense of the city, to be reimbursed by an assessment upon the property benefited.”

One dealing with the agents of a municipality is bound to know the limits of its power. When the Town of Ryegate issued \$15,000 in general bonds as a direct obligation of the town those dealing therewith well knew, or should have known, that the city could contract no greater indebtedness at that time for the purpose in view, and because of that fact resorted to the special improvement plan to raise the funds required to pay for that part of

the works to be constructed in that particular district.

The funds here were used for a corporate purpose—a special purpose as to the improvement district and a general corporate purpose as to the town at large. Would that of itself create a legal obligation on the part of the town to pay the debt in event of failure of the district plan? With no such constitutional inhibition, it was within the general powers of the town to construct a water supply, but in the instant case no such general power existed on the part of the town until conferred upon it by the taxpayers of the town. To begin with, it had [87] no power at all, and in order to acquire it, an election must be held to determine whether such power should or should not be granted.

The Court held in *Stanley vs. City of Great Falls*: “Proposing purchasers of bonds and warrants look only to the present condition of the law, and therefrom determine whether or not such bonds and warrants furnish a reasonably safe investment.” The responsibility is upon the purchaser of such bonds to know the law and to see that it has been complied with before investing their funds; and well may they purchase with care when they read the language of the Supreme Court of Montana in respect to them: “No other city bonds and warrants stand in the precarious situation of these special improvement district bonds and warrants, as this is the only class of bonds and warrants which does not have the credit of the city back of them.” (*Stanley vs. Jeffries, County Treasurer*, 86 Mont. 128.) And

again from the same source: "Section 5226, Id., provides that 'Whenever the public interest or convenience may require, the city council is hereby authorized and empowered to create special improvement districts. * * * ' Then follows a long list of purely public improvements which may be erected by the creation of such a district. Under the special improvement district law, the cost of the work may be assessed to bordering property because of supposed special benefit, and 'whenever the contemplated work or improvement, in the opinion of the city council, is of more than local or ordinary public benefit * * * ' and under certain other conditions, the council may spread the assessment over an extended district (Sec. 5228 Id.) * * * When therefore the legislature provided that, as to special improvement districts created in the future, a fund shall be created to insure the prompt payment of bonds and warrants issued in payment of such improvements, it but modified the special improvement district law to impose upon the general public, within the municipality, a conditional obligation to pay a small portion of the cost of erecting the public improvement, whereas it might have lawfully, imposed a much greater [88] burden upon the municipality. It is readily discernible that, under the law as it existed at the time this act was passed, the value of district bonds and warrants was problematical, and their salability greatly impaired, and the public credit and public good necessitated some action to remedy the defect in existing law. * * * we are concerned only

with the legality, and not at all with the policy or reasonableness of a legislative enactment, and, in the absence of a constitutional limitation the legislature has plenary power to levy taxes for public purposes. The question as to whether or not this enactment will trench upon the constitutional limitation of indebtedness of the city is not here presented. Finding no constitutional prohibition against such an act as this in its application to improvement districts created after the passage of the Act, the judgment in *Stanley vs. Jeffries* is affirmed.”

In *Stanley vs. Great Falls, supra*, the Court said: “Herein the Legislature did not attempt to impose a liability upon the people with respect to past transactions, but merely gave them the option to impose such a burden upon themselves if they saw fit, which, in so far as this inhibition of the constitution is concerned, they may do. In *re Pomeroy*, 51 Mont. 119, 151 P. 333 * * * . However, what is the purpose of the act in so far as it deals with special improvement district bonds and warrants issued prior to the date thereof? Such bonds and warrants were, it is true, issued for the purpose of constructing a public work, and consequently issued for a public purpose, but the transaction has been completed and the bonds and warrants accepted in full settlement thereof; they have passed into the hands of individuals or corporations. With respect to these there is no duty or obligation resting upon the city other than to enforce and obey the provisions of the special improvement district laws; if this is done, and still

a loss is suffered by reason of deficiencies in that law, the loss falls upon the holders of the bonds and warrants, and not upon the city." From this case it appears that there is no obligation resting upon the city other than to enforce the provisions of the special improvement district laws. The Court held in *Gagon vs. [89] Butte*, 75 Mont. 279, 'There is no liability in the city to the contractor other than to make and collect the assessment and pay it over, unless the city fails in some duty it owes to the contractor connected with the levy and collection of the assessment. Upon receipt of the assessment the city becomes liable to the contractor as for money received to his use' (2 Dillon on Municipal Corporations, 5th ed., Sec. 82)

* * * Primarily, the city of Butte incurred no personal liability to the contractor who did the work. It was merely constituted an instrumentality of the law in initiating and carrying out the improvements and in collecting the money due upon assessments made by it against the property benefitted in order to pay the obligations incurred in execution of the work * * * . The plaintiff was chargeable with knowledge of the nature and terms of the city's obligation with respect to the bonds, and to permit him to hold the general taxpayers responsible because of the neglect of duty on the part of the city Treasurer would be manifestly unjust." And much to the same effect will be found the principles laid down in the following cases:

Moore vs. City of Napa, 18 F. (2d) 861,
C. C. A. 9;

New First National Bank vs. City of Weiser, 166 Pac. 213;

Capital Heights vs. Steiner, 101 So. 451;

Windfall City vs. First National Bank, 87 N. E. 984;

Castle vs. City of Louisa, 219 S. W. 439;

Morrison vs. Morey, 48 S. W. 629.

The case of Hitchcock vs. Galveston (24 L. Ed. 659, 96 U. S. 341), fairly illustrates the line of argument of plaintiff in its effort to shift the indebtedness of a special improvement district to the taxpayers of the city. In the main the law presented by plaintiff could be accepted if the facts here were substantially identical with the facts cited in those cases. In the first place, the Town of Ryegate did not enter into a contract to pay this debt. The town officers had no right to bind the town in this instance by any act or failure to act on their part. All the town agreed to do was to deliver the bonds and agree to make the necessary assessments against the property, and the contractor accepted the bonds in full payment. Nowhere has the court been able to find authority for holding that the debt of a special improvement district is an obligation of the city or town; seemingly under Montana statutes and decisions there can be found no authority [90] *authority* for doing so. Under the contract in the Hitchcock case the city was primarily liable for the cost of the improvement; "The resort to the land owner is to be after the work has been done, after the expense has been incurred, and it is to be for the reimbursement of the city."

That the special improvement district in Ryegate "for practical purposes included the town," was a general statement made by counsel for plaintiff in their brief. According to the stipulated facts herein, the improvement district embraced within its boundaries thirty business houses, several public buildings and sixty-one residences, and thirty-five residences, four warehouses and a substation of the Montana Power Company in the town but outside of the improvement district. Of that number, not within the district, thirteen residences and two warehouses receive no benefit from the improvement district except fire protection, and twenty-two residences and two warehouses "can not use the water sytem and improvements or equipment for fire protection, or for any other purposes as the same is now installed." It appears that the persons owning property within the district were the ones chiefly benefited by the water system and that perhaps the claim here made should have been advanced in the suits brought in the state court to enjoin the town and its officers from levying the special improvement assessments, wherein the Lumbermens Trust Company was represented by its counsel. From the evidence there were many taxpayers outside of the district who were not benefited by the water system and who were given no opportunity to be heard on the question of creating the indebtedness.

The agreed facts show that plaintiff purchased these bonds from the Security Bridge Company

“with the knowledge that they were special improvement district bonds and with full knowledge of the laws of Montana governing the issuance of such bonds, the power of the defendant with reference thereto and the methods provided and authorized for the payment thereof.”

Whatever the decision here loss is bound to be sustained, if for the plaintiff—many taxpayers who derive no benefit from the [91] waterworks system and others who never had a chance to object, if for the defendant—the bondholders lose. It was held by the Supreme Court of Washington in *German-American Savings Bank vs. Spokane*, 49 Pac. 542, 549, 550, that “after all that can be said and done, however, as a matter of right and law, where one of two parties must suffer, the loss should fall upon the one who has the best opportunity to protect himself and and is the most at fault. * * * While perhaps such general taxpayer might have compelled the city officers to act after the work was done, and the danger of loss to him imminent, the contractor or warrant holder had this same right, and the courts have all the time been open to him. By force of the contract such officers should be held to be more directly his agents or representatives than the agents of the general taxpayers for the purposes of the assessment, if they were such taxpayers’ agents at all in the premises. By the contract the contractor has in effect adopted the machinery provided for raising his money through the acts of such officers.”

It is, of course, manifest that the town had exceeded its constitutional limit of indebtedness but I cannot agree with counsel that under the circumstances here there would be a general liability on the part of the town and that the calling of an election to authorize additional indebtedness should be treated as a mere formality and that the failure to call it would amount to no more than an irregularity. On the contrary there was no power at all on the part of the town to incur such excessive indebtedness without the previous authorization of the qualified voters.

After consideration of both sides of the issues the court feels obliged to hold that the Town of Ryegate did not become indebted to plaintiff on account of the special improvement district bonds delivered to it. In accordance with these views judgment will be entered for the defendant with costs.

Bell vs. Kirkland, 113 N. W. 271;

Stanley vs. Jeffries and Stanley vs. City of Great Falls, 86 Mont. 114.

City of Lichfield vs. Ballou, 114 U. S. 190.

City of Santa Cruz vs. Wykes, 202 Fed. 361 C. C. A. 9;

Deer Creek Highway District vs. Doumecq Highway District, (Idaho) 218 Pac. 371;
[92]

Mittry vs. Bonneville County, 222 Pac. 292;

Eaton vs. Shia Wasse County, 218 Fed. 588;

Atkinson vs. City of Great Falls, 16 Mont. 372;

44 C. J. 1131;

Sections 5278, 5280, 5039 #64, 5227, 5229,
5230 and 5279 of the Political Code of
Mont. (1921);

44 C. J. 1194;

State vs. Jeffries, 83 Mont. 76.

CHARLES N. PRAY,
Judge.

Dated May 14th, 1931.

Filed May 14, 1931. [93]

THEREAFTER, on May 16th, 1931, decree was
duly filed and entered herein, said decree being in
the words and figures as follows, to wit: [94]

In the District Court of the United States, in and
for the District of Montana, Billings Division.

LUMBERMENS TRUST COMPANY, a Cor-
poration,

Plaintiff,

vs.

THE TOWN OF RYEGATE, MONTANA, a
Municipal Corporation,

Defendant.

DECREE.

This cause came on to be heard January 20,
1930, and was submitted upon briefs thereafter
filed by counsel; and thereupon, upon considera-
tion thereof, it was ORDERED, ADJUDGED
AND DECREED that the complaint of plaintiff

herein be dismissed, that plaintiff take nothing by this action and that the defendant do have and recover of and from plaintiff its costs and disbursements herein, taxed at the sum of \$193.50.

Done in open court, May 16th, 1931.

CHARLES N. PRAY,
Judge.

Filed May 16, 1931. [95]

THEREAFTER, on June 19th, 1931, plaintiff's bill of exceptions was duly signed, settled, allowed and filed herein, as follows, to wit: [96]

[Title of Court and Cause:]

PLAINTIFF'S BILL OF EXCEPTIONS.

BE IT REMEMBERED, That this cause came on regularly for trial at Billings, Montana, on the 20th day of January, 1930, before the above-entitled court, sitting without a jury, a jury having been theretofore duly waived by a stipulation in writing and filed in said cause, the same being hereinafter referred to and set out.

There appeared as counsel for the plaintiff, John G. Brown, Esq., of the firm of Stewart and Brown and as counsel for the defendant, W. M. Johnston, Esq., and H. J. Coleman, Esq., of the firm of Johnston, Coleman & Jameson.

After both parties had announced to the court their readiness for trial the following testimony was given and proceedings had.

Mr. Brown offered in evidence on behalf of both parties an agreed statement of facts, the same being in words and figures as follows:

(Title of Court and Cause.)

STIPULATION AS TO TRIAL AND FACTS.

It is hereby stipulated by and between the parties above named as follows: [97]

I.

That a trial by jury in the above-entitled cause is hereby waived by the parties.

II.

That the following matters may be considered by the Court as facts admitted in evidence for all purposes in this action.

a. That the allegations of Paragraphs I, II, IV and XV of the complaint are true.

b. In 1919 the Town of Ryegate, the County seat of Golden Valley County, was desirous of installing the water system, but because of the small assessed value of all property within its corporate limits it could not legally and constitutionally issue sufficient general bonds to cover the entire cost of such installation. It did issue general bonds of the Town of Ryegate in the sum of \$15,000.00 and on December 30th, 1919, passed a resolution of intention to create and establish improvement district known as Special Improvement District No. 4, and Exhibit "A" attached to the complaint herein, is, except as to an immaterial matter, a true and correct copy of the resolution so

passed and said district was created for the purpose of raising additional funds over and above the \$15,000.00 general bonds necessary to pay for said water system and improvements specified in such resolution.

c. On Feb. 17th, 1920, said Town passed and the Mayor thereof approved Resolution No. 14, a true copy of which is attached to the answer herein, marked Exhibit "A" thereto.

d. The map initialed and marked Exhibit 1 filed with this agreed statement correctly portrays the boundaries of the town and its additions, the boundaries of said improvement district and location of water-mains and street or city hydrants of said water system. The unplatted area shown within the boundaries of the town and its additions on said map is liable for the payment of all taxes levied for town purposes, the same as though it were platted; said map also portrays the location of certain public buildings in said town. The only buildings belonging [98] to the Town of Ryegate as a municipal corporation are the pumping station of said water system and a small frame building used to store fire equipment, said building and equipment having a value not to exceed \$1,000.00.

e. The true object and purposes of the passage and approval of said resolution and the issuance of said general and special improvement district bonds was the establishment and installation in and for the Town of Ryegate, and for a portion of its inhabitants of a complete waterworks and a complete waterworks system consisting of reser-

voir, pumping plant, mains, and all other connections and appliances necessary to have a complete system for the supplying of water for municipal purposes to said town, and water to a portion of the inhabitants thereof and for the purpose set out in said resolutions.

f. That when the said Town of Ryegate called for bids for the construction of said waterworks system and the improvements specified in said resolution, the Security Bridge Company was the successful bidder therefor and a written contract was thereupon entered into between said town and said Security Bridge Company for the construction of said waterworks system and the improvements specified in said resolution, a true and correct copy of which contract is hereto annexed and marked Exhibit 2.

g. For the purpose of paying for said waterworks system and the improvements specified in said resolution, said town issued its general bonds in the sum of fifteen thousand dollars and bonds of said Special Improvement District No. 4 in the sum of forty-five thousand six hundred two dollars and forty-two cents; that Exhibit "B" attached to the complaint herein is a true and correct copy of one of said special improvement district bonds which, save and except as to amounts and dates of maturity, is a true and correct copy of all of said bonds.

h. On April 14, 1920, W. P. Roscoe, as an officer of the Security Bridge Company, purchased said general bonds of said town at par and accrued

interest and said Security Bridge Company agreed to accept and did accept said general bonds and said special improvement district bonds [99] in the sum of forty-five thousand six hundred two dollars and forty-two cents in payment of the costs of installation of said waterworks system and the improvements specified in said resolution and that said improvement district bonds were issued and delivered to said Security Bridge Company, or upon its order, from time to time as the work progressed and upon the estimates of the engineer of said town as said work was completed and accepted.

i. That said Security Bridge Company was a construction corporation without funds for investment purposes and it was necessary for said company to at once arrange for the sale of said bonds in order to obtain the money necessary to purchase supplies and materials and to pay the labor necessary for the construction of said waterworks and the improvements specified in said resolution.

j. The Security Bridge Company sold said general and improvement district bonds to plaintiff herein at 85% of the par value thereof, the plaintiff paying said Security Bridge Company the sum of thirty-eight thousand seven hundred sixty-two dollars and six cents for said improvement district bonds.

k. That while said contract disclosed that said bonds were taken at par as the consideration in the construction contract, they were in accordance with a *rior* agreement between plaintiff and the Security Bridge Company sold by the Security

Bridge Company to the plaintiff herein at a price of 85% of the par value thereof.

1. From time to time, after said improvement district bonds were issued for completed and accepted work, plaintiff purchased and accepted said bonds at 85% of their par value with accrued interest from said Security Bridge Company and did thus by the purchase of said district and said general bonds furnish to Security Bridge Company all the money used by it to build and complete said waterworks system and the improvements specified in said resolutions, that plaintiff became the purchaser of said bonds for value before maturity and is now the owner and holder thereof and that said general and improvement district bonds were issued and delivered by said town to said Security Bridge Company, [100] or delivered to the plaintiff, at the request of said Security Bridge Company, upon the dates, of the number and in the amounts set out in paragraph twelve of the complaint herein.

m. Said water system and improvements specified in said resolution were so constructed and accepted and the said town has been and yet is receiving the income from said system and improvements, and said town and such of the inhabitants thereof as live within the limits of said district now have and are using said water system and improvements.

In further amplification of this paragraph "m" the facts are that there are:

(1) Thirty business houses within said improvement district and none without.

(2) Public buildings consisting of public school, courthouse, four churches, postoffice in one of said business houses, Milwaukee Railway Station, school gymnasium and a shack used as fire hall, all within said special improvement district, there being no similar buildings in said town outside of said improvement district.

(3) Sixty-one residences within said improvement district.

(4) Thirteen residences, two warehouses, a small substation of the Montana Power Company outside of the limits of said improvement district but within the fire protection of said water system by reason of the fire apparatus owned by said town but used for fire protection only as to such residences and structures.

(5) There are twenty-two residences and two county warehouses in the Town of Ryegate situated outside of the limits of said special improvement district which cannot use said water system and improvements or equipment for fire protection, or for any other purposes as the same was installed.

(6) Said town has operated said water system and said improvements since their installation and has received therefrom total gross income as follows, each year of its operation thereof:

1921	\$211.33	
1922	978.53	[101]
1923	721.16	
1924	980.95	
1925	811.70	
1926	1092.68	
1927	749.18	

Total gross receipts \$5,545.53.

(7) The charges against said water department, water system and improvements during the same years are as follows:

Cash paid on warrants issued with interest thereon	\$5,539.28
Warrants outstanding	1,504.03

The interest accruing on said general bond issue of \$15,000.00 is paid out of a levy of 7½ mills each year upon all of the property within the Town of Ryegate and its additions, which levy has not been quite sufficient to pay such accruing interest. None of such general bonds have been paid.

The interest which matured on said improvement district bonds up to January 1, 1922, was paid by the Town of Ryegate out of assessments levied upon the lots in said district in accordance with said resolutions, but no part of said interest was paid out of any general or special fund of said town. Six per cent is a reasonable rate of interest in the State of Montana.

n. On October 16, 1930, the town clerk of the Town of Ryegate at the request of Security Bridge Company forwarded bonds numbered fifty-four to seventy-eight inclusive for five hundred dollars

each a total par value of twelve thousand five hundred dollars of said Special Improvement District No. 4 to plaintiff and on November 26, 1920, at the request of Security Bridge Company said town clerk forwarded to plaintiff bonds of said Special Improvement District No. 4, numbered from seventy-nine to ninety-one inclusive of the par value of six thousand six hundred two dollars and forty-two cents and that plaintiff remitted to Security Bridge Company 85% of the par value of said bonds with accrued interest.

o. All of the allegations of Subdivision II of defendant's answer, being defendant's first affirmative defense, are admitted to be true excepting the clause "nor were the same payable out of the current [102] revenues of said Town of Ryegate" and excepting the clause "that said bonds were never payable out of the current revenues of said town," and excepting all of that portion of said Subdivision II which reads as follows: "and that if the said bonds of special improvement district number 4 of the Town of Ryegate, amounting to the sum of \$45,602.42 were held to be general obligations of the town of Ryegate the same and each of said bonds would be and are unconstitutional, invalid and void for that the amount of said bonds and each of them, added to the then general indebtedness of said town would be and are greatly in excess of the constitutional and statutory limit of indebtedness which said town might then or may now incur." None of the exceptions above noted are admitted.

p. All of the allegations of paragraph one of Subdivision IV of defendant's answer being defendant's third separate defense are admitted.

q. All of the allegations of Paragraph 2 of said Subdivision IV are admitted except the following allegations "and that in purchasing the general bonds of the Town of Ryegate, as herein alleged, and in agreeing to accept said special improvement district bonds at par value in payment of work under its said contract with the Town of Ryegate, said Security Bridge Company relied wholly upon the advice of its counsel."

r. It is further admitted that plaintiff purchased said special improvement district bonds from Security Bridge Company with the knowledge that they were special improvement district bonds and with full knowledge of the laws of Montana governing the issuance of such bonds, the powers of the defendant with reference thereto and the methods provided and authorized for the payment thereof.

s. It is admitted that in the month of January, 1922, Mike Belec and other property owners began various suits (see reference thereto in Subdivision V of defendants answer), and that made a part of this statement of agreed to facts by being attached hereto, marked Exhibits 3, 4, 5 and 6 are, except for formal parts, true copies of the [103] complaint, answer, reply and decree respectively in said suit.

That similar suits were filed by a number of other persons similarly entitled to sue with a similar

pleading and decree. That this plaintiff had its own counsel associated in the defense and trial of those actions. That no appeal was ever taken from said judgment and decrees.

t. In none of the minutes of the town council of the Town of Ryegate does the name of plaintiff, as purchaser of said general bonds of the Town of Ryegate or of said special improvement district bonds appear. Neither does plaintiff's name appear in any of said minutes, records or files in any connection whatever, except in copies of letters of the town clerk remitting some of said bonds to plaintiff at the request of Security Bridge Company, as hereinbefore set forth.

Upon the trial of this cause, both plaintiff and defendant may offer evidence by depositions or otherwise upon all issues raised by the pleadings herein not covered by or included in this agreed statement of facts, and the cause may be submitted to the court upon the admissions in the pleadings, this statement of facts and the evidence introduced upon the trial of the cause, but no evidence shall be introduced by either party to this action upon any disputed question of fact which is covered by the foregoing statement of facts.

Signed and dated July 13, 1928.

(Signed) JOHNSTON, COLEMAN &
JOHNSTON,

Attorneys for Defendant.

STEWART & BROWN,

Attorneys for Plaintiff.

EXHIBIT No. 2.

CONTRACT.

THIS AGREEMENT, made and entered into the 26th day of April in the year ONE THOUSAND NINE HUNDRED TWENTY, by and between the TOWN OF RYEGATE, MONTANA, of the first part, and THE SECURITY BRIDGE COMPANY, a corporation of Billings, Montana, of the second part.

WITNESSETH, that the said party of the second part has agreed, [104] and by these presents does agree with the said party of the first part, for the considerations herein mentioned and contained, and under the penalty expressed in a bond bearing even date with these presents and hereto attached, to furnish at his own proper cost and expense, all the necessary material and labor, except as herein specifically provided, and to excavate for and build in a good, firm, substantial and workmanlike manner, before the first day of October, A. D. 1920, the water mains, pumping plant, and reservoir indicated on the plans now on file in the office of the Town Clerk, and the connections and appurtenances of every kind complete, of the dimensions, in the manner and under the conditions herein specified, and has further agreed that the Engineer shall be and is hereby authorized to inspect or cause to be inspected the materials to be furnished and the work to be done under this agreement and to see that the same conform to plans and specifications.

The party of the second part hereby further agrees that he will furnish the Town with satisfactory evidence that all persons who have done work or furnished material under this agreement, and are entitled to a lien therefor under any law of the State of Montana, have been fully paid or are no longer entitled to such lien, and in case such evidence be not furnished as aforesaid such amount as the party of the first part may consider necessary to meet the lawful claims of the persons as aforesaid shall be retained from the money due the party of the second part under this agreement until the liabilities aforesaid may be fully discharged and the evidence thereof furnished.

The said party of the second part further agrees that within ten days of notification of award of contract he will execute a bond in the sum of Twenty-five Thousand Dollars (\$25000.00) satisfactory to the Town Council, for the faithful performance of this contract, conditioned to indemnify and save harmless the said Town of Ryegate, Montana, its officers and agents, from all suits or actions of every name or description brought against [105] any of them for or on account of any injuries or damages received or sustained by any party or parties, by or from the said party of the second part, its servants or agents, in the construction of said work, or by or in consequence of any negligence in guarding the same, or any improper materials used in the construction, or by or on account of any commission of the said party of the second part or its agents in the performance of this agreement, and for the faithful

performance of this contract in all respects by the party of the second part, and the said party of the second part hereby further agrees that so much of the moneys due, under and by virtue of this contract, as shall be considered necessary by the said town of Ryegate, may be retained by the said party of the first part until all such suits or claims for damages as aforesaid shall have been settled, and the evidence to that effect furnished to the satisfaction of the town.

The said party of the first part hereby agrees to pay and the said second party agrees to receive the following prices as full compensation for furnishing all materials, labor, tools and equipment used in building and constructing and completing said water system, in the manner and under the conditions heretofore specified, and full compensation for all loss or damage arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen obstructions or difficulties which may be encountered in the prosecution of the same, and for all expenses incurred by or in consequence of the same, and for all expenses incurred by or in consequence of the suspension or discontinuance of the said work, and for well and faithfully completing the same and the whole thereof, according to plans and specifications and the requirements of the engineer under them, to-wit:

For furnishing all material, tools and labor and in every way completing in a first class workman-like manner the proposed water system in the Town of Ryegate, Montana, according to plans [106] and specifications therefor on file in the office of the

Town Clerk, and any special instructions that may be given from time to time during the construction of the work.

Per linear foot four inch cast iron water pipe complete including the necessary excavation, backfill and all valves and specials according to plans and specifications.

Price in words.	Price in figures.
Two Dollars and Fifty-five Cents.	\$2.55

Per linear foot for six inch cast iron water pipe complete including the necessary excavation, backfill and all valves and specials according to plans and specifications.

Price in words.	Price in figures.
Three Dollars and Sixty Cents.	\$3.60

Per linear foot for eight inch cast iron water pipe complete including the necessary excavation, backfill and all valves and specials according to plans and specifications.

Price in words.	Price in figures.
Five Dollars and Five Cents.	\$5.04

For hydrants complete in place including auxiliary valve and all necessary excavation and backfill according to plans and specifications.

Price in words.	Price in figures.
One Hundred Seventy Four Dollars Forty Cents.	\$174.70

Per cubic yard excavation at reservoir site including disposition of surplus material according to plans and specifications.

Price in words.	Price in figures.
Three Dollars Seventeen Cents.	\$3.17

Per cubic yard for concrete in reservoir including forms, and reinforcing according to plans and specification.

Price in words.	Price in figures.
Thirty Seven Dollars Fifty Cents.	\$37.50

For equipment for reservoir including roof, ladder, overflow, and floor drain according to plans and specifications [107]

Price in words.	Price in figures.
Fourteen Hundred Twenty-five Dollars.	\$1425.00

Per cubic yard for excavation for well including the disposal of surplus material according to plans and specifications.

Price in words.	Price in figures.
Two Dollars and Seventy-five Cents.	\$2.75

Per cubic yard for concrete in place in well and pump house foundation, pump pit and floor according to plans and specifications.

Price in words.	Price in figures.
Forty Dollars.	\$40.00

For shallow well pumping equipment complete, including pump, motor valves, switchboard and all electrical equipment, according to plans and specifications.

Price in words.	Price in figures.
Twenty-five Hundred Twenty-five Dollars.	\$2525.00

For pump house complete according to plans and specifications.

Price in words.	Price in figures.
Sixteen Hundred Twenty-five Dollars.	\$1625.00

Per cubic yard for excavating rock encountered in trench, pump pit and well in addition to above prices.

Price in words.	Price in figures.
Three Dollars	\$3.00

And the said party of the second part further agrees that it will not assign, transfer or sub-let the aforesaid work or any portion thereof, (with the exception of contracts for materials and tools) without the written consent of the Town Council, and that any assignment, transferring or sub-letting without such written consent shall in every case be absolutely void.

It is further agreed by the party of the second part that the payments by the party of the first part shall be as provided for in the specifications.

The provisions herein contained shall bind the parties hereto [108] and their heirs, administrators, successors and assigns.

IN WITNESS WHEREOF The Town of Ryegate, party of the first part, has caused these presents to be sealed with its corporate seal and to be signed by its Mayor and Town Clerk, and said party

of the second part has hereunto set its hand on the 15th day of May, A D. 1920.

TOWN OF RYEGATE,

By W. H. NORTHEY, Mayor.

Attest: J. A. BROWN, Town Clerk.

PARTY OF THE SECOND PART.

[Seal]

By H. C. HARKNESS,

Secty.

State of Oregon,

County of Multnomah,—ss.

I hereby certify that the above is a full, true and correct copy of the original contract.

IN TESTIMONY WHEREOF I have hereunto set my hand and notarial seal this 18th day of February, 1927.

ANNE McNAB,

Notary Public for Oregon.

My commission expires Feb. 25, 1929.

EXHIBIT No. 3.

In the District Court of the Fifteenth Judicial District of the State of Montana, in and for the County of Golden Valley.

MIKE BELECZ, IDA GRAMS, BERT BELDING, L. F. LUBELY, GEORGE A. COPE, H. C. STILGER, ISABEL CURRIE, R. C. CURRIE, JOSEPH H. KOLMAN, MARTHA J. BROYLES, SARAH G. SNYDER, PHYLLINDA C. REDISKE, W. J. EDSON, HENRY G. JACOBSON, STATE BANK OF RYEGATE, J. B. GREGG, GOL-

DEN VALLEY COUNTY ABSTRACT COMPANY, L. P. ALBRECHT, G. M. BABCOCK, EVANGELICAL LUTHERAN CHURCH OF RYEGATE, M. W. WAUGH, L. W. MARQUARDT, WILLIAM E. STOKES, HENRY THIEN, THE ROMAN CATHOLIC BISHOP OF GREAT FALLS, Sometimes Known as MATHIAS C. LENIHAN, Bishop of Great Falls, a Corporation Sole, FRED WYMAN, THE HILBERT-THIEN COMPANY, FRANCES THIEN, RYEGATE CREAMERY COMPANY, CHARLOTTE GRAMS, A. D. LINDERMAN, Estate of P. A. HILBERT, Deceased,
Plaintiffs,

vs.

THE TOWN OF RYEGATE, MONTANA, and W. O. WOOD, as County Treasurer of Golden Valley County, Montana,
Defendants.

COMPLAINT. [109]

Plaintiffs complain and allege:

1. That the defendant, the Town of Ryegate, is and at all of the times hereinafter mentioned was, a municipal corporation and body politic, duly organized and existing under and by virtue of the laws of the State of Montana, and situated in Golden Valley County, Montana.

2. That the defendant, W. O. Wood, is now and during the year 1921, was the duly elected, qualified and acting treasurer of said County, and the proper

person to whom payment should be made of taxes and assessments levied on behalf of the said Town of Ryegate.

3. That the plaintiffs, State Bank of Ryegate, Golden Valley County Abstract Company, The Roman Catholic Bishop of Great Falls, sometimes known as Mathias C. Lenihan, Bishop of Great Falls, a corporation sole, the Hilbert-Thien Company, Evangelical Lutheran Church of Ryegate and Ryegate Creamery Company are now and at all of the times hereinafter mentioned have been corporations organized, existing and doing business under and by virtue of the laws of Montana.

4. That the plaintiffs are not and at all of the times hereinafter mentioned have been the owners of the various tracts of land hereinafter set forth, as belonging to them, and that all of said tracts of land are embraced in the description of Special Improvement District No. 4 in the said Town of Ryegate, hereinafter described.

5. That on or about December 30, 1919, the Town Council of the Town of Ryegate, passed a resolution of intention to create a special improvement district known as Special Improvement District No. 4, which said resolution is designated as Resolution No. 10 of said town, a copy of which is hereunto attached, marked "Exhibit A" and hereby made a part of this complaint.

6. That on January 1, 1920, the notice set out in and required to be published by said resolution of intention, was published in the said Town of Ryegate.

7. That thereafter, and on or about February 11, 1920, a resolution known as Resolution No. 14 of said Town, was passed by the Town Council thereof, creating said Special Improvement District No. 4, and [110] that in said Resolution No. 14, the general character of the improvement to be made is described in exactly the same words as in "Exhibit A" hereto attached.

8. That the object and purpose of each and all of the foregoing proceedings was the establishment and installation in the said Town of Ryegate of complete water works and a complete water works system, consisting of reservoir, pumping plant, mains and all other connections and appliances necessary for a complete system for the furnishing of water to the inhabitants of said town; that thereafter a contract was made for the construction and installation of such system and the same was constructed and installed.

9. That thereafter, for the purpose of paying for said improvements, a resolution was passed by the Town Council of said Town, known as Ordinance No. 28, providing the method and manner of assessment and payment of the cost and expense of making and installing the improvements in said Special Improvement District No. 4, by which resolution it was provided that each lot or parcel of land within said District was to be assessed for that part of the whole cost of said improvements which its area bore to the area of the entire district, exclusive of streets, alleys and public places, and which resolution further provided for the issuance of the bonds of said

District to be retired out of the fund derived from said assessments when paid; that by Ordinance No. 29 passed by the Town Council of said Town, the issuance of such bonds was authorized, and the amount thereof and form of Bond, together with other details in connection therewith, were fixed and determined.

10. Thereafter, the Town Council of said Town, by its Resolution No. 20, provisionally passed on August 22, 1921, and finally passed and adopted by the Town Council of said Town in the month of September, 1921, purported to levy and assess a tax and special assessment against all the real property in said Special Improvement District No. 4, including the property of these plaintiffs, to defray the cost [111] of said improvements, in which Resolution it was recited that the total cost thereof was \$45,602.42. Plaintiffs are informed and believe and therefore state the fact to be that the notice of resolution levying such assessment, to the effect that the same was on file in the office of the Town Clerk and stating the time and place at which objections to the final adoption of said resolution would be heard, was not published as required by law; that the property owned by each of the plaintiffs herein and the total amount so attempted to be assessed against the same, exclusive of interest, is as follows, to-wit:

Owner.	Description.	Amount of tax.
Mike Belec, z,	Lots 5 and 6, Block 1,	\$340.10
	Lot 1, Block 5,	136.10
Ida Grams,	Lot 3, Block 9,	170.10
Bert Belding,	Lots 10, 11 & 12, Blk. 17,	510.30
L. F. Lubeley,	Lots 1, 2 & 3, Blk. 15,	510.30
	Lots 7, 8 & 9, Blk. 16,	510.30
George A. Cope,	Lots 4 and 5, Block 22,	340.20
H. C. Stilger,	Lots 3 and 4, Block 21,	340.20
Isabel Currie,	Lots 9 and 10, Block 8,	340.20
R. C. Currie,	South 100 feet of Lots 5 & 6, Block 2,	243.00
Joseph H. Kilman,	Lots 4 and 5, Block 12,	340.20
Martha J. Broyles,	Lot 4, Block 24,	170.10
	Lots 5 and 6, Block 3,	<u>340.20</u>

Owner.	Description.	Amount of tax.
Sarah G. Snyder,	Lots 7, 8 and 9, Blk. 15,	510.30
Phylinda C. Rediske,	Lots 9 and 10, Blk. 9,	340.20
W. J. Edson,	Lot 4, Block 8,	170.10
Henry C. Jacobson,	Lots 7, 8 & 9, Blk. 18,	510.30
State Bank of Ryegate,	Lots 13 & 14, Blk. 5,	159.20
J. B. Gregg,	Lots 11 & 12, Block 9,	340.20
Golden Valley County Abstract Company,	of lots 15 to 18, Blk. 4,	48.60
L. P. Albrecht,	Lot 1 of Block 1,	170.10
Evangelical Lutheran Church of Ryegate,	Lot 12, Block 19,	170.10
[112]		
G. M. Babcock,		
M. W. Waugh,	Lot 12, Block 7,	170.10

Owner.	Description.	Amount of tax.
L. W. Marquardt,	Lot 6, Block 24,	170.10
William E. Stokes,	West 1/2 of lot 2 and lot 3, Blk. 22,	255.20
Roman Catholic Bishop of Great Falls,	Lots 10, 11 & 12, Block 10,	510.30
The Hillbert Thien Company,	Lots 10, 11 and 12, Blk. 10,	510.30
	Lot 2, Block 5,	136.10
	Lot 9 in Block 10,	170.10
Henry Thien,	Lot 6, Block 15,	170.10
Fred Wyman,	Lot 1, Block 2 of lots 15 to 18, Block 4,	170.10
	Lots 1, 2 & 3, Block 6,	121.50
	Lots 1 and 2 in Block 7,	510.30
	Lot 1 in Block 8,	340.20
	Lot 4 in Block 16,	170.10
	Lot 6 in Block 22,	170.10

Owner.	Description.	Amount of tax.
Frances Thien, Ryegate Creamery Company, Charlotte Grams,	Lots 7, 8 and 12, Block 5, South 50 ft. of lots 7 to 10, Block 6,	238.80 121.50
A. D. Linderman, Estate of P. A. Hilbert, deceased,	Lot 2, Block 24, Lot 3 in Block 3, Lots 3 and 4, Block 5, Lot 9, Block 20,	170.10 170.10 159.20 170.10

11. That the resolution of intention hereto attached and marked "Exhibit A" did not contain any sufficient description of the general character of the improvements to be made as required by law in this,—that the only description used was: "the construction of pipes, hydrants and hose connections for irrigating appliances and fire protection," which said general language gave no definite information to plaintiffs and others within the district as to the specific character, extent or nature of said improvement; that there was nothing in said description advising the plaintiff and others in the district that a waterworks system or a system of mains was contemplated [113] or would be installed and that the character of the improvement described in said notice included only pipes, hydrants and hose connections for irrigating appliances and fire protection, and did not include waterworks or a general waterworks system or system of mains, or reservoir, or pumping plant, which was in fact contemplated, and was thereafter constructed and installed; that the improvements described in the notice were entirely different and much less extensive than the improvements that were actually made; that said description recited that said improvements were to be made in accordance with plans and specifications to be prepared, which said plans and specifications were not then prepared and were not on file or available for the examination of these plaintiffs or any other property owners within said district; that the notice as published and the resolution purporting to create said district, were defective in the same particulars as in this paragraph recited, in failing

to describe the character of the improvement, and that for the reasons herein stated the said Town Council of the Town of Ryegate did not at any time acquire any jurisdiction to create said improvement district or to proceed with the installation or construction of said mains, and that all subsequent proceedings were and are void and of no effect.

12. That the whole cost of said improvements so assessed as hereinbefore alleged, far exceeds the sum of \$1.50 per lineal foot plus the cost of the pipe so laid of the entire length of the water mains laid in said district and that said total cost is in excess of the limit prescribed by law.

13. That no notice of any kind was given of the letting of the contract for said improvement, and when the same was let the contract price therefor amounted to \$52,829.35, whereas the estimated cost amounted to \$28,350; that in addition to said contract price, other payments have been made by the Town Council of said Town to the contractor and for engineering work, so that the total cost of making such improvements is the sum of \$57,619.22 and that both the [114] contract price agreed upon and the actual cost of making such improvements is wholly out of proportion to the value of said improvements to the said Town or to the property included within said district.

14. That plaintiff is informed and believes and therefore states, that at the time said contract was let, it was impossible to sell the bonds or warrants of said Special Improvement District at par; that no purchaser therefor could be found; that these

facts were then well known to the Mayor and Town Council of said Town; that the contractor took the bonds of said District in payment of its contract price and claimed extras in connection with the installation of said improvements; that in so doing, it allowed for a considerable discount on said bonds and added such discount to its bid for said work; that because thereof, the cost of said work was greatly increased over what it would have been if said bonds had been sold by said town council at the par value thereof, and that at the time said contract was entered into and the bid of said contractor accepted, the Mayor and Town Council of said Town had knowledge of all of the aforesaid facts.

15. That before the time fixed in said Resolution No. 10 for hearing objections and protests to the creation of said Special Improvement District No. 4, written protests thereto were made and filed by the owners of a majority in area of the lots and parcels of land within said District No. 4. Among the lot owners so protesting was the Chicago, Milwaukee & St. Paul Railway Company, the owner of a large amount of land within the said district; that prior to the hearing upon the creation of said Special Improvement District No. 4, said Chicago, Milwaukee & St Paul Railway Company withdrew its protest to the creation of said district, thereby leaving protests from the owners of an insufficient number of lots to defeat the creation of said district, and that plaintiff is informed and believes, and therefore states the fact to be that said Chicago, Milwaukee & St. Paul Railway Company was induced to with-

draw its said [115] protest by the payment to it of \$2500.00, which sum of money was furnished, provided and paid by certain parties who were greatly interested in having said improvements made, including the contractor who secured the contract for making such improvements.

16. That by reason of the facts stated in paragraphs 11 to 15, inclusive, in this complaint, the levy of any and all assessments against the said property of plaintiffs in said district was and is, illegal and void.

17. That one-tenth of all of the taxes and assessments so attempted to be levied against the aforesaid property of these plaintiffs was by the resolution aforesaid, to be paid on or before November 30, 1921; that if not so paid, the same was to become delinquent on December 1, 1921, and a ten per cent penalty added thereto because of such delinquency; that none of the plaintiffs herein has paid any part of said alleged tax and assessment against his or its said property for the year 1921; that the said Town of Ryegate is now advertising said property for sale for the nonpayment of the taxes and assessments which it claims should have been paid thereon in November, 1921; that if not restrained by order and decree of this court, the defendants will sell all of the aforesaid property belonging to plaintiffs for the nonpayment of the aforesaid installments thereon for the year 1921, and thus cloud the title to plaintiff's said lands; that if plaintiffs were to pay said alleged taxes each year under protest and then bring suit against the defendants to recover the taxes and assessments so paid, it would result in

a great multiplicity of suits; that plaintiffs have no plain, speedy and adequate remedy at law for the wrongs herein complained of and that great and irreparable damage and injury will be done to plaintiffs and each of them, if said defendants are not enjoined and restrained from selling any portion of the aforesaid lands, because of the nonpayment of any of said alleged taxes and assessments.

[116]

WHEREFORE, plaintiffs demand judgment;

That a decree of this court be entered adjudging and decreeing the aforesaid taxes and assessments null and void;

That the defendants herein be enjoined and restrained from selling any of the aforesaid property of these plaintiffs on account of the nonpayment of said alleged taxes and assessments thereon for the year 1921; that their agents, servants, attorneys, employes and successors be enjoined and restrained from selling any portion of said described lands for the non-payment of any installment of said alleged taxes and assessments for any year hereafter;

That in case any of said property should be sold by said defendants or either of them, for the non-payment of said installments of such alleged taxes and assessments for the year 1921, before the final determination of this suit, that the said defendants, their agents, servants, attorneys, employes and successors be enjoined and restrained from issuing any tax deed to the purchaser of said lots or any part thereof at such sale.

That said defendants, their agents, servants, attorneys, employes and successors be enjoined and

restrained from in any way or manner attempting to collect any portion of said alleged taxes and assessments.

That plaintiffs may have such other and further relief as to the court may seem just and equitable, and that they may recover their costs and disbursements herein incurred.

D. AUGUSTUS JONES,
JOHNSTON, COLEMAN & JOHNSTON,
By W. M. JOHNSTON,
Attorneys for Plaintiffs.

(Duly verified.)

EXHIBIT No. 4.

ANSWER.

Comes now the defendants in the above entitled cause and, answering the complaint of the plaintiffs herein allege:

I.

They admit the averments of paragraphs 1, 2, 3, 4, 5, 6, 7, 9 and all that portion of paragraph 10 excepting that part thereof [117] beginning with the words "Plaintiffs" in the last line on page 3 and concluding with the words "law" in line five on page 4.

II.

They specifically deny the averments of paragraphs 8, 11, 12, 13, 14, 15 and 16.

III.

Answering the averments of paragraph 17 of said complaint, the defendants admit all the averments thereof excepting that portion beginning

with the words "that plaintiffs" in the last line on page 8 and continuing to the end of the paragraph, as to which they deny the same.

Further answering said complaint and as a special defense, the defendants allege:

I.

That notice of the passage of the resolution of intention to create said Special Improvement District No. 4 was actually published in one issue of the Ryegate Reporter, a weekly newspaper printed and published in the Town of Ryegate, said publication having been made on the 1st day of January, 1920, as required by law.

II.

That the plaintiffs did not at any time within sixty days from the date of the awarding of the contract for the construction of the improvements referred to in said complaint, file with the said Clerk of the Town *or* Ryegate a written notice specifying in what respect the said acts were irregular, erroneous, or invalid, or in what manner their property would be damaged by the making of said improvements, and did not in writing make any objections to any act or proceeding in relation to the making of said improvements; and these defendants now allege that the plaintiffs have thereby waived all the objections which they now urge in their said complaint and upon which their cause of action is based. [118]

WHEREFORE, the defendants having answered the complaint of the plaintiffs herein, now pray that they may take nothing by their cause of action

and that the defendants may have judgment against them for their costs and disbursements herein.

STUART McHAFFIE,
NICHOLS & WILSON,
By EDMUND NICHOLS,
Attorneys for Defendants.

(Duly verified.)

EXHIBIT No. 5.

REPLY.

Plaintiffs make this their reply to the answer of defendants herein:

1. Admit the allegations contained in paragraphs one and two of defendants' Special Defense, except that they deny that they waived any objections to the irregular, erroneous and invalid acts of the officials of the Town of Ryegate complained of in the complaint herein.

2. Save and except as hereinbefore specifically admitted or denied, plaintiffs deny generally each and every allegation of new matter in said answer.

WHEREFORE, plaintiffs demand judgment as prayed for in their complaint.

D. AUGUSTUS JONES,
JOHNSTON, COLEMAN & JOHNSTON,
By W. M. JOHNSTON,
Attorneys for Plaintiffs.

(Duly verified.) [119]

EXHIBIT No. 6.

DECREE.

This cause came on for trial February 6, 1923, before the Court sitting without a jury, a jury having been expressly waived by counsel for the respective parties. D. Augustus Jones, Esq., and Johnston, Coleman & Johnston appeared as attorneys for plaintiffs, and Stuart McHaffie, Esq., and Nichols and Wilson appeared as attorneys for the defendants. Evidence was introduced on behalf of both plaintiffs and defendants and the cause was thereupon submitted to the Court.

Thereafter and on June 27, 1924, the Court made and filed its Findings of Fact and Conclusions of Law herein, which, omitting title of Court and cause, are as follows, to-wit:

“FINDINGS OF FACT.

1. That the defendant Town of Ryegate is, and was, at all times referred to in the proceedings, a Municipal corporation, organized and existing under and by virtue of the laws of Montana, and situated in the county of Golden Valley, Montana, and that the defendant W. O. Wood, was, during the times referred to in the proceedings, the duly elected, qualified and acting treasurer of said Golden Valley County, and the officer to whom the assessments hereinafter referred to were paid.

2. That the plaintiffs were at all of the times referred to in the proceedings herein, the owners of the various lots and tracts of land described in plain-

tiff's complaint as belonging to said plaintiffs, all of which property was and is embraced within the limits of Special Improvement District No. 4 in the said Town of Ryegate.

3. That on the 30th day of December 1919, the town Council of the Town of Ryegate, duly passed resolution of intention number 10, for the creation of special improvement district No. 4 within said Town of Ryegate, a copy of which said resolution as adopted is attached to the plaintiffs' complaint and marked Exhibit "A" and that notice of such resolution was duly published as required by law, and that thereafter on the 11th day of February, 1920, resolution number 14, creating said [120] special improvement District No. 4 was duly passed by the Town Council of said Town of Ryegate.

4. That the character of the improvements as set out in said resolution of intention and also in said resolution No. 14 was "the construction of pipes, hydrants, and hose connections for irrigating appliances and fire protection." That the actual improvement sought to be installed as a result of said proceedings and which was actually installed by said town was a complete water works and water system consisting of reservoirs, pumping plant, mains and fire hydrants constituting a complete system for the furnishing of water to the inhabitants of said town. That said improvement was installed and constructed by Security Bridge Company, a corporation, under one contract, which contract was entered into upon the award of said work to said Security Bridge Company, which said award was made upon bid filed in response to notice to con-

tractors given in pursuance of resolutions numbers 10 and 14, referred to above. That the notice to contractors and the plans and specifications covering said work and contract itself all refer to and call for the construction of a complete water system consisting of the elements above described.

5. That after the contract for said water system was let, the Town Council of the town of Ryegate by appropriate action provided the mode of assessment for the payment of said improvement and assessed each parcel of land within the district for that part of the entire cost of the improvement which its area bore to the entire area of said district, exclusive of streets and alleys, and that the total amount assessed against each of the plaintiffs herein is correctly set forth in their complaint herein. That the assessment so made against the property in said district was for the purpose of retiring the bonds of said district to the amount of \$45,602.42, which said bonds under the provisions of said contract with said Security Bridge Company, were to be accepted and were in fact issued and accepted in payment for said improvement to the extent of forty-five thousand six hundred two and 42/100 dollars. [121]

6. That the plans and specifications for the improvements actually made were delivered to the Town Clerk ten days or two weeks before April 13, 1920, but were not presented to the Town Council or approved by the Town Council of Ryegate until April 13, 1920, one day before bids were received for the construction of the improvements called for by said plans and specifications.

7. That the total amount of pipe used in said construction was 8271 feet of four inch pipe, 2726 feet of six inch pipe and 841 feet of eight inch pipe, and that the cost of said pipe so used was not in excess of Seventeen Thousand Seven Hundred Twenty-six and $47/100$ dollars. (\$17,726.47.)

8. That the said contractor, Security Bridge Company, in making its bid took into consideration the fact that the bonds issued in payment would have to be sold at a discount and it was known to the Town Council of the Town of Ryegate at the time the contract for said improvement was let that the bid of said contractor was made upon that basis and with the expectation and understanding that said bonds would be disposed of at a discount and with the knowledge that the bid was higher than it would have been had it been provided that payment was to be made in cash.

9. That no notice of any kind was ever given to the property owners in Improvement District No. 4 or to anyone else of the letting of the contract for the construction of the improvements made under the aforesaid plans and specifications.

10. That the cost of installation of improvements made, which the Town Council of the Town of Ryegate attempted to assess against the property included in Special Improvement District No. 4 was the sum of \$45,602.40; whereas, the estimated cost of such improvements was \$28,350.00.

11. That there are no sprinkling, or parking, or boulevard districts in the Town of Ryegate, and never have been.

12. That the plaintiffs L. F. Lubeley, Isabel Currie, W. J. Edeson, Henry G. Jacobson, State Bank of Ryegate, Henry Thien, Fred [122] Wyman and the Hilbert-Thien Company within sixty days of the letting of the contract to construct the improvements in question, made and filed their written protests and objections thereto, setting up the grounds relied upon by plaintiffs in this action, and that none of the other plaintiffs herein filed any protest or objection whatsoever.

13. That the improvement actually installed as a result of the proceedings hereinbefore referred to was a different improvement from that described in resolutions 10 and 14 in that the improvement actually installed was an entire and complete water system, whereas the improvement described in the resolution of intention was the construction of pipes, hydrants, and hose connections for irrigating appliances and fire protection.

14. That within the time fixed by the resolution of intention for the creation of Special Improvement District No. 4, written protests were made and filed by the owners of a majority in area of the lots and parcels of land within said District No. 4; that among the land owners so protesting was the Chicago, Milwaukee & St. Paul Railway Company, the owner of a large amount of land within said District; that prior to the hearing upon said protests, interested citizens of the Town of Ryegate agreed to raise a fund of \$2500.00 and to pay the same to the Chicago, Milwaukee & St. Paul Railway Company so as to reduce its assessment to the sum of \$6,000.00,

for installation of both a water system and sewer system in the town of Ryegate, as it was informed by the parties so agreeing to raise and pay said sum of money, and that on account of said agreement, the said Chicago, Milwaukee and St. Paul Railway Company withdrew its protest to the formation and creation of Special Improvement District No. 4; that by so doing an insufficient number of protests were left on file to defeat the creation of said district.

From the Findings of Fact the Court makes the following Conclusions of Law. [123]

CONCLUSIONS OF LAW.

1. That the Town Council of the Town of Ryegate never at any time acquired jurisdiction to create an improvement district for the installation of a water system or of an improvement of the kind actually installed, and that the installation of said system was without authority and all of the proceedings with reference thereto were and are null and void and of no effect.

2. That the cost of said system as installed was in excess of the cost allowed by law, to-wit: \$1.50 per lineal foot of pipe laid, plus the cost of pipe and the assessment imposed upon the tax payers within said district was and is for that reason illegal.

3. That the Town Council of the Town of Ryegate in awarding the contract for said improvement knew that the contract price was increased my reason of the fact that the bonds issued in payment therefor would have to be disposed of at less than

par and knew that the bid would have been a lower bid and the contract price lower if the bonds could have been sold at par, and that for this reason the proceedings of the Council in letting said contract were null and void.

4. Plaintiffs are entitled to an injunction restraining the defendants, their agents, servants, attorneys, employees, or successors from in any way or manner attempting to collect any portion of the alleged assessments against the property of any of said plaintiffs situate in Special Improvement District No. 4 of the Town of Ryegate.

5. Let Decree be drawn in accordance with these Findings and Conclusions.

Dated this 27 day of June, A. D. 1924.

GEO. A. HORKAN,
Judge."

WHEREFORE, by reason of the law and the premises aforesaid, IT IS ORDERED, ADJUDGED AND DECREED:

That all taxes and assessments levied and assessed upon property [124] situate in Special Improvement District No. 4 within the Town of Ryegate, in Golden Valley County, Montana, to pay for special improvements therein under resolution of intention No. 10 for the creation of said district, and under resolution No. 14 of said town creating said Special Improvement District No. 4, which are the subject of this action, are null and void; that the defendants are, and each of them is hereby enjoined and restrained from selling any of the property of plaintiffs herein, described in the complaint herein, on account of the nonpayment of any of said alleged

taxes and assessments imposed because of the creation of said district and the construction of improvements therein; that if any of said property has been sold for the nonpayment of any of such taxes or assessments, the defendants, their agents, servants, attorneys, employees and successors are, and each of them is, hereby enjoined and restrained from issuing any tax deed to the purchaser of any of said lots or property, or any part thereof.

That the said defendants, their agents, servants, attorneys, employees and successors are, and each of them is, hereby enjoined and restrained from in any way or manner attempting to collect any portion of said alleged taxes and assessments:

That the lots and property referred to herein, the taxes and assessments against which, on account of the creation of said district and construction of improvements therein, are hereby declared to be null and void and the collection of which is hereby restrained, are particularly described as follows, to-wit:

Lots 5 and 6, block 1; lot 1 of block 5; lot *e* of block 9; lots 10, 11 & 12 of block 17; lots 1, 2 & 3 of block 15; Lots 7, 8, & 9 of Block 16; Lots 4 and 5 or block 22; Lots 3 and 4 of block 21; lots 9 and 10 of block 8; south 100 feet of lots 5 and 6 in block 2; lots 4 and 5 of block 12; lot 4 of block 24; lots 5 and 6 of block 3; lots 7, 8, and 9 of block 15; Lots 9 and 10 of Block 9, lot 4 of Block 8; Lots 7, 8, and 9 of Block 18; lots 13 and 14 of Block 5; Lots 11, and 12 of Block 9; Lots 15 to 18 of Block 4; lot 1 of block 1; lot 12 of

block 19; lots 7 and 8 of block 5; lot 12 of block 7; lot 6 of block 24; West half of lot 2 and lot 3 of block 22; lots 10, 11 and 12 of block 10; lot 2 of block 5; lot 6 of block 15; [125] lot 12 of block 5; lot 1 of block 2; north 50 feet of lots 15 to 18 in block 4; lots 1 and 3 of block 6; lots 1 to 6 of block 7; lots 1, 11, and 12 of block 8; lot 4 of Block 16; lot 6 of block 22; lots 1, 2, and 3 of block 17; Lots 7 and 8 of Block 20; South 50 feet of lots 7 to 10 of Block 6; Lots 3, 4, 5 and 6 of block 18; Lots 7, 8, 9, 10, and 11 of Block 19; lots 5 and 6 of block 23; lot 2 of block 24; lot 3 of block 3; lots 3 and 4 of block 5; Lot 9 of Block 10; and Lot 9 of Block 20.

Done in open court this 8th day of July, 1924.

GEO. A. HORKAN,

Judge.

Filed July 16, 1928. [126]

The deposition of John D. Neale, taken under stipulation between the parties was read in evidence by Mr. Brown, during which reading the following objections were made to the questions noted:

(First question on page 5.)

“Q. And what was the character and extent of your investigation of bond issue prior to the time that it was passed and issued?”

Mr. JOHNSTON.—We object to that as irrelevant and immaterial.

By the COURT.—I will let it stand, subject to the objection. (Exception.)

(Last question on page 5.)

“Q. In connection with your desire to find

out not only the financial resources, but the attitude of the town, did you discuss with the town officers there the feasibility of the project and learn their attitude either for or against it?"

Mr. JOHNSTON.—We object to that as irrelevant.

By the COURT.—It is rather difficult to say whether it is or not. I do not think I will pass on the objection. Let it stand, subject to the objection. (Exception.)

(Second and third questions on page 8.)

“Q. Now subsequently when the bond issue came up for sale, or when the contract came up for bidding, did you have any correspondence or wires from Roscoe relative to it?”

Q. And at that time were you reminded of the assurances that you had given relative to [127] the handling some of these bonds—I mean the water bonds?”

Mr. JOHNSTON.—We object to that as irrelevant and immaterial.

By the COURT.—Overruled. (Exception.)

Cross-examination of Witness JOHN D. NEALE,
in the Deposition of Said Witness.

Mr. BROWN.—To that question, which is the second question on page 11 of the deposition, we object as not proper cross-examination; as assuming a state of facts not shown to exist, and for the further reason that the Milwaukee Railroad or any other protestant would have a perfect right to, for or without consideration, to withdraw its protest if it so desired.

By the COURT.—I will overrule the objection.

The said deposition being in the words and figures as follows:

“Pursuant to the stipulation of the parties for taking the depositions of witnesses on behalf of plaintiff, and the conditions under which depositions should be taken, on the 30th day of July, A. D. 1928, at the hour of 1:30 P. M., the plaintiff appeared by John G. Brown of Helena, Montana, and the defendant appeared by W. M. Johnston of Billings, Montana, before Fred M. Rose, a Notary Public in and for the State of Oregon in the city of Portland, Oregon, whereupon proceedings were had as follows:

DEPOSITION OF JOHN N. NEALE, FOR
PLAINTIFF.

“JOHN N. NEALE was produced as a witness on behalf of plaintiff in the above-entitled cause, and, testified on direct examination by Mr. BROWN as follows:

Direct Examination.

“My name is John D. Neale. I reside at 318 Elm Street, San Mateo, California. In 1919 I was employed by the Lumbermens Trust Company of Portland, Oregon, as a bond buyer. My duties required examination of securities; examination of towns and districts, and cities, where we were [128] negotiating for the purchase of bonds and other

(Deposition of John N. Neale.)

towns, cities and municipal subdivisions that had no bonds for sale. During that year, representing the Lumbermens Trust Company, I went to Billings, Montana, some time about the middle of May, 1919, I was in that vicinity until about the month of September of the same year. I know and then knew W. P. Roscoe, Executive Vice-President of the Security Bridge Company. The principal place of business of the Security Bridge Company was Billings, Montana, and its business was general contracting, building of bridges, installation of water systems, sewer systems, etc. It had a very extensive and substantial business at that time. It had no financial department, it was entirely a construction concern. In connection with my trip to Billings for the Lumbermens Trust Company I made investigation of contemplated municipal projects in Roundup, Hardin, Laural, Harlowton, Ryegate, Ingomar and Musselshell, towns in Montana which were contemplating municipal or public bond issues based upon construction contemplated to be done by the Security Bridge Company. I visited the Town of Ryegate at least twice, possibly three times. The improvement there contemplated was a water extension for municipal and domestic purposes. Oh, no, it wasn't any irrigation system. It was a municipal proposition for fire protection and domestic purposes. Mr. Roscoe accompanied me on the trip to Ryegate. The Lumbermens Trust Company which I represented subsequently got these bonds that were issued to install this water system at Rye-

(Deposition of John N. Neale.)

gate. I was the man they sent there. As to my investigation of the bond issue prior to the time that it was passed and issued, I examined carefully the territory to be included in the enterprise, going over the plat with the City Clerk. I also checked up carefully the resources of the community there and the shipments of products from the Town of Ryegate. I talked the matter over with an officer of the town in the bank there, Mr. Thien, or Thiel, or some such name. I discussed the bond issue with another officer of the town, a member of the Council, in the creamery. Whether he was manager of the creamery or just in the creamery that day, I don't know; I have forgotten, but he was a member of the Council. Naturally we were interested in knowing whether the town was anxious to make this [129] improvement or whether it was simply a contractor's promotion. The figures pertaining to valuations were obtained from the City Clerk, which I believe was a man by the name of Brown at that time. There was other work contemplated besides the water extension, but I never gave Mr. Roscoe nor anyone else connected with the enterprise any encouragement that we would be interested in the sidewalk bonds. Yes, I discussed the feasibility of project and attempted to learn the attitude of the town, from these two men that I talked to, two members of the Council. I don't remember for sure whether I talked to any more than that. I don't remember about a pool-hall. I met a city official one evening there, but whether it was on the street or on the platform of the hotel,

(Deposition of John N. Neale.)

on the porch of the hotel, where we ate, or some other place—I don't know at this time. As to the information given these officials by Mr. Roscoe, as to why I was interested, Roscoe introduced me as the representative of the Lumbermens Trust Company, to whom he would sell the bonds if he secured them from the city for the work contemplated. He stated to them in my presence his inability to handle them. As to the extent of his explanation, he stated that he could not do the work and accept bonds in payment therefor, except he was assured beforehand that he had a market for the bonds, stating that he was not in the bond business and must be assured that he could convert them into cash before he accepted them and took the contract, unless they expected to pay him in cash. It seems that the city could not pay him in cash. I made at least two trips to Ryegate. The first trip was when I saw the Councilman in the bank and the man in the creamery, who was a member of the City Council. Another trip was late in the evening. Roscoe and I came in from Harlowton, ate dinner at the hotel in Ryegate, and talked to one member of the City Council late that evening on the street. Yes, I made up my mind that my company would be interested in these bonds and I so stated to Roscoe. I recommended the purchase of about fifty thousand dollars of water bonds, approximately fifty thousand dollars worth. Yes, I know that my company subsequently purchased the general [130] and the improvement bonds that were to cover the

(Deposition of John N. Neale.)

installation of this water system, about sixty thousand dollars worth of them. The purchase didn't take place until eight or nine months later, sometime the next year following my investigation, but it was on the basis of my investigation of the issue. Subsequently I had some correspondence with Roscoe about these bonds. In the meantime I had been transferred by the Trust Company to San Francisco, late in September, 1919, and some time early in the spring of 1920, possibly March, I received communications from Mr. Roscoe concerning this particular financing, and was reminded of the assurances that I had given relative to handling some of these water bonds. I recommended the purchase to the Lumbermens Trust Company."

Cross-examination by Mr. JOHNSTON.

"As to my going to Montana in 1919, I was there primarily to meet Mr. Roscoe or to meet representatives of the Security Bridge Company for the purpose of buying bonds. Yes, I knew that the Security Bridge Company was doing considerable contracting work and I knew it was quite a common practice for contractors to do work for small cities and take their pay in bonds and dispose of them to bond buyers. I went with Mr. Roscoe to look over towns where he was already figuring with them on work. Yes, he had been figuring with the Town of Ryegate on that work. I am quite sure of that. As to whether or not the Town of Ryegate had planned on any improvement, it was my understanding that it had;

(Deposition of John N. Neale.)

that before we visited the town, considerable talk had been taking place between Roscoe and the city officials. I got that understanding from things Mr. Roscoe said. As to whether or not when I was there in May, 1919, anything had been done, I am not able to say whether or not any previous construction had been done in the Town of Ryegate. It had evidently been discussing the matter with the Security Bridge Company. As to it being the fact that Mr. Roscoe and I went there to promote the installation of the city water system, he was not promoting anything. [131] It seemed to be an established fact on the part of the Security Bridge Company and the City of Ryegate that a water system was going to be constructed and that the chances were good that the Security Bridge Company would be the agency through which the construction should take place. As to what I base that statement on, it is on account of my talks with Roscoe and statements which he made in my presence when we were in Ryegate and statements made to members of the Council that I met there. As to my recollections of the names of these councilmen, I do not recall their names, except Mr. Thien.

“Q. Is it not a fact that when you and Roscoe were there you examined the Town of Ryegate without disclosing to any city official who you were or what company you represented?”

“A. That is not a fact.”

WITNESS.—(Continuing.) “I do not recall the name of the city official I met on my second visit.

(Deposition of John N. Neale.)

I think he was the mayor, but I am not sure. As to my business when I go to towns like that it is not simply to examine the town or city with reference to reporting as to the assessable wealth of the town and its future prospects and the security that would really be back of any bond issue, but to ascertain whether the proposed improvement was popular, whether the bonds which we were considering would be authorized. There would be no use in us examining the towns unless we knew that the city officials and the taxpayers were in favor of the improvement. I did not learn in the spring of 1920 that the bonds were opposed, by nearly one-half of the property holders in the district. I did not know of the Chicago, Milwaukee & St. Paul Railroad protest and their being paid to withdraw their name from the protest. I do not pass upon the legality of the bonds. Messrs. Teal, Minor & Winfree of Portland, Oregon, passed upon them for the Lumbermens Trust Company I think. I do not know whether they are the regular attorneys or not, but they approved many bond issues. I am not certain which one of the attorneys did it. It is my understanding that they don't buy bonds until they have their counsel pass upon the legality of the proceedings. I do not know the firm of Nichols & Wilson, a firm of lawyers of Billings, Montana. [132]

Redirect Examination by Mr. BROWN.

“As a result of this trip we bought bonds at Hardin, Harlowton and Laurel. I do not remember the name of the mayor of Hardin. I do not re-

(Deposition of John N. Neale.)

member the names of the aldermen at Hardin. I do not remember the name of the mayor of Harlowton. I do not remember the *name* of the aldermen of Harlowton. It would be very difficult to remember the names of all the city officials that we meet when I am making investigations over a period of years. As to the investigation as to the financial responsibility and attitude of the town generally, that is very distinct because it is fundamental.

“Q. Now, counsel has asked you about protests, and suggested an improper use of money to get protestants to withdraw; I will ask you when was the first time you ever heard of that?”

“A. When Mr. Johnston mentioned it just now.

“Q. Did you ever hear of any such thing as that in connection with your investigation?”

“A. No, sir.

“Q. Was there ever any suggestion that there would be protests at the time you made the investigation? A. Certainly not.”

WITNESS.—(Continuing.) “If I had known at my first visit or at my second investigation of protests of a substantial character I would not have made a recommendation to purchase any bonds. I would not have made a recommendation to purchase any bonds where there was any actual or threatened litigation existing or pending, as at the time I made this investigation I was an experienced bond buyer, and that is one of the things that an experienced bond buyer always looks out for, as to whether there is threatened litigation.

(Deposition of John N. Neale.)

“Q. As to any improper or other use of money to get a railroad or any other taxpayer to withdraw protests, did you ever hear of any such thing in connection with this?

“A. Not before Mr. Johnston’s question to-day, no, sir; absolutely not. [133]

“Q. Did you or your company have anything to do with any such thing? A. No, sir.”

Recross-examination by Mr. JOHNSTON.

“I did not make any effort to ascertain whether there were any protests after my second investigation. I was out of the transaction. I know nothing about what transpired after my last visit. I know nothing of any dissatisfaction on the part of any property owners concerning this improvement. As to whether or not one of the council opposed the creation of the district and the issuance of the district improvement bonds, I knew nothing about it. My investigation had shown there was absolute harmony in connection with the proposed improvement.

“Q. And you did not know, in the spring of 1920, that the then Mayor of the Town of Ryegate refused to sign ordinances and resolutions for the creation of the district and the issuance of these bonds? A. I did not; no.”

Further Redirect Examination by Mr. BROWN.

“As to whether or not there was any secretive or covered-up character about my visits to Ryegate, absolutely not. All these jobs I went to look over

(Deposition of John N. Neale.)

had been talked over by Roscoe and the officials before I had ever looked at them. Mr. Roscoe had a story that he illustrated it with. The cities were always anxious to carry out these proposed improvements, and they stated their desires and enthusiasm to Roscoe and myself, and Roscoe would always say that if the Lumbermens Trust Company will buy the bonds, we will be glad to do the work, but we cannot take the bonds unless we have them sold. His story was that bonds to a contractor are no good, are worth nothing to the contractor unless he can sell them; that 'in fact, there was a dozen contractors found starved to death last winter with their pockets full of bonds.' That was his story, the one he always told in illustrating the point that he couldn't accept bonds unless they were [134] sold first. They used to say to him, 'We will give you the bonds,' He always told them the bonds would not do him any good unless he was sure he could convert them into cash."

Further Recross-examination by Mr. JOHNSTON.

"My information as to these bonds being talked over before I went to Ryegate came from Mr. Roscoe. I knew it was talked over before I was there because the first man we met, who was one of the councilmen, if not the mayor himself, in the creamery, was thoroughly conversant with the situation when I first saw him. He had evidently been told by Mr. Roscoe he would bring a man through that country soon to look over a number of towns and districts in which he had been and on which he had been figuring contracts, and when I was introduced

(Deposition of John N. Neale.)

to this member of the Council in the Creamery, Roscoe told him that I was the man that he had been speaking about. I do not recollect the man's name. When I refer to the City officials I met, I met three. I know the name of Mr. Brown and Mr. Thien, or Mr. Thiel. I don't recall the name of the man I met one night, late at night there. That was the second trip there."

Further Redirect Examination by Mr. BROWN.

"It is my recollection that the man I met late at night on the street, or the porch of the hotel, was the mayor."

Witness signed the deposition and was excused.

The deposition of W. P. BRIGGS taken under stipulation between the parties was read in evidence by Mr. Brown, during which reading the following objections were made to the questions noted:

"Mr. BROWN.—We offer the Financial Statement that is attached to the deposition, in evidence.

"Mr. JOHNSTON.—No objection.

"By the COURT.—It will be received. [135]

"Mr. JOHNSTON.—I object to the following questions and answers on page 19 of the deposition of W. P. Briggs, on the ground the matters mentioned in these questions and answers are thoroughly covered by the Agreed Statement of Facts in this case, therefore, under the Agreed Statement, they are not admissible in evidence.

"Q. Did your Company buy both the general and special improvement district bonds, necessary for

(Deposition of John N. Neale.)

the promotion and completing of the water improvements of the Town of Ryegate? A. Yes, sir.

“Q. In connection with the general bonds, or the first group of bonds that was sent in, did you buy them through the Security Bridge Company or deal direct with the City upon those?”

“A. You mean in taking them up?”

“Q. Yes.

“A. We dealt with the City direct and paid to them.”

“Mr. JOHNSTON.—We make the further objection, on the ground those questions and answers are irrelevant and immaterial, and also, incompetent, for the reason that the matter of the general bonds are not involved in this case. It would make no difference whether the plaintiff purchased those bonds direct from the City or from the Security Bridge Company.

“By the COURT.—I will let it stand. (Exception.)

“Mr. BROWN.—We offer this paper in evidence.”

(Paper marked Plaintiff's Exhibit 2 attached to Deposition of W. P. Briggs.) [136]

“Mr. JOHNSTON.—We object to the testimony, and I would like to have an objection to all that part of the deposition with reference to this proof, on the ground and for the reason it is irrelevant and immaterial, and also, incompetent, as being in relation to the general bond issue, and not having anything to do, whatever, with the special improvement bonds which are involved in this case.

(Deposition of John N. Neale.)

“For the further reason that is covers matters that are completely covered by the agreed statement of facts in this case, which shows that these general bonds were sent to the plaintiff by the Town of Ryegate at the request of the Security Bridge Company, and the mere fact that a sight draft would accompany them would have no bearing on the issues in this case, whatever.

By the COURT.—It may go in, subject to your objection, and I will either rule on it and cut it out or let it stay in, after I carefully scrutinize this.”

(Question in latter part of the Deposition of W. P. Briggs.)

“Q. What was the first that you knew, your company or you knew, that there was a contest about these bonds, the payment of the principal or interest—that there was objection to these bonds in the payment of principal or interest?

“Mr. JOHNSTON.—Objected to as irrelevant and immaterial.

“By the COURT.—Overruled. (Exception.)”

(Question found in latter part of Deposition of W. P. Briggs.) [137]

“Q. Now some suggestion has been made here in connection with this, with relation to protests being made to the creation of the District or the issues of the bonds; did you or your company, so far as you know, ever have any knowledge of any contest or objection to those bonds prior to their issuance?

“Mr. JOHNSTON.—Objected to as irrelevant and immaterial.

(Deposition of W. P. Briggs.)

By the COURT.—Overruled. (Exception.)”

The said deposition being in the words and figures as follows:

Under the same stipulation and at the same time and place, the deposition of W. P. BRIGGS was taken, who being duly sworn, on direct examination by Mr. BROWN, testified as follows:

DEPOSITION OF W. P. BRIGGS, FOR
PLAINTIFF.

“My name is W. P. Briggs and I have been either assistant secretary or secretary of the Lumbermens Trust Company during the time involved in controversy here. As to the investigation of the records and so forth pertaining to municipal or public bond issues prior to my company’s purchase of them, I handled considerable of the office end of the matter, taking care of the correspondence and getting figures here to submit to attorneys and submit to our officials. I made a request of the town clerk of the Town of Ryegate to furnish me or my company, under seal, an official statement of local improvement district bonds and financial statement of the City of Ryegate, with reference to the particular bond issues here in controversy. This paper which you call to my attention, marked for identification as Plaintiff’s Exhibit No. 1, to be attached to my deposition, is the statement furnished to the Lumbermens Trust Company by J. A. Brown, town clerk of the Town of Ryegate, relative to the bond issues here under controversy and was

(Deposition of W. P. Briggs.)

furnished to the Company and received in due course of mail in response to requests therefor.”

[138]

The said statement was thereupon marked for identification, Plaintiff's Exhibit 1 and offered and received in evidence and the same is in words and figures as follows:

PLAINTIFF'S EXHIBIT No. 1.

Lumbermens Trust Co.

Portland, Oregon.

OFFICIAL STATEMENT OF LOCAL IMPROVEMENT BONDS.

Town of Ryegate in the County of Golden Valley,
State of Montana.

District No. 4. Boundaries and names of streets
to be improved ———.

See Transcript of Proceedings.

If possible, furnish map of city showing location of
district ———.

Nature of improvement ——— Water improvement.

Material used in improvement ——— Cast Iron
Pipe and concrete structures.

Opposition to improvement ———. Not material
———. How evidenced ———. By protest
against creation of district.

Engineer's estimate of cost—\$42000. ———

Amount of Contract, \$56000 Less \$15000 Cash.

Number of blocks improved—264 Lots Basis 50x140.

Average size ———.

Number of front feet ———. See map ———.

Cost per front ft. Figured area \$158.00 per
50x146.

Assessed value of District:

Real Estate, \$ 73 543.

Improvements, \$130 289.

Estimated actual value:

Real Estate \$———

Improvements \$———

Amount of Bonds authorized for this improvement

—Entire cost of plant over and above author-
ized.

Estimated amount to be used for this improvement

—\$43,000.

Interest rate ——— six ——— payable annually or

semi-annually—Annually.

Date of Bonds. ——— Dated as issued ———.

Maturity of bonds 1931, Jany. 1st.

Denomination \$500.00. ——— When ready for de-

livery from time to time.

Principal and interest payable at office Town Treas-

urer of Ryegate, Mt.

Are Bonds Special Assessment, District or General

Obligations—Special. Assessment on District.

Does the city or abutting property pay for street

intersections—Yes, *pro rata* over district.

Character of abutting property, business or resi-

dence—Partly residential and partly business

property.

What percentage of District improved with build-

ings—70%.

Give names of six responsible people who own property abutting improvements—Henry Henton, Binone Mellen, C. H. Corrington, T. A. Strong, Anton Barta.

If any city, county or school property is abutting the improvement, what portion of above indebtedness is assessed against same—School District equal to 6 lots.

Nature and amount of other assessment liens in this district—\$ ———. Sidewalk Districts cover portion of this district outstanding—Sidewalk Bonds \$18,200.00.

Amount of maintenance bond required and for how long a period does it remain in force—None.

Any litigation pending or threatened affecting this issue—No.

Under what law or authority are bonds issued—State of Montana, Chapter 89, 1913.

Can you arrange to have principal and interest payable in New York, or remitted by treasurer in New York Exchange ———. [139]

FINANCIAL STATEMENT OF CITY.

Estimated actual value of all taxable property in city\$601,366.00

Assessed valuation of all property (year 1919) Assessed at full value\$601,366.00

INDEBTEDNESS—

Bonded debt (Water Bonds)\$ 15,000.00

Floating debt\$ 1,315.90

Water debt included in above (Included in \$15000 item)Yes

Local Improvement debt NOT included above\$ 18,200
sidewalk bonds
 Amount of Sinking Fund—Bonds just issued
 _____, \$ None
 Population of city (census 1910) 300. Present estimate—750.

Date city incorporated—April, 1917.

On what railroads—C. M. & St. P. Ry. Co.

General Resources—Agricultural, County Seat Golden Valley County.

Nature of surrounding country—Well improved, good farming country.

Who owns waterworks—Town. Who owns electric light plant?—Montana Power Co.

Have your bonds (including local improvement bonds) and the interest thereon always been paid promptly when due—Yes.

The foregoing statement I certify to be, to the best of my knowledge and belief, true and correct.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 12th day of August, A. D. 1920.

(Seal) (Signature) J. A. BROWN,
 (Official Title) Town Clerk, Town of Ryegate.

ATTACH PRINTED NOTICE AND COPY OF ORDINANCE. [140]

“My company bought both the general and the special improvement district bonds necessary for the promotion and completing of the water improvements of the Town of Ryegate. As to the first issue of bonds sent out we dealt direct with the city and paid to them. The paper which you have

marked as Plaintiff's Exhibit No. 2, to be offered in connection with my deposition, is a draft written on the typewriter; it is a sight draft on the Lumbermen's Trust Company, drawn under date of May 29th, 1920, payable to the order of The Farmers and Merchants State Bank of Ryegate, for \$11,158.76, plus certain accrued interest, and drawn on the Town of Ryegate by Harry Henton, Treasurer. That is the draft that accompanied this issue of bonds when they were forwarded to me by the Town of Ryegate. My company took up the draft when it came."

The said draft, known as Plaintiff's Exhibit 2, was offered and received in evidence to be attached to the deposition of witness Briggs, the same being in words and figures as follows:

PLAINTIFF'S EXHIBIT No. 2.

"The Farmers & Merchants State Bank of Ryegate,
Ryegate, Montana, May 29th, 1920.
(Int. 375.00)

On sight pay to the order of The Farmers & Merchants State Bank of Ryegate \$11,158.76 plus accrued interest at 6% on \$15,000 from Jany. 1st, 1920, to date of settlement. Eleven thousand one hundred fifty eight and 76/100 dollars with exchange.

Value received and charge the same to account of
TOWN OF RYEGATE, RYEGATE, MONT.

By HARRY HENTON, Treas.

(Deposition of W. P. Briggs.)

Lumbermen's Trust Company, Portland, Oregon.

Care Ladd & Tilton, Bankers, Portland, Oregon.

Ladd & Tilton Bank.

Paid

June 1, 1920.

Collection Teller,

Portland, Oregon. [141]

“The first that I knew there was any trouble about these bonds, that there was a contest about these bonds, the payment of the principal or interest was early in 1922 when we were advised that somebody had started injunction proceedings.

“Q. Now, some suggestion has been made here in connection with this, with relation to protests being made to the creation of the district or the issues of the bonds; did you or your company, so far as you know, ever have any knowledge of any contest or objection to these bonds prior to their issuance?

“A. Not so far as I know.

“Q. If there had been any such, you, doubtless, would have known it, wouldn't you, in your position?

“A. I think so, because that detail, normally, came through my hands.

“Q. The suggestion also has been made of a possible proper or improper use of money in connection with the withdrawal of objections to the creation of the improvement district and the issues of bonds; when was the first time you ever heard of any such comment as that?

(Deposition of W. P. Briggs.)

“A. After this litigation was started, some time in the early part of 1922, and pleadings had been filed by the plaintiffs; I think they set up something of that character in the litigation. It was in connection with that, was the first time I ever heard of it.

“Q. Did your company or you or anyone, to your knowledge, ever have anything to do with anything of that kind or nature? A. We did not.

“Q. Did you ever instigate any such action or conduct? A. We did not.

“Q. Or approve or ratify or confirm it?

“A. We did not.

WITNESS.—(Continuing.) “Mr. J. A. Brown was town clerk of the Town of Ryegate at the time I received Plaintiff’s Exhibit 1. I am morally certain they furnished [142] us with a transcript of the proceedings. This Exhibit 1 is the form of certificate which we always require and was furnished in response to our request.”

Cross-examination by Mr. JOHNSON.

“I can’t say positively without checking up the correspondence of whom I made the request for this statement.”

(Witness was excused after signing his deposition.)

DEPOSITION OF W. P. ROSCOE, FOR
PLAINTIFF.

W. P. ROSCOE, a witness called on behalf of the plaintiff, being first duly sworn, on direct examination by Mr. BROWN, testified as follows:

“My name is W. P. Roscoe and I am the Mr. Roscoe referred to as executive vice-president of the Security Bridge Company. I was such officer of that company at the time of the building of the waterworks involved in the controversy and was then acquainted with the Mayor and Councilmen of the Town of Ryegate. I made infrequent trips to Ryegate possibly over a period of 18 months, upon which trips I talked to Mr. Thien, and Mr. Gregory. Mr. Curry was Mayor at that time. No, I never met the Mayor and Councilmen in executive session. I did meet them in groups, met at one time the three of them, that is the Mayor and two aldermen.”

“Q. You may state whether or not in these various conferences you had with them prior to your taking the contract, if they understood and were told by you of the necessity of your selling bonds?”

Mr. JOHNSTON.—We object to that as irrelevant and immaterial, also, incompetent. It does not appear this was a session of the City Council, and statements on the curbstone between the witness and the officials would not be of any material weight in this matter.

By the COURT.—Perhaps you would have to show some authority on the part of one to speak

(Deposition of W. P. Roscoe.)

rather than the actual conversation, to make it material. Was there any official sanction of this?
[143]

Mr. BROWN.—We have to come to that later.

By the COURT.—It is merely preliminary?

OVERRULED, if it is simply preliminary.

Mr. JOHNSTON.—Exception. Subject to be stricken out if you do not connect it up. An examination of the minutes will never disclose any authority of that kind, I am quite sure.

(Question read.)

“A. Oh, yes.

Q. Did you advise the Town, or its officers, of the Company to whom you expected to sell these bonds?

Mr. JOHNSTON.—Objected to as irrelevant and immaterial.

By the COURT.—Are you starting out to establish the legality of the bond issue.

Mr. BROWN.—No, your Honor. Before you can recover for money had and received, we have got to bring home to the defendant the knowledge that it was our money that was had and received and used.

By the COURT.—That is some law we have to encounter and pass upon later on. I will let him show that under his allegation, subject to your objection.

Mr. JOHNSTON.—We may have an exception.

By the COURT.—Yes.

Mr. JOHNSTON.—In order to save time and

(Deposition of W. P. Roscoe.)

the record, may it be understood, we have that objection and exception to all questions of this character?

By the COURT.—Everything is deemed excepted to.

Mr. JOHNSTON.—With reference to conversations between this witness and any official of the City or Town of Ryegate? [144]

By the COURT.—Yes.

(Question read.)

A. Yes, sir.

Q. Now, as to the first bond issue, the fifteen thousand general bond issue, I will ask you to state whether or not you directed the Town and its Clerk, to mail these bonds, with draft attached, to the Lumbermens Trust Company, in Portland, Oregon?

Mr. JOHNSTON.—I object to that as irrelevant and immaterial.

By the COURT.—I will let it stand in the same way.

Mr. JOHNSTON.—I object to this question, additionally, for the reason it is covered by the Agreed Statement of Facts.

By the COURT.—I will let him answer, subject to your objection. (Exception.)

(Question read.)

“A. I will answer that question this way: Yes, sir. The draft was not in the full amount of the bonds.

Q. We were not asking you the amount, we were asking you if you did that? A. Yes, sir.”

(Deposition of W. P. Roscoe.)

WITNESS.—(Continuing.) Prior to the time that the bonds were sent and the draft issued, I made request of the Town Council and City Clerk of Ryegate for a legal opinion as to the \$15,000 bond issue. Plaintiff's Exhibit "A" is the letter that was furnished me by the Town of Ryegate in response to this request. I made this request for a legal opinion of the Council. No, sir, I do not recall that the request was in writing. I might explain the matter so that you will understand it, Mr. Johnston, if the Court permits. Yes, sir, the City Council furnished me with that opinion of Mr. Thompson on this general bond issued. Plaintiff's Exhibit "A" is the opinion in question.

(Plaintiff's Exhibit "A" offered and admitted in evidence.)

At the time I got the opinion I advised the city officers of the Town of Ryegate that it was to be forwarded to the Lumbermens Trust Company and I [145] did forward it to the Lumbermens Trust Company. This is the first time I have seen it since then. Subsequently I made a request of the City (Ryegate) to furnish me with an official transcript of the proceedings of the Special Improvement District of the Town of Ryegate. When I requested these proceedings I likewise advised the City Officers who it was for and they furnished me that transcript of the proceedings, which was for and delivered by me to the Lumbermens Trust Company. Plaintiff's Exhibit "B" contains the official transcript of the Special Improve-

(Deposition of W. P. Roscoe.)

ment District proceedings that are involved in this lawsuit and that is the transcript so furnished by the officers of the Town of Ryegate for transmittal to the Lumbermens Trust Company.

(Plaintiff's Exhibit "B" admitted in evidence.)

WITNESS.—(Continuing.) "Claude Renshaw of Roundup, Montana, was the engineer on the Ryegate job. He is the same engineer who was on a number of waterworks systems along the line of the Milwaukee. He had charge of the work at Harlowton, Roundup and Ryegate. From time to time this City Engineer made up an estimate of the amount of work completed in any prescribed period and furnished it to the City Council so that they could authorize bonds to be issued for work done. The City Council would allow these estimates. In two or three instances they paid us cash out of the proceeds—out of the general obligations and the balance out of the Improvement District Bonds. When they furnished me with Improvement District Bonds I would request a certificate from the city showing that the Council had authorized the issuance, advising the Council and officers that it was for the Lumbermens Trust Company. Plaintiff's papers grouped together as Exhibit "C" are the certificates covering these estimates, covering the Improvement District Bonds and covering the certificates of the officers, but I did not personally obtain all of them. Some other officer of our company got the rest of them. These were forwarded to the Lumbermens Trust Company."

(Deposition of W. P. Roscoe.)

(Plaintiff's Exhibit "C" offered and received in evidence.)

WITNESS.—(Continuing.) [146] "During the times in question, as vice-president of the company, I was in charge of what we call the Waterworks and Sewer Department, particularly in charge of the work and various matters we had in connection with the council of the Town of Ryegate and the construction work of the Security Bridge Company. I was the one exclusively in charge and made frequent trips to Ryegate in connection with the work. When I could not go I outlined what was to be done to some other office of the company. I have been in the contracting business 26 years, including 10 years of waterworks construction in the State of Montana, and have a knowledge and experience of waterworks construction in Montana generally. I have made a study of the capacity of plants for future growth of towns and things of that sort. I am also personally familiar with the character and kind of equipment and installation made in the Ryegate waterworks system. The population of Ryegate when this construction was put in was approximately four or five hundred. The construction that we put in there I would say would serve a population of 1500 people with the equipment installed. It would serve more people than there is now in Ryegate, or up to fifteen hundred people. To furnish water it would not require any changes or alterations in the fundamental system installed by us. The system was installed in such a way that exten-

(Deposition of W. P. Roscoe.)

sions could be made to it that would serve the entire community of Ryegate within the corporate limits.”

Cross-examination by Mr. JOHNSTON.

“Yes, sir, I would say that no changes would be necessary to serve more people with this water system. Well, that is true in one sense that it is on the theory that these additional people were living adjacent to the mains that are there now; however, they could be served outside the lines of the district. If they lived outside of the lines of the district there would have to be some extensions to the mains; yes, sir, the same as in Billings. As to whether or not there would have to be additions if there were any additional population in Ryegate, some could be served with ordinary service, Mr. Johnston, similar to that that runs from the main to the house—and some on the other side of the line. If they were outside the [147] district they could be served by these mains if they would build additional houses along side of these mains. If they built a block or half a block away from these mains, you would have to have a service pipe. The ordinary distance, the length of the service pipe is from the street to the house. There are lots of service, however, run further than that. Well, some here in Billings. About over in Ryegate, I don’t know. If a man lived outside the district and wanted to get, and got permission of the Council to build his own main, it would not cost the

(Deposition of W. P. Roscoe.)

city anything, I don't think. If the town wanted to extend the system so as to cover additional territory to any extent, yes, sir, it would have to lay additional mains."

Redirect Examination by Mr. BROWN.

"As to these additional mains, they would not have to put new mains going back to the pumping system. They would be simply extensions. There were "T's" placed at street intersections for that purpose so that these extensions could be made at some future date. Oh, yes, that was done at the request of the city; that was part of the plan."

(Witness excused.)

Mr. BROWN.—There was furnished to us at our request, the Ordinances of the City of Ryegate and we would offer them in evidence. Ordinance No. 33, found on pages 152 to 158 of the Ordinance Records of the Town of Ryegate, and Ordinance No. 34, found on page 159 of the Ordinance Records. We offer these in evidence.

(Objected to; objection overruled and ordinances admitted.)

The Ordinances in question, read as follows:
[148]

ORDINANCE No. 33.

Entitled: "AN ORDINANCE PROVIDING REGULATIONS FOR THE USE OF WATER IN THE TOWN OF RYEGATE, PROVIDING RATES FOR THE USE OF SAME, PROVIDING PENALTIES FOR THE VIOLATION OF THIS ORDINANCE AND REPEALING ALL RULES AND ORDINANCES IN CONFLICT HEREWITH.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF RYEGATE, MONTANA:

Section. 1. The following rules and regulations, approved by the Public Service Commission of Montana are hereby adopted to govern the use of city water in the Town of Ryegate, Montana, and are hereby made a part of the contract with every individual, firm or corporation, who takes water, and every such individual, firm or corporation agrees, in making application for water to be bound hereby.

GENERAL RULES AND REGULATIONS:

Rule G-1. THE CITY WATER DEPARTMENT contracts with agents or with tenants. The City Water Department may require a deposit equal to one and one-half the estimated amount of the monthly or billing period, as guarantee of payment of same. Application for the use of water must be made at the City Water Department office on a printed form furnished for that purpose. Service will be furnished to any consumer who fully and truly sets forth all the purposes for which

water may be required and who agrees to and conforms to all rules and regulations governing the service; provided the purposes set forth comply with all the City Water Department Rules, and that the system of mains and pipes extend to the point where service is desired, and is adequate to supply the service applied for. Interest will be paid on consumers' deposits at the rate of six per cent per annum, provided such deposits are left with the City Water Department for one month or longer. Such interest will cease when the use of City water is discontinued.

Rule G-2. An application for the installation must be signed by the owner of the premises and must be made on the regular form furnished by the City Water Department for that purpose. When such application has been granted, the City Water Department at its own expense, will tap the main and furnish corporation cock or any other material used or labor furnished in connection with the tapping of the main. All expense of laying and maintaining the service pipes from the mains to the consumers' premises must be borne by the consumer. The service pipe must be laid below the street grade and on the consumers premises, at a standard depth designated by the City Water Department, to prevent freezing. A Curb cock of approved pattern with cast iron curb box must be installed by the consumer at a point designated by the City Water Department. Whenever a tap is made through which service is not immediately desired, the appli-

cant will bear the entire expense of tapping, subject to refund whenever regular service is begun.

Rule G-3. At some convenient point inside the building and so located that it cannot freeze, a stop and waste cock must be placed, so that water can be readily shut off from the building and the water pipes drained to prevent freezing. [149]

Rule G-4. Waste of water is prohibited, and consumers must keep their fixtures and service pipes in good order at their own expense, and all waterways closed when not in use. Leaky fixtures must be repaired at once without waiting for notice from the City Water Department, and if not repaired for notice from the City Water Department, and if not repaired after reasonable notice is given, the water will be shut off by the City Water Department.

Rule G-5. No plumber or other person will be allowed to make connection with any conduit, pipe or other fixture therewith, or to connect pipes when they have been disconnected or to turn water off or on, on any premises without permission from the City Water Department.

Rule G-6. Service pipes will be so arranged that the supply of each separate building, house or premises, may be controlled by a separate curb cock, placed within or near the line of the street curb, under rules established by the City Water Department or civil authorities. This curb cock and box must be kept in repair and easily accessible by the owner of the premises.

Rule G-7. Should the consumer desire to dis-

continue the use of water temporarily, or should the premises become vacant, the City Water Department, when notified to do so in writing, will shut off the water at the curb cock and allowance will be made on the bill for such time as the water is not in use. No deductions will be made in bills for the time any service pipes may be frozen.

Rule G-8. Notice will be given whenever practicable, prior to shutting off water, but consumers are warned that, owing to unavoidable accidents or emergencies, their water supply may be shut off at any time.

All persons having boilers on their premises, depending on connected pressure with the water mains, are cautioned against collapse of their boilers. As soon as water is turned off, the hot water faucet should be opened and left open until the water is again turned on. A check valve must always be placed between the boiler and the City Water Department mains to prevent draining the boiler. Never leave the premises with any faucets open and the water turned off.

Rule G-9. Contractors, builders and owners are required to take out a permit for the use of water for building and other purposes in construction work. Consumers are warned not to allow contractors to use fixtures unless they produce a permit specifying the premises on which the water is to be used. Water will not be turned on at any building until all water used during construction has been paid for.

Rule G-10. Permits for lawn sprinkling during each current year must be secured at the office of the City Water Department as the supply to any premises, using a hose without a permit, will be shut off without warning. Lawn sprinklers will only be permitted where water is carried into the house also.

Rule G-11. The City Water Department agents or other authorized persons, shall have access at reasonable hours [150] to any premises where water is used, for the purpose of making inspections or investigations.

Rule G-12. For violation of any of these rules, or for non-payment of water rent, for either domestic, sprinkling or other purposes, the City Water Department has the right to turn off water without further notice, and after it has been turned off from any service pipe on account of non-payment or violation of rules, the same shall not be turned on again until back rents are paid, together with the actual costs incurred thereby, not to exceed \$1.00.

Rule G-13. The foregoing rules shall be effective for all water utilities operating in Montana. The flat rate rules and meter rules shall be effective for all water utilities having schedules of that nature.

This rule, however, shall not be construed to mean that any utility must have both flat rates and meter rates. A utility may adopt, subject to the approval of the Public Service Commission, either a flat rate or a meter schedule, or both.

In addition to the general flat rate and meter rate rules a utility may adopt, subject to the ap-

proval of the Public Service Commission, other rules to be designated as special rules, to fit local conditions. In case of an apparent conflict in rules, the general rules shall govern.

MONTHLY RATES—FLAT.

1. Apartments	Not over five rooms	\$1.50
	Each additional room	.15
2. Bakery	Using not more than one barrel of flour per day	2.50
	Each additional barrel	.75
3. Banks	Not more than two persons	1.50
	Each additional person	.15
4. Barber Shops	1 chair and lavatory	2.00
	Each additional chair	.50
5. Bath tubs	Private each	.35
	Public each	1.50
6. Blacksmith shop	One fire	1.50
	Each additional	.50
7. Boarding House	Board only not more than ten persons	3.00
	Each additional 5 persons	1.00
8. Board and Lodging	Not over ten rooms or persons	5.00
	Each additional room or persons	.35
9. Building & Construction	(Brick per 1000)	.20
	(Cement walk per 100 Sq. Ft.)	.30
	(Concrete work per Cu. Yd.)	.12½
	(Plastering per 100 Sq. yds.)	1.00

	(Settling earth per Cu. yd.	.05
	(Stone work per perch	.10
10. Butcher Shop	Not more than two persons	2.50
	Each additional person	.15
11. Dwelling	Not more than five rooms	1.50
	Each additional room	.15
12. Fire Hydrants	Municipal First 15 per year	225.00
	Each Additional	10.00
13. Garage.	Private one car	.25
	Each additional car	.15
[151]		
14. Halls, Lodge Rooms	One cold water faucet	1.00
	Each additional	.25
15. Heating Plant Steam (First 10,000 cu. ft. heating Boiler or Hot Water (space or less		.50
	(Each additional 1000 ft.	.05
16. Hotel	Base rate: kitchen, dining room and office.....	5.00
	Each additional room	.10
17. Hydrant—Yard	Not more than one family	1.50
	Each additional family	1.50
18. Ice Cream Parlor	12 chairs or stools	3.00
	Each additional six chairs	.50
19. Laundry	Hand.....Meter	
	Steam.....Meter	
20. Lodging House	Not over ten rooms	3.00
	Each additional room	.15
21. Office Building.	Each room	.25
22. Photograph Gallery	Not over two persons	3.00

23.	Printing Office	Not over two persons..	2.00
24.	Public BuildingMeter	
25.	Restaurant	12 chairs or stools or less	3.50
		Each additional 6 chairs	.50
26.	SchoolsMeter	
27.	Soda Fountain	Single fountain per season	12.00
28.	Sprinkling	Lawn, Garden, etc. each	
		Sq. Ft. or major portion	
		thereof per season	6.00
29.	Store	Drug	3.00
		Candy, grocery, fruit etc.	2.00
30.	Theater	One cold water faucet	1.50
31.	Urinal	Public	1.50
32.	Water Closets	(Private	.65
		(Each additional	.50
		(Public self closing	1.00
		(Each additional one	1.00
		(Public continuous flow	2.00

METER RATE.

The meter rates are divided into commercial and industrial.

Commercial Rates.

Minimum rate per month \$2.00

1st 5000 gallons..... .40 per 1000 gallons

next 5000 gallons..... .35 per 1000 gallons

above 10,000 gallons..... .30 per 1000 gallons

Industrial Rate.

Minimum rate \$5.00 per month.

From 1 to 25,000 gallons per month per 1000
gallons .20

From 25M to 50,000 gallons per month per gallons	.15
From 50M to 100,000 gallons per month per 1000 gallons	.13
From 100M to 200,000 gallons per month per 1000 gallons	.12
From 200M to 300,000 gallons per month per 1000 gallons	.10
From 300M to 500,000 gallons per month per 1000 gallons	.09
From 500M to 10,000,000 gallons per month per 1M gallons	.08
Above 10,000,000 gallons per month per 1000 gallons	.07

[152]

FLAT RATE SERVICE.

Rule F-1. The flat rate will cover the use of water for domestic uses, lawn sprinkling, and any other purposes enumerated on the rate sheet covering flat rate service. The City Water Department agrees to furnish water for certain specified uses for a certain specified sum. *Id*, therefore, a consumer furnishes other people with water without permission from the City Water Department, or uses it for other purposes than he is paying for, it is a violation of his contract, and the consumer offending, after reasonable notice, may have his water shut off and service discontinued until such time as the additional service furnished has been paid for, together with the additional expense incurred in shutting off the water, not to exceed \$1.00.

Rule F-2. Flat rate water rents are payable monthly in advance, and payments should be made at the City's office before the 10th of each month. If not paid before the 15th of each month, the right is reserved to discontinue the service after reasonable notice.

Rule F-3. Should any consumer on a flat rate schedule wish to install additional fixtures, or should he desire to apply for water for purposes not stated in the original application, written notice must be given to the City Water Department prior to making such installation or change of use. Special extension permits are issued for any extension of pipe within a building. In case a consumer places new fixtures on his premises without securing an extension permit from the City Water Department when such fixtures are discovered, a charge will be made for such extra fixture at schedule rates for the full length of time such fixtures have been installed.

Rule F-4. Should it be desired to discontinue the use of water for any purpose, whether for bath tubs, closets, lawn sprinkling, hose connections, or other fixtures, the faucet must be removed, the branch line plugged and notice given the City Water Department at its office before any reduction of rates will be made.

METERED SERVICE.

Rule M-1. Meter rates will apply to all services not covered by the accompanying flat rate schedule. Any consumer desiring to receive water by meter

measurement may have meter placed by the City Water Department under the following rules and regulations. Meters may be installed on any service when the same becomes necessary to prevent the waste of water. Meters are owned by the City Water Department and are furnished to consumers and set in place, provided proper receptacles are provided for them.

Rule M-2. Each metered consumer is subject to the minimum charge for such class of service as he receives. Minimum and rates for additional water are shown on accompanying schedules of meter rates.

Rule M-3. In all cases where a meter is installed the consumer must furnish proper protection from frost or other damage, and meter must be located where it is easily accessible for reading purposes and repairs; where necessary for [153] protection a standard form of meter box will be placed by the City Water Department. The actual cost of the same shall be paid for by the consumer. After such receptacle is placed the City Water Department will furnish and connect the meter, and maintain the same in good condition.

Rule M-4. When a meter is installed at the request of the consumer its installation is to be permanent unless the consumer elects to have the same removed and pays all expenses incident to the installation and removal of same, or discontinues service entirely. Service on a meter for a shorter period than six months will be considered temporary, and in such case the consumer will be required

to reimburse the City Water Department for the actual cost of the labor in connection with the installation and removal of the meter.

Rule M-5. One meter only will be supplied for a single service and in case a consumer desire one or more secondary meters for various tenants in a single building, the consumer will be required to pay \$1.00 per month for the installation and maintenance including the reading of said secondary meters. The City Water Department will not make collections for any secondary meters and all water rents for a single building must be paid by one consumer when supplied by meter measurement from one service. The City Water Department, however, will inclose the reading of the secondary meters with the bill for the whole building.

Rule M-6. The City Water Department may replace any meter at such time as it may see fit and shall be the judge of the size and make any meter installed. In case of a dispute as to the accuracy of the meter, the consumer may upon depositing the estimated cost of making a test, demand the meter be removed and tested as to accuracy, in his presence. In case the meter is found to be registering correctly or in favor of the consumer the cost of such testing and replacing of the meter shall be *born* by the consumer.

In case the meter is found to be recording incorrectly and against the consumer, the amount deposited by the consumer will be funded and a reasonable adjustment made for overcharges, for

period not exceeding sixty days previous to the demand of the consumer for a test to be made.

Rule M-7. In case a meter is found stopped for any reason so that it is not correctly registering the quantity of water consumed the City Water Department may average the amount due for the current month, using the past two months as a basis of such average.

Rule M-8. Water consumers are not permitted to interfere in any way with the meter after it is set in place. In case the meter seal is broken, or the working parts of the meter have been tampered with or the meter damaged, the City Water Department may render a bill for the current month based on an average of the last two months, together with the cost of such damage as has been done the meter and may refuse to furnish water until the account is paid in full.

Rule M-9. In no case will the City Water Department furnish water from one meter to two or more houses, whether the same are owned by one person or not. [154]

SPECIAL RULES AND REGULATIONS.

Rule S-1. The Office of the Water Department will be open daily for the transaction of business and accomodation of the public, from 9:00 A. M. to 4 P. M. with the exception of Sundays and Holidays.

Rule S-2. All water supplied to consumers must be paid in advance, and such charges become delinquent on the 5th day of each month and if not paid by the 15th of the current month, it is hereby made the duty of the Superintendent to shut *of* the water

from such consumer and he shall not *trun* the water on again except for the payment of all past indebtedness, and in addition \$1.00 for turning the water on again.

Rule S-3. Blank application forms for the tapping of the main, extension of service lines and for the installing of additional fixtures must be procured at the office of the Town Clerk.

Rule S-4. Service pipes must be laid at least *fice* feet below the established street grade and at least five feet below the surface of the ground in all other places. Where service enters upon property from the street the curb cock and curb box shall be placed one foot from the outer edge of the *sude* walk line. Where the surface enters the property from the alley the curb box and curb cock shall be placed one foot from the outside of the property line. This rule must be strictly complied with.

Rule S-6. Owners, agents and tenants should familiarize themselves with the location of the stop and waste, which should be installed in such a manner as to drain the entire building, and close it as soon as the property becomes vacant, thereby preventing the pipes freezing and bursting. This stop and waste should always be placed in an accessible part of the premises. The shutting off of the water at the curb cock will not drain the pipes.

Rule S-7. For flat rate services, where the rate remains the same from month to month, failure to receive a bill will not constitute a waiver of the provisions of this ordinance requiring that rentals be paid before a certain date of each month.

Rule S-9. The hours during which sprinkling

is allowed will always appear on the permit in accordance with Rule G-10. These hours must be strictly observed except where water is metered, and for the violation of this rule the water will be shut off without notice.

Rule S-10. In no case will consumers be permitted to use a hose larger than $3/4$ inches in inside diameter for lawn sprinkling, washing vehicles or any other purpose. No hose of any size shall be used for any purpose except that it be provided with a nozzle with a discharge not greater than $1/4$ inches in diameter except when service is metered.

Rule S-11. Meters may be placed at the option of the water Superintendent where in his judgment water is being wasted or the amount of water used is in excess of the amount the consumer is entitled to under the flat rate. Meters will be installed for any consumer complying with [155] the regulations of the City Water Department on request.

Rule S-12. The size and character of the services shall be subject to the approval of the water Superintendent and shall be governed by such rules as may be prescribed from time to time by the water Department.

Section 2: This Ordinance shall be in full force and effect from and after its passage, and approval and publication as provided by law.

Passed and approved this 8th day of December, A. D. 1920.

Approved:

W. H. NORTHEY,
Mayor.

(Corporate Seal) Attest: J. W. BROWN,
Town Clerk.

ORDINANCE No. 34.

Entitled an "ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RYEGATE, MONTANA, CREATING THE OFFICE OF CITY WATER COMMISSIONER, PROVIDING FOR THE APPOINTMENT, PRESCRIBING THE DUTIES AND FIXING THE SALARY OF THE APPOINTEE:"

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RYEGATE, MONTANA:

Section 1. There is hereby created the Office of City Water Commissioner for the City of Ryegate, Montana, which office shall be filled by appointment by the Mayor, subject to confirmation of the City Council, and shall hold during the term of the Mayor appointing.

Section 2. The person so appointed to the office of City Water Commissioner may be the same person holding the appointment of City Clerk, and while exercising the duties of the City Water Commissioner shall be designated as "City Water Commissioner."

Section 3. The person appointed to the office of City Water Commissioner before assuming the duties thereof, shall take and subscribe the Constitutional Oath and file the same duly certified, and furnish the City a good and sufficient bond in the

penal sum of One Thousand (\$1000.00) Dollars conditioned upon the faithful performance of the duties of his office, and the prompt, and faithful payment over to the person entitled thereto of all moneys coming into his hands by virtue of his office; which said bond, when approved by the City Council, shall be filed with the City Treasurer of the City of Ryegate, Montana.

Section 4. It shall be the duty of the City Water Commissioner to ask, demand, and collect all water rentals as heretofore, or as may hereinafter be fixed and prescribed by ordinance or the City Council, and subscribe and deliver receipts therefor, and to collect fees for permits and fines and forfeitures pursuant to ordinances and rules and regulations of said City Council, in the conduct, [156] management and control of the City Water Department, and to monthly pay all such moneys collected over to the City Treasurer, taking his receipts therefor.

Section 5. It shall be the duty of the City Water Commissioner, and he is hereby empowered and directed to enforce all rules and regulations prescribed for the furnishing of water to the consumers, including the issuing of permits, shutting off or discontinuing the supply to consumers for the violation thereof as heretofore, or as may hereinafter be, prescribed by said City Council; and said City Water Commissioner shall make, subscribed a monthly report and statement to the City Council of the amount of collections made, permits issued, and causes and reasons for any discontinuances of service, if any, to consumers.

Section 6. The City Water Commissioner shall receive for his services a salary to be fixed by the City Council, and until the City Council shall otherwise determine, his salary shall be One Hundred Twenty Dollars per year (\$120.00) payable in equal installments at the end of each month after his services are rendered upon his filing of the proper voucher and approval thereof by the City Council.

7. This office is hereby declared to be an emergency measure and ordinance and shall take effect and be in full force and effect after its passage and approval.

Passed and Approved this 22nd day of December A. D. 1920.

Approved:

W. H. NORTHEY,
Mayor.

Attest: _____,
Town Clerk.

Plaintiff rests.

DEPOSITION OF HENRY THIEN, FOR DEFENDANT.

HENRY THIEN, a witness called on behalf of the defendant, being first duly sworn, on direct examination by Mr. JOHNSTON, testified as follows:

“My name is Henry Thien; I live at Ryegate and was living there in 1919 and 1920. In 1919, up to May, 1920, I was a member of the Town Council. R. C. Curry was the Mayor at the time. He is not living now. The other members of the Council at that time were T. A. Strong, C. H. Parizek, D. H.

(Deposition of Henry Thien.)

Corrington, he wasn't the full time, but part of the time, and myself. Mr. Gregory succeeded Mr. Corrington, in the fall of 1919 I should judge, September or October, I would not know the exact date. My term of office [157] expired in May, 1920. Yes, sir, I know Mr. Roscoe who was just on the stand, and knew him prior to 1919, and the company that he was then connected with. The question of establishing a water and sewer system for Ryegate was first discussed in a general way among the people in the summer of 1919. I remember Mr. Roscoe coming to town, I think it was in May or June, possibly in July. I think I saw him there three or four times up to September. I recall one instance that he was accompanied by another party. As to whether or not the other party was Mr. Neale, I cannot recall. I cannot say I knew him personally or even recall the name. I know there was another man accompanied Mr. Roscoe that called at my place of business on that trip. I was running a bank there at the time. I think it was in May, June or July. I could not make it any more definite as to time. No, I don't think I remember what business Mr. Neale, or whoever this man was with Mr. Roscoe, represented. I think Mr. Roscoe introduced him as representing some bond company, a purchaser of bonds, but I do not recall he mentioned the name of the company that he was representing. I believe he mentioned 'Portland' but I do not recall that he mentioned any firm. I would rather think that he mentioned Portland as the residence of Mr. Neale, if he mentioned it at all, but I would

(Deposition of Henry Thien.)

not be certain as to that. I heard Mr. Roscoe's testimony this morning relative to the conversations that took place between us and him and this third man. I do not recall Mr. Roscoe in that conversation telling me that if the Security Bridge Company took the contract and built the water system they would have to sell the bonds. I do not recall in that conversation that anything was said about Mr. Neale, or whoever this third man was, buying any bonds of the Town of Ryegate. As to what action was taken by the Council, as a body, with reference to the installation of the water system, I thing not any, when these two men were there. I think the matter did not come before the Council before probably August or September, when perhaps it started. Yes, there was some opposition to this proposed plan later in the year 1919. The cause of the opposition was, when we obtained the estimate of what the probable cost would be, that was when the opposition developed, on account of the excessive cost; that it was more than the Town could [158] stand—could bear. That was the grounds for the opposition. Yes, sir, we had that estimate before the Ordinance or Resolution was passed creating the district. I was present at the Council Meeting when Mr. Roscoe, for the Security Bridge Company, became the purchaser of the *Generla* Bonds for the sum of \$15,000, and I think it was the same day, the same meeting, that he submitted the bid of the Security Bridge Company for the contract of this water system. Mr. Roscoe may have appeared before the Town Council on other occasions. He may

(Deposition of Henry Thien.)

have appeared once or twice besides that, after I think, perhaps before. As to this meeting when the bid for the General Bonds was submitted being my last meeting which I attended as Councilman, no, I think we had another meeting prior to when our term expired. It was the windup of the old Council before the new one took charge. I don't think Mr. Roscoe was there at that time. As to whether or not Mr. Roscoe said when he made his bid for the General Bonds and submitted his contract, or at any other time when he appeared before the Council in session, I do not recall that he ever said anything as to the Security Bridge Company selling the General and Special improvement Bonds if they got the contract. I do not recall that the purchaser, Lumbermens Trust Company's name was ever mentioned. He didn't ever mention in conversation with me when the Council was in session that the Lumbermens Trust Company had purchased or was going to purchase these bonds, either the general or special, in case his company got the contract to construct the sewer system. I do not recall ever knowing until after the suit was started by the property owners in 1922 that the Lumbermens Trust Company had purchased the general or special bonds from the Security Bridge Company. That suit was the one started to have these improvement bonds declared illegal, the cases that are mentioned in this lawsuit. Mr. Strong who in 1919 was a member of the Council is no longer living. Mr. Parizek is here as a witness. The other Councilman, Mr. Gregory, is in California, although I haven't his address.

(Deposition of Henry Thien.)

During 1919, the Mayor of Ryegate or a councilman was connected with the creamery in Ryegate as a stockholder, but not to my knowledge, as manager or employee. You call my [159] attention to the legal opinion of these general bonds by John C. Thompson, dated April 1, 1920, Exhibit 'A,' well I might have seen it, but I do not recall it. I was not aware that the City Council employed Mr. Thompson or his firm to pass on the legality of the issue. I was aware that they employed an attorney named Mitchell, who was acting for the Wells-Dickie Company, the Council made arrangements with him. Since you refresh my memory, I think it was the Gold-Stabeck Company. I don't recall Mr. Roscoe making a request of the Council for an opinion of Mr. Thompson, though I attended every meeting of the Council. I don't recall Mr. Roscoe ever advising the Council that he was going to forward this opinion of Mr. Thompson to the Lumbermens Trust Company of Portland."

Cross-examination by Mr. BROWN.

"Yes, the opposition developed later; it was due to the high cost it would probably involve. This installation was made during 1920. That was in the period at which expenses were rather high, following the war. Materials were high. Mr. Renshaw was the engineer who prepared the estimates, plans and specifications for the Town Council in the fall of 1919 and I was still a member of the Council. That was the fall preceding the passage of the ordinance that created the district that went ahead.

(Deposition of Henry Thien.)

Well, I examined those plans and specifications in a general way. They were before the Council and I was a member of it. Yes, the opposition was confined to the question of costs. I would say I was one of the leaders of that opposition. Well, perhaps, it might be stated without embarrassment to me that I was the leader of it. When these matters were taken up and worked out, I was the only Councilman who voted 'No.' I got out of the situation. My term expired and I wasn't anxious to continue as councilman. I was engaged in the banking business at Ryegate at that time and the leader in the movement in favor of the ordinance was the opposing banker, yes, sir. I would not call it a war between the two bankers. I think it was a controversy between the elements who considered the cost entirely excessive for a town of that size and on the other hand such that thought it would be all right. [160]

The two leaders of the two movements, myself as opposed to the construction and the other bank of those in favor of it. There were a good many on the other side. I, also, had some associates on the thing. I didn't say that I didn't remember seeing Roscoe before the Council. I remember seeing him at the time the bid was submitted and he probably appeared before that. The general bond issue had been authorized and issued when I went out of office. The bid had been accepted, later, I think the Council passed the ordinances having these bonds issued and the amount that might be necessary. I don't remember Mr. Roscoe ever mentioning the Lumber-

(Deposition of Henry Thien.)

mens Trust Company. I heard his testimony here this morning, upon that subject. In preparing for this bond issue the Town Council employed the Gold-Stabeck Company to get up the proceedings and I believe Mr. Mitchell represented them."

Redirect Examination by Mr. JOHNSTON.

"Referring to the opposition that was arising and the extent of it there were formal protests against the creation of the district."

"Q. There has something been said today about some opposition arising, and the extent of it; were there any formal protests filed against the creation of the district? A. Yes.

Q. Did you examine that so as to know whether or not as it was originally filed it represented over half of the area of the Improvement District?

Mr. BROWN.—Objected to as not the best evidence.

By the COURT.—Sustained.

Q. Do you know whether that protest was numerously signed, or not?

Mr. BROWN.—Objected to as not the best evidence.

By the COURT.—I think you should produce the protest if it was a written protest. He says it was.

Mr. JOHNSTON.—I will look it up and put it in later on.

By the COURT.—Very well." [161]

WITNESS.—(Continuing.) "Prior to engaging Renshaw we had another engineer there to prepare a rough estimate as to the probable cost."

(Deposition of Henry Thien.)

“Q. Do you know, Mr. Thein, how much, if at all, the actual cost exceeded the estimate of Mr. Renshaw?

Mr. BROWN.—To which we object as not competent from this witness.

By the COURT.—I hardly think, unless you have the estimates here, showing it is competent. That would be a matter of writing. There must be some written document in existence showing what that is. I do not think he could testify about it. I will sustain the objection. (Exception.)

Mr. JOHNSTON.—(Offer of proof.) We now offer to show by this witness that the estimate of the engineer, Renshaw, for that portion of the work which was to be paid for by special improvement bonds, was something over \$28,000.00 and that the actual cost of the work, which was in excess of the \$15,000.00 general bond issue and was paid by Special Improvement warrants, was over \$45,000.00.

Mr. BROWN.—That is objected to as not the best evidence and for that very reason, incompetent to any issue in this proceeding. It is for the actual money involved irrespective of whether it was over or under the estimates. If there were a charge of fraud an issue might be raised upon that.

By the COURT.—I will let it stand as it is.”

WITNESS.—(Continuing.) “I knew J. W. Brown, Town Clerk of Ryegate at that time and am familiar with his signature. Yes, that is his signature on Defendant’s Exhibit ‘D.’”

Mr. BROWN.—I am willing to agree that the record may show, there is now produced on the

(Deposition of Henry Thien.)

witness-stand from the files of the Town of Ryegate, a paper called Specifications of Water and Sewer System, and the captions Contractors [162] Proposal: Instructions to Bidders, etc., and that that received the approval of the Mayor and Council on the meeting of April 13, 1920, and that proposal includes all the things which that description describes, to wit: The Specifications, the copy of Instructions, etc., and that it includes as a part thereof such parts as counsel wants to read.

Mr. JOHNSTON.—Counsel for the defendant now offers in evidence the second page of the document marked Defendant's Exhibit "D," referred to by Mr. Brown in his statement to the Court, being entitled "NOTICE TO CONTRACTORS," and particularly the first 5 lines of that proposal. The proposal consisting of two pages, the first part being signed by the United States F. & G. Co., Baltimore, Md., and then as a part of that proposal, signed by The Security Bridge Company, by P. W. Hastings, Treasurer, on April 14, 1920, to which is appended in pen and ink, the following:

"This proposal is made upon the express condition that the bid of W. P. Roscoe upon the general obligation bonds be accepted.

THE SECURITY BRIDGE CO.

By P. W. HASTINGS,

Treas."

And that part of the Specifications, being a part of the same exhibit, which appears upon page 28, as it is numbered in the exhibit under the word "PAYMENTS," being the latter part of page 28

and a portion of page 29.

Now, it may simplify the record by reading it into the record.

(Pages 28 and 29.)

“PAYMENTS.

The contractor will receive monthly partial payments of the amount of ninety per cent of an estimate of the work done or the material furnished during the preceding month made by the engineer in charge on the 1st day of each month. Said estimate to be less the amount of any deduction which may be made in accordance with these specifications. The remaining ten per cent shall be paid upon final completion and acceptance of the work by the engineer and members of the Town Council. Final payment shall be made within ten days [163] of date of final acceptance of the work. The Town now has available from the proceeds of general obligation bonds, \$15,000.00 in cash to apply on the construction of the sewer system and \$15,000.00 in cash to apply on the construction of the water system. After deducting the preliminary expenses this money will be paid to the contractor in cash for the construction of the reservoir, pump house, pumping plant, the sewage disposal plant, and such of the main water line and the main sewer line as it will cover. The balance of the water system is to be paid in Special Improvement District bonds drawn against Special Improvement District No. 4 in the Town of Ryegate, Montana, and the balance of the cost of the Sewer System will be paid for in Special

Improvement District Bonds drawn against Special Improvement District No. 3, in the Town of Ryegate, Montana. These bonds will be accepted by the contractor in full payment for such work at their par value.

The contractor will from time to time have included in his estimate, the cost of such incidental expenses, as printing, engineering, legal expenses, etc., for which he will be issued Special Improvement District bonds against Special Improvement Districts Nos. 3 and 4, and the amount of such incidental expenses as shown by the estimate shall be immediately refunded in their full amounts without discount to the Town or such other persons as estimates may have been issued for."

Mr. BROWN.—To which offer the plaintiff objects for the reason, First: That the item is covered, or the evidence sought to be introduced, by the stipulation of facts therein.

There is no dispute, according to the agreed statement of facts, as to the procedure, the terms and conditions under which the petition or contract—including the fact he obtained the contract under the agreement he would accept the Special Improvement District Warrants.

Second: Because the proposed offer includes the contract or details relative to another construction job of public improvement, to wit: Sewer System and Improvement District Number 3 about which there is no controversy in this lawsuit and has no part in this lawsuit.

Object further, for the reason it is a segregation of a part of the exhibit without offering the whole,

and without counsel has an opportunity to examine to see if the whole would modify or affect any of the parts offered in evidence. [164]

By the COURT.—I would sustain the objection as to the Sewer proposal—it is not involved here. Really, it ought to be sustained as to the parts offered on the ground it all should be offered. If there are any parts that might modify what you have introduced it certainly would be immaterial—would be material to have them considered as well.

You can put it all in if you want to submit it as an exhibit.

Mr. JOHNSTON.—I am perfectly willing. It makes the record more cumbersome.

By the COURT.—I know it is.

Mr. JOHNSTON.—As long as he objects to it—I now offer the entire Exhibit, Defendant's Exhibit "D."

By the COURT.—It will go in subject to your objection, Mr. Brown. (Exception.)

(Portion of Exhibit "D" offered by Mr. Johnston, referred to as "the first five lines of page 2.)

EXHIBIT "D."

"NOTICE TO CONTRACTORS.

Sealed Bids will be received by the Town Clerk at his office until eight o'clock P. M. of the Fourteenth day of April, A. D. 1920, for the furnishing of all materials and the construction of the proposed water system in the Town of Ryegate, Montana, and in Special Improvement District No. Four in said Town of Ryegate. . . .

(Portion of Exhibit 'D' offered by Mr. Johnston, referred to in his offer as 'Proposal,' consisting of two pages, the first part being signed by the United States F. & G. Co., Baltimore, Md., and then as a part of that proposal, signed by the Security Bridge Company, by P. W. Hastings, Treasurer).

PROPOSAL.

To the Honorable Mayor and Town Council of the
Town of Ryegate, Montana.

Gentlemen:

The undersigned propose to furnish all material and do all work of constructing the proposed water and sewer systems in the town of Ryegate, Montana, in a first class workmanlike manner, according to the attached form of contract and specifications, plans and profiles on file in the office of the Town Clerk, at the prices hereinafter mentioned and named.

The following is the name and place of business of the surety company which will sign the form of bond as surety if the work is awarded to the undersigned.

[165]

UNITED STATES F. & G. CO.,
Baltimore, Md.

And we hereby agree, to enter into a contract within 10 days of the notification of the acceptance of this proposal to finish and complete all of said work by the 1st day of October, A. D. 1920, according to the form of contract, plans and specifications hereto attached or filed in the office of the Town Clerk under which this proposal is made. In default of any of the conditions to be performed by the

party of the second part, the certified checks which accompany this proposal, shall at the discretion of the Town Council, be absolutely forfeited to the Town of Ryegate as liquidated damages for the failure of the undersigned to comply with all the terms of this proposal. If this proposal is rejected, then the accompanying checks made payable to the Town of Ryegate shall be returned to the undersigned within 10 days of the date thereof. If this proposal is accepted then the enclosed checks will be returned within 10 days of the filing of a bond for the faithful performance of the work.

Dated this 14 day of April, A. D., 1920.

Name THE SECURITY BRIDGE CO.,

Residence _____,

By P. W. HASTINGS,

Treas. ”

(The following letter was received by the Court Reporter, accounting for only the portions originally offered by Mr. Johnston being copied in the record.

“Helena, Montana. Jan. 28th, 1930.

Re: Lumbermens Trust Co. v. Town of Ryegate,
Mont.

Mr. C. S. Prater,
Court Reporter,
Billings, Mont.

Dear Mr. Prater:

Upon further consideration of Mr. Johnston’s Exhibit D I can see no reason for burdening the record with this entire exhibit. I believe his suggestion that we only use the parts that he desires is perfectly proper. I return the Exhibit to you here-

with. I am copying this letter to Mr. Johnston that he may be advised.

Very truly yours,

JOHN G. BROWN.”)

Mr. JOHNSTON.—We now offer in evidence the Minutes of the Town Council of the Town of Ryegate of February 11, 1919, appearing on Pages 135, 136, 137 and 138 of the Minute Book of the Town of Ryegate, and—

Page 139 of the same Minute Book, being a copy of the protests referred to in the minutes of that meeting.

Mr. BROWN.—We object to the offer upon the sole ground that the minutes offered refer to a meeting of a later date, which later date appears to have been [166] on February 17, 1920, and found on Page 140 of the same Minutes, and if this is offered in connection with the other, we have no objection.

Mr. JOHNSTON.—We will include that in the offer.

Mr. BROWN.—No objection.

By the COURT.—It may be admitted.

Mr. BROWN.—That will include Page 140, as well as the other pages?

By the COURT.—Yes.

Mr. BROWN.—We can agree that the Stenographer may omit parts of that minute that has nothing to do with this case.

By the COURT.—You may agree on that, there.

MINUTES OF REGULAR MEETING OF THE
TOWN COUNCIL OF THE TOWN OF
RYEGATE, MONTANA, HELD AT THE
REGULAR PLACE OF MEETING, THE
FARMERS AND MERCHANTS STATE
BANK, ON WEDNESDAY THE 11TH
DAY OF FEBRUARY L(“), (1920) AT 7:30
P. M.

Upon roll call the following members were found to be present: Mayor R. C. Currie. Aldermen, Gregory, Parizek, Strong and Thirn. Absent None. Town Clerk J. A. Brown was present.

The Committee to whom was referred Ordinance No. 25 at the regular meeting of the Council on January 14, 1920, submitted the following report: “To the Mayor and Council of the Town of
Ryegate, Montana.

Gentlemen:—

We, your Committee, to whom was referred by the Mayor at the regular meeting of the Town Council on January 14, 1920, Ordinance No. 25 entitled: “AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF \$15,000 WATER BONDS OF THE TOWN OF RYEGATE, MONTANA, FOR THE PURPOSE OF PROCURING A WATER SUPPLY AND CONSTRUCTING A WATER SYSTEM FOR SAID TOWN: AND DESIGNATING THE FORM OF SUCH BONDS AND PROVIDING FOR THE LEVY OF A TAX FOR THE PURPOSE OF PAYING THE INTEREST ON AND TO CRE-

ATE A SINKING FUND FOR THE REDEMPTION OF SAID BONDS," beg leave to report and recommend the following amendments to said Ordinance as introduced and passed upon its first reading:

The Town Treasurer having filed a Certificate with the Town Clerk, designating the LIBERTY NATIONAL BANK in the City of New York, State of New York, as the Bank in the City of New York at which the principal and interest of said bonds may be payable at the option of the holder, that the words "Liberty National" be inserted in the first paragraph of the [167] form of the bond and also in the form of the coupon in Section 2 of said Ordinance, so that the same will read, "or at the option of the holder at the LIBERTY NATIONAL BANK in the City of New York, State of New York."

That the date of the sale of such bonds be the 14th day of April, 1920, at 8 o'clock P. M. and that the Notice of Sale, provided for in Section 4 of said Ordinance be amended in the second line thereof by interlineation so as to provide for the sale of such bonds at said date and hour.

That the last line in the second paragraph of said Notice of Sale be amended by inserting the words "Liberty National" so as to read as follows: "or at the option of the holder at the LIBERTY NATIONAL BANK in the City of New York, State of New York."

We recommend that the foregoing amendments be made in said Ordinance and that as amended the said Ordinance be finally passed and adopted.

Respectfully submitted,

L. W. GREGORY,

C. H. PARIZEK,

Committee.”

Alderman Gregory moved the adoption of the report of the Committee which motion was duly seconded and carried and the foregoing report was adopted and ordered spread upon the minutes of the meeting. Alderman Gregory thereupon moved that the Clerk be instructed to amend said Ordinance by interlineation in accordance with the above report, which motion was duly seconded and carried and the Clerk thereupon inserted the words “LIBERTY NATIONAL” in the form of the bond and form of the coupon in Section 2 of said Ordinance and also in the Notice of Sale in Section 4, and also inserted the words “14th day of April, 1920 at 8 o’clock P. M.” in the second line of said Notice of Sale.

Thereupon said Ordinance No. 25 was read at length as of its second reading and Alderman Strong regularly moved the final passage and adoption of said Ordinance. Such motion was duly seconded by Alderman Parizek and upon roll call the following vote was recorded upon the final passage and adoption of said Ordinance.

AYES: Alderman Gregory, Parizek, Strong and Thien.

NOES: None.

Thereupon said Ordinance No. 25 was declared

duly passed and adopted and was signed by the Mayor and Clerk in open session of the Council and the Clerk was directed to make proper record and publication of the same. The Town Clerk was instructed to cause the Notice of Sale provided in said Ordinance No. 25 to be published in the "Ryegate Weekly Reporter," a weekly newspaper published and printed in the Town of Ryegate and in the Bond Buyer, a newspaper published in New York City, for a period of not less than four weeks.

(Minutes of meeting held February 11, 1920, continued.)

The Town Council of the Town of Ryegate having at a [168] Special meeting thereof duly called and held on December 30, 1919, regularly passed and adopted Resolution No. 10, the same being a Resolution declaring it to be the intention of the Town Council of the Town of Ryegate, Montana, to create Special Improvement District No. 4 and Notices having been regularly published and mailed on the first day of January, 1920, as provided in said Resolution No. 10, and this being the next regular meeting of the Town Council, after the expiration of the time within which protests may be made to the Town Council against the creation of said Special Improvement District, the Council proceeded to hear and pass upon all protests which had been filed with the Town Clerk within the time allowed by law after the first publication of such Notice of the passage of said Resolution of Intention.

Attorney D. Augustus Jones representing certain protestants was present at such hearing and

orally argued the reasons why protestants opposed creation of such districts and the proposed works; said reasons being same as set out in the written protests.

After considering such protests filed, Alderman Strong made the following motion: That an adjourned regular meeting of the Town Council be held Tuesday, February 17th, 1920, at 8 o'clock P. M. for the purpose of giving such protests filed final consideration and for the additional purpose of finally determining the matter of the creation of such special improvement districts, hereinbefore mentioned, in accordance with Resolutions of Intention heretofore introduced and passed by the Town Council. Said motion was regularly seconded by Alderman Parizek. The Mayor stated the motion and put the question and upon roll call the following vote was recorded:

AYES Alderman Gregory, Parizek, Strong and Thien.

NOES None.

PROTESTS FILED WITH TOWN CLERK AGAINST CREATION OF SPECIAL IMPROVEMENT DISTRICT NUMBERED 3 AND NUMBERED 4.

Name of Protestant.	Property Protested	Area Protested.
(Protestants represented at hearing Feby. 11th by D. A. Jones in accordance with written Power of Attorney filed with Clerk.)		
May Edson	Lots 7 and 8	Block 8 14,000 Sq. Ft.
W. J. Edson	Lot 4	Block 8 7,000 " "
John H. Fraher	Lot 2	Block 6 7,000 " "
Mrs. Charlotte Grams	Lot 4	Block 20 7,000 " "
Floyd M. Edson	Lot 3	Block 8 7,000 " "
Henry G. Jacobson	Lots 7, 8, 9	Block 18 21,000 " "
Ethel Stinton	Lot 1, E ¹ / ₄ 2	Block 22 10,500 " "
Mrs. Chloe J. Gugler	Lot 1	Block 3 7,000 " "
C. H. Broyles	Lot 4	Block 24 7,000 " "
C. H. Broyles	Lot 5 & 6	Block 3 14,000 " "
A. D. Linderman	Lot 2	Block 24 7,000 " "
L. F. Lubeley	Lots 1, 2, 3	Block 15, 21,000 " "

Name of Protestant.	Property Protested.	Area Protested.
L. F. Lubeley	Lots 7, 8, 9	21,000 Sq. Ft.
Isabel Currie	Lots 9, 10	14,000 "
Sarah G. Snyder	Lots 7, 8, 9	21,000 "
Fran Reavely	Lots 5, 6	14,000 "
[169]		
Lubeley & Reavley	Pt. Lots 15, 16, 17, 17	1,800 "
	(Lots 1 & 3)	14,000 "
	(Lots 1, 2, 3, 4, 5, 6, 12)	49,000 "
Fred Wyman	(Lots 1, 11, 12)	21,000 "
	(Lots 4 & 5)	14,000 "
	(Lot 4)	7,000 "
	(Lots 1, 2, 3)	21,000 "
	(Lots 3, 4, 5, 6)	28,000 "
	(Lots 7, 8, 9, 10, 11)	35,000 "
R. C. Currie	(Lots 7, 8, 9)	21,000 "
	(Lot 6)	7,000 "
	Block 16,	
	Block 8,	
	Block 15,	
	Block 17	
	Block 4	
	Block 6	
	Block 7	
	Block 7	
	Block 15	
	Block 16	
	Block 17	
	Block 18	
	Block 19	
	Block 20	
	Block 22	

Name of Protestant.	Property Protested.		Area Protested.
	Lots 5 & 6	Block 23	14,000 Sq. Ft.
Fred Wyman	Lot 1	Block 1	7,000 "
Fred Wyman	Lot 1	Block 2	7,000 "
Fred Wyman	Pt. Lots 15, 16, 17, 18	Blk 4	5,200 "
Wilste & Currie	Pt. Lots 5 & 6	Block 2	10,000 "
Sasch Leah Sterling	Pt. Lots 4, 5, 6	Block 9	10,500 "

(Protestants represented at said hearing by D. A. Jones under verbal request by Henry Thien made in said meeting; said Henry Thien holding written Power of Attorney from protestants and filed with Clerk.)

Name of Protestant.	Property Protested.	Block	Area Protested.
Edwin M. Wright by Henry Thien, Agent	Lot 4	Block 3	7,000 Sq. Ft.
A. B. Hoehler by Henry Thien Agent,	Lots 2, 5, 6	Block 8	21,000 "
State Bank of Ryegate	Lots 13 & 14	Block 5	7,000 "
Henry Thien	Lot 12	Block 5	3,500 "
Mathias T. Lenihan, Bishop by B. A. Kuhn	Lots 10, 11, 12	Block 10	21,000 "
Henry Thien	Pt. Lots 15, 16, 17, 18	Block 4	2,000 "
Hilbert Thien Co.	Lots 3	Block 3	7,000 "
Hilbert Thien Co.	Lots 3 & 4	Block 5	7,000 "
Hilbert Thien Co.	Lot 9	Block 10	7,000 "
Ryegate Creamery Co.	Pt. Lot 7, 8, 9, 10	Block 6	5,000 "

(The following protests filed but prior to said hearing WITHDRAWN by written instrument filed with the Clerk together with revocation of Power of Attorney.)

Name of Protestant	Property Protested.	Block	Area Protested.
Fred Ammer	Lots 3 & 7	Block 4	10,500 Sq. Ft.
Joe Schultz	Lots 5 & 6	Block 21	14,000 " "
Milwaukee Land Co.	Lots 11, 12, 13, 14, 15, 16, 17, 18	Block 6	28,000 " "
C. M. & St. Ry. Co. Dist. #4 Pt. of Right of Way			389,200 " "
C. M. & St. P. Ry. Co. Dist. #3 Pt. of Right of Way			268,800 " "

Protest of I. G. Madden for Lot 1 Block 2 not considered as signature was not authorized.

I, J. A. Brown, Town Clerk of the Town of Ryegate, Montana, hereby certify that the foregoing is true and correct list of all the protests and withdrawal of protests filed with me as such Town Clerk against the formation of Special Improvement Districts as outlined in Resolution Nine and Ten declaring it to be the intension of the council to create such districts.

(Corporate Seal)

J. A. BROWN,
Town Clerk. [170]

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MINUTES OF ADJOURNED REGULAR
MEETING HELD FEBRUARY 17, 1920.

MINUTES OF AN ADJOURNED REGULAR
MEETING OF THE TOWN COUNCIL OF
THE TOWN OF RYEGATE, MONTANA,
HELD AT THE REGULAR PLACE OF
MEETING, THE FARMERS AND MER-
CHANTS STATE BANK, ON TUESDAY
THE 17th DAY OF FEBRUARY, A. D. 1920,
AT EIGHT O'CLOCK P. M.

Upon roll call, the following members were found to be present.

Mayor R. C. Currie.

Aldermen Gregory, Parizek, Strong and Thien.

Absent none.

Town Clerk J. A. Brown was also present.

The Clerk read all the protests filed with him against the creation of Special Improvement Districts Number 3 and Number 4 as outlined in Reso-

(Deposition of G. H. Corrington.)

lutions Number 9 and Number 10 passed by the Council at the meeting held December 10, 1919.

The Council then fully considered the protests filed against the creation of Special Improvement District No. 4 and upon finding that the total area of the property protested was less than 50% of the total area of the entire district, Alderman Strong made the following motion: "That the protests filed with the Clerk in accordance Resolution No. 9 protesting the creation of Special Improvement District No. 4 have been considered in full and found insufficient under the law to prevent the creation of such District." Alderman Gregory seconded the motion. The Mayor stated the motion and put the question and the following vote was recorded.

Ayes: Aldermen Gregory, Parizek and Strong.

Noes: Alderman Thien.

The Mayor declared the motion carried.

DEPOSITION OF G. H. CORRINGTON, FOR DEFENDANT.

G. H. CORRINGTON, a witness called on behalf of the defendant, being first duly sworn, on direct examination by Mr. JOHNSTON, testified as follows:

"G. H. Corrington is my name and I live at Ryegate, Montana. I am Town Treasurer and have been since the spring of 1922. Prior to that time I was alderman. I was alderman when we were

(Deposition of G. H. Corrington.)

first incorporated, until the fall of 1919—September or October. I resigned in the fall of 1919. I know W. P. Roscoe who testified in this case. No, sir, Mr. Roscoe never appeared before the Council with reference to the proposed water system for the Town of Ryegate while I was a member of the Town Council. I recall meeting Mr. Roscoe but not in regard to this particular matter in the summer of fall of 1919. He did not discuss with me the matter of the water system for the Town of Ryegate. My resignation was accepted in October. I do not recall meeting Mr. Roscoe in that spring or summer [171] or fall when he was accompanied by another gentleman and I do not recall having met Mr. Neale. I didn't know that the Lumbermens Trust Company contemplated buying the General or Special Improvement Bonds of the Town of Ryegate, for the construction of this water system."

"Q. Did you, as an officer of the Town of Ryegate, ever importune or request the Lumbermens Trust Company to buy *an* of the General or Special Improvement District bonds of the Town of Ryegate?

Mr. BROWN.—To which we object for the reason that the witness has said he never knew of their being in the market up to the time he went out of office; no bonds were ready to be sold until after he had passed out as an officer.

(Deposition of C. H. Parizek.)

By the COURT.—Ask him the question; let it go.

(Exception.)

(Question read.)

A. I did not.”

DEPOSITION OF HENRY THIEN, FOR DEFENDANT (RECALLED).

HENRY THIEN a witness recalled on behalf of the defendant, on direct examination by Mr. JOHNSTON, testified as follows:

“Q. Mr. Thien, at any time while you were an officer of the Town of Ryegate, did you importune or request the Lumbermens Trust Company to buy any of the General or Special Improvement Bonds of the Town of Ryegate? A. I did not.

Mr. BROWN.—The same objection.

By the COURT.—The same ruling.”

DEPOSITION OF C. H. PARIZEK, FOR DEFENDANT.

C. H. PARIZEK, a witness called on behalf of the defendant, being first duly sworn, on direct examination by Mr. JOHNSTON, testified as follows:

“My name is C. H. Parizek and I live at Ryegate. I was a member of the Town Council in 1919 and 1920. My term of office expired in the spring of 1920, at the same time Mr. Thien’s expired. I had never met Mr. W. P. [172] Roscoe who testified here. I have seen him. I do not recall any

(Deposition of C. H. Parizek.)

conversation with Mr. Roscoe during the time I was alderman with reference to the Security Bridge Company getting the contract for the construction of the water system for Ryegate.”

“Q. Did you ever meet anybody there in Ryegate with Mr. Roscoe in connection with that water system, about the issuance of these bonds?

Mr. BROWN.—We object to that as incompetent because the witness says he never knew Mr. Roscoe and never saw him.

By the COURT.—I will let it go in. (Exception.)

(Question read.)

A. I never met them to talk to them. I have seen the man with him. I knew Mr. Roscoe by sight.”

WITNESS.—(Continuing.) “I do not recollect ever meeting Mr. Neale, whose deposition was read. I do not recollect anybody else ever talking to me about the Lumbermens Trust Company buying either Special or General Improvement bonds of the Town of Ryegate. No, I don't recall Mr. Roscoe ever appearing before any meeting of the Town Council. I don't recall ever having heard that the Lumbermens Trust Company might buy any of these Special Improvement Bonds while I was Councilman. As to whether or not I, or any other official ever requested the Lumbermens Trust Company to buy these Special Improvement Bonds, I would say not that I know of. I do not recall that I ever saw the opinion of Mr. Thomp-

(Deposition of C. H. Parizek.)

son, marked Plaintiff's Exhibit 'A' with reference to the legality of the General Bonds of the Town. I might have seen it but I do not recall. I have no recollection of Mr. Roscoe ever appearing before the Council when it was in session and asking for this copy and advising the Council that he was going to send it to the Lumbermens Trust Company."
[173]

Cross-examination by Mr. BROWN.

"I knew Mr. Strong the banker. He was in the Farmers & Merchants State Bank. I also knew Mr. Thien; he was in the State Bank of Ryegate. I was a merchant in Ryegate at that time. I did business with both banks. I do not recollect ever having met Mr. Roscoe and Mr. Neale and two other of the Councilmen with Mr. Strong in Mr. Strong's bank to discuss this matter. I do not recollect any such meeting at any time or at any date. As to my saying I never did, I would answer I do not recall it. I do not recall at that time and place, if there was such a time and occurrence at such a place, it was discussed as to how the matter would be delayed until Thompson's opinion came on these General Bonds, before Mr. Roscoe would forward the bonds, with the opinion, on to the Lumbermens Trust Company. As to whether or not it ever happened, I do not recall."

DEPOSITION OF W. H. NORTHEY, FOR DEFENDANT.

W. H. NORTHEY, a witness called on behalf of the defendant, being first duly sworn, on direct examination by Mr. JOHNSTON, testified as follows:

“My name is W. H. Northey. I live at Ryegate and was a member of the Ryegate Town Council in 1920 and 1921. I was Mayor of the town from May, 1920, to May, 1922. I know Mr. W. P. Roscoe but I am not acquainted with Mr. Neale, whose deposition was read. I never met him that I know of. I was not an official of the town in 1919. I had no conversation with any official of the Lumbermens Trust Company. I never had any knowledge that the Lumbermens Trust Company had agreed to buy these Special Improvement Bonds from the Security Bridge Company. The first time I knew this company had the bonds was the other day when I was served with the summons—I mean the subpoena served on me. That was the first time I ever knew the Lumbermens Trust Company claimed to be the purchaser of these bonds. As to Plaintiff’s Exhibit ‘A,’ the opinion of Mr. Thompson with reference to the legality of the General Bonds of the Town, I don’t know anything about it—I don’t remember ever seeing it. I don’t recall that Mr. Roscoe ever appeared before me and the Council [174] when I was Mayor, asking for this opinion, Plaintiff’s Exhibit ‘A.’ I don’t recall Mr. Roscoe ever stating to me and the Coun-

(Deposition of W. H. Northey.)

cil, while in session or otherwise, that he wanted this opinion to send to the Lumbermens Trust Company of Portland, Oregon; in fact I never heard of that man Thompson in connection with the water system at all. [175] Calling my attention to the certificates marked for Identification as Plaintiff's Exhibit 'C,' being certificates relative to the construction, I would say it is my signature on them. I understand they were estimates of work done. Also, this third place, where it appears to be my signature, it is mine. Yes, sir, that is my signature on the fourth and fifth ones."

Mr. BROWN.—Are these signatures disputed?

Mr. JOHNSTON.—No, sir.

WITNESS.—(Continuing.) "I think my signature was put on at the request of the engineer. I think that is the Clerk's handwriting on them, Mr. Brown. Mr. Roscoe never appeared and requested me to sign any of these certificates. Mr. Roscoe, nor anyone else ever told me they were being sent to the Lumbermens Trust Company. I never heard the Lumbermens Trust Company mentioned, in connection with these certificates. I never importuned or requested the Lumbermens Trust Company to buy any of these General or Special Bonds."

DEPOSITION OF B. MELLEN, FOR DEFENDANT.

B. MELLEN, a witness called on behalf of the defendant, being first duly sworn, on direct examination by Mr. JOHNSTON, testified as follows:

(Deposition of B. Mellen.)

“My name is Binone Mellen and I live at Ryegate and was a member of the Town Council of Ryegate in 1920 and 1921. I went into office the first Monday in May, 1920. I served two full years. I know Mr. Roscoe by sight; I never met him until I came on the Council. I do not know Mr. Neale whose deposition was read in evidence. I was not an officer of the Town of Ryegate in 1919 and to my knowledge I never met Mr. Roscoe or Mr. Neale in connection with this water system or these bonds. I never at any time importuned the Lumbermens Trust Company to buy any of these Special Improvement Bonds, nor did I *never* know of any officer of the Town of Ryegate asking the Lumbermens Trust Company to buy any of the bonds. I don't remember when I learned that the Lumbermens Trust Company was the owner of these Special Improvement Bonds. It wasn't until after the suit was started, to annul the bonds. Yes, sir, that was the suit started in 1922. I do not remember Mr. Roscoe appearing before the Town Council as representative of the Security Bridge Company, but [176] he may have been present. I do not remember any particular meeting. He never appeared before the Town Council and mentioned that the Lumbermens Trust Company had bought any of the General or Special Improvement Bonds.”

“Q. I call your attention to Plaintiff's Exhibit 'A,' being an opinion of Mr. Thompson with reference to the validity of the General Bond Issue of Ryegate, and ask you whether you recall ever having seen that before.

(Deposition of B. Mellen.)

Mr. BROWN.—Objected to as immaterial. The letter shows by its face it is an advance date, before the time he was a member of the Council.

By the COURT.—Overruled. (Exception.)

A. No, sir.”

WITNESS.—(Continuing.) “I do not recall Mr. Roscoe ever appearing before the Council while I was a member and asking for this opinion of Mr. Thompson. I never heard of this opinion of Mr. Thompson’s until to-day.”

“Q. Now, I call your attention to Plaintiff’s Exhibit ‘C,’ being a bunch of certificates with reference to the work on this system—supposed to be copies of the minutes of the meetings relative to that, the allowance of estimates; certified copy of the minutes being signed by Mr. Brown, and the ones with reference to the work, of the issuance of bonds, signed by Northey, Mayor, Brown, Town Clerk and Hinton, Town Treasurer. Did the matter of the issuance of any of these certificates ever come before the Mayor or Council, in session, while you were a member of the Council?

Mr. BROWN.—We object to that as incompetent. If it came before them, officially, the best evidence of it is the minutes of their meeting.

By the COURT.—Overruled. (Exception.)

(Question read.)

A. These were brought up—these estimates were brought up and allowed at the Board meeting.”
[177]

WITNESS.—(Continuing.) “I never knew that certified copies of the minutes were being made out

(Deposition of B. Mellen.)

by the Town Clerk and delivered to anyone. No, sir, I didn't know that the Mayor, Town Clerk and Treasurer were making them out at that time. I never heard of them before to-day. I never knew of any officers of the Town of Ryegate having any such knowledge during the time I was Councilman."

Cross-examination by Mr. BROWN.

"Q. Mr. Mellen, you were present at meetings of the Town Council, at seven o'clock P. M. on the 11th of August; 7:30 o'clock the 25th day of August and 7:30 o'clock the 8th of September and other times along in that interval, that the Town Council of Ryegate was in session, were you not?

A. The minutes would show whether I was present.

Q. Do you recall whether or not you were present? A. I think I was present most of the time.

Q. Now *the*, calling your attention to these minutes in question, to the minutes of the dates mentioned, I mean—to the dates mentioned in these certificates, isn't it a fact that each of the estimates submitted by the engineer was submitted to the Council, and each time they were submitted, 'it was regularly moved that the estimate of the Security Bridge Company be allowed as read and that the Mayor and Town Clerk be instructed to issue bonds numbered from 20 to 27, both inclusive, etc., against Special Improvement District Number 4.' Don't you recall of a number of instances where a similar motion to that went through each time these were prepared? A. The estimates, yes, sir.

(Deposition of B. Mellen.)

Q. And that was all done in accordance with the contract for the construction was it not?

Mr. JOHNSTON.—That is a conclusion he is asking for; objected to for that reason. [178]

By the COURT.—Let him answer the question, if you were there and participated in the meeting?

A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. You were present and voted for the authority, for the estimate upon that date—

Mr. JOHNSTON.—Object to that as not the best evidence.

By the COURT.—Let him testify whether he was or not.

A. I was present on that date.”

WITNESS.—(Continuing.) “On that date I voted for the estimate being allowed. I was present at the meeting of July 28, 1920, and voted in favor of the allowance of the estimate of the Security Bridge Company on the construction of the waterworks. I was present at the meeting of August 25th and voted for the allowance of the estimate of the Security Bridge Company for the construction work that had been certified to that meeting. I was present at the meeting of September 8, 1920, and voted in favor of the allowance of the estimate of the Security Bridge Company on that date. I was present at the meeting of October 13. There was submitted to the Council and I voted in favor of the allowance of the estimate of the Security Bridge Company for the construction of this water-

works system at that time. As to the meeting of November 24, 1920, I was present on that date and voted in favor of the allowance of the estimate of the Security Bridge Company of the waterworks of the City of Ryegate submitted to that meeting. I still live in Ryegate.”

“Mr. JOHNSTON.—We now offer in evidence the minutes of the meetings of the Town Council of Ryegate on each of the dates mentioned by counsel on his inquires of the witness who just left the stand. We want to show there was nothing—

Mr. BROWN.—We have no objection to the offer if confined to this; if confined to the bills of Tom, Dick and Harry— [179]

By the COURT.—Let it be confined to the estimates, and they may go in.

Mr. JOHNSTON.—Offered for the purpose of showing, at these meetings nothing was said about the certificates.

By the COURT.—They will be admitted for what they show.”

(PORTION OF MINUTES OF REGULAR MEETING OF TOWN COUNCIL OF TOWN OF RYEGATE, MONTANA, ON WEDNESDAY THE 11th OF AUGUST, 1920, AT 7:30 O’CLOCK P. M.)

The July estimate of the Security Bridge Company for labor and material on waterworks was read as follows:

117 cu. yds. concrete in reservoir @

\$37.50 \$ 4,387.50

The Town of Ryegate.

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Reservoir roof structure complete	1,425.00
11 cu. yds. concrete at well @ \$40.00	440.00
100 cu. yds. excavation at well @ \$2.75..	275.00
300 cu. yds. excavation at reservoir @ \$3.17	951.00
1400 lin. ft. 6" pipe on ground @ \$2.50..	3,500.00
Material on ground as per first estimate	4,268.04
<hr/>	
Total to August 1st	\$15,246.54
Less	
Previous estimated	\$6,341.24
Re-inforcing at reservoir	873.00
10%	1,532.30
<hr/>	
Total deductions	\$8,746.54

Balance due contractor this estimate. . . . \$ 6,500.00

Alderman Gregory moved that the estimate be allowed as read *at the the* Mayor and Town Clerk be instructed to issue bonds numbered 7 to 19 inclusive of Special Improvement District No. 4 in the denomination of \$500.00 each to the Security Bridge Company according to the terms of the contract with that company. This motion was duly seconded and unanimously carried.

(PORTION OF MINUTES OF REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF RYEGATE, MONTANA, ON WEDNESDAY THE 28th OF JULY, 1920, AT 7:30 P. M.)

Estimate Ryegate Water System for the month of June, 1920, to the Security Bridge Company,

Contractors, approved by Claude A. Renshaw was read as follows:

Material on ground as per previous estimate	\$4,268.04
64 yds. Concrete in place in reservoir @ \$37.50	2,400.00
300 Cu. Yds. excavation at reservoir @ \$3.17	951.00
	<hr/>
Total material furnished and work completed to date	\$7,619.04

[180]

Less previous estimate	\$3,841.24
Less re-inforcing in reservr..	360.00
Less 10%	917.80
	<hr/>

Total deductions	\$5,119.04
Balance due contractor this estimate.....	\$2,500.00

(PORTION OF MINUTES OF SPECIAL MEETING OF THE TOWN COUNCIL OF THE TOWN OF RYEGATE, MONTANA, HELD ON THE 25th DAY OF AUGUST, 1920, AT 7:30 P. M.)

Fourth Estimate Ryegate Water Works System, Security Bridge Company, Contractors.

August 25th, 1920.

Previous estimates	\$15,246.54
Materials furnished and labor performed since August 11th Estimate as follows:	
1200' 6" pipe @ \$2.50	3,000.00
2 tons specials @ \$365.00	730.00

The Town of Ryegate.

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11 Cu. Yds. Concrete at well @ \$40.00 . . .	440.00
100 Cu. yds. Excavation at well @ \$2.75	275.00

Total material furnished & labor performed \$19,691.54

Less previous estimate \$12,841.24

Less reinforcing in reservoir 873.00

Less 10% 1,977.30

Total deductions \$15,691.54

Bal. due this Estimate 4,000.00

\$19,691.54

These items are correct.

(Signed) CLAUDE A. RENSHAW,

Engineer.

Alderman Gregory moved that the Fourth Estimate of the Security Bridge Company be allowed as read and that the Mayor and Town Clerk be instructed to issue Bonds numbered from 20 to 27, both inclusive in the denomination of five hundred dollars each against Special Improvement District Number 4 be issued in payment of same.

Upon roll call all the members voted "Aye." The motion was declared to have unanimously carried.

(PORTIONS OF MINUTES OF REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF RYEGATE, MONTANA, HELD ON SEPTEMBER 8, 1920, AT 7:30 P. M.)

The following estimate of the Security Bridge Company was read:

“Fifth Estimate for the Security Bridge Company
for Ryegate Water System.”

Previous estimated	\$19,691.54
Work done and materials furnished since last estimate,	
840 lin. feet 8" C. I. Pipe @ \$3.50	2,940.00
4320 Lin. feet 4" C. L. Pipe @ 165	7,128.00
9000# lead @ 15¢	1,350.00
Brick and Tile	250.00
Millwork	100.00
[181]	
Pump, Motor, Switchboard & other pumping equip.	1,750.00
100 Cu. Yds. Excavation at well @ \$40.00	960.00
	<hr/>
Total work completed & material fur- nished to date	\$34,444.54
Less previous estimates	\$16,481.24
Less reinforcing used	873.00
Less 10%	3,730.30
	<hr/>
Total Deductions	\$21,444.54
Due Cont'r this Est.	13,000.00
	<hr/>
	\$34,444.54

This estimate was approved by Claud A. Renshaw,
Engineer in charge.

Alderman (In lead pencil (“Mellen”)) moved that
this estimate be allowed as read. This motion was
duly seconded and on roll call all members present
voted, “Aye.” The motion was declared to have
been carried by the Mayor and the Mayor and Town

Clerk were instructed to issue Special Improvement District #4 Bonds numbered from 28 to 40 both inclusive.

(PORTION OF MINUTES OF REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF RYEGATE, MONTANA, HELD ON OCTOBER 13, 1920, AT 7:30 P. M.)

The September Estimate (estimate #6) Ryegate Water System, Security Bridge Company, Contractors, was read as follows:

5437 Lin. feet 4" pipe laid complete @		
\$2.55	\$16,414.35	
1602 Lin. feet 6" pipe laid complete @		
\$3.60	5,767.20	
10 Fire Hydrants complete @ \$174.40..	1,744.00	
438 Cu. Yds. Excavation at well @ \$2.75	1,204.50	
79 Cu. Yds. concrete at well @ \$40.00...	3,160.00	
300 Cu. Yds. excavation at reservoir @		
\$3.17	951.00	
117 Cu. yds. concrete at reservoir @		
\$37.50	4,387.50	
Roof and reservoir equipment complete	1,425.00	
Materials on ground,		
1835 Lin. feet 4" pipe @ \$1.65	3,027.75	
1011 Lin. feet 6" pipe @ \$2.50	2,527.50	
840 Lin. feet 8" pipe @ \$3.50	2,940.00	
3 fire hydrants @ \$142.50	427.50	
1800# speicals @ \$365.00 per	328.50	
5 valves with boxes	280.50	
Motor and pumping equipment	1,750.00	

Millwork, brick tile etc.	350.00
4000# lead @ 15¢	600.00
<hr/>	
Total work complete to date and material on gd.	\$47,285.30
Less previous estimates	\$29,841.24
Leback fill incomplete	300.00
Less 10%	4,644.06
<hr/>	
Total deductions	\$34,785.30
Balance due contractor	12,000.00
<hr/>	
	47,285.30

Alderman Gregory moved and Alderman seconded the motion that the estimate No. 6 be allowed and that the Mayor and Town Clerk be instructed to issue Special Improvement District No. 4 Bonds numbered from 54 to 78 both inclusive in the sum [182] of Five Hundred dollars each to the Security Bridge Company in payment for said estimate. On roll call all the members voted "AYE."

(PORTION OF MINUTES OF AN AD-
JOURNED REGULAR MEETING OF THE
TOWN COUNCIL OF THE TOWN OF RYE-
GATE, MONTANA, HELD NOVEMBER 24,
1920, AT 7:30 O'CLOCK P. M.)

The Final Estimate on the Ryegate Water System submitted by the Security Bridge Company, Contractors, and approved by Claude A. Renshaw, Engineer, was read as follows:

8271 Lin. Feet 4" C I Pipe @ \$2.55	\$21,091.05
2726 Lin. Feet 6" C I Pipe @ \$3.60	9,813.60

841 Lin. Feet 8" C I Pipe @ \$5.04	4,238.64
13 Fire Hydrants @ \$174.40	2,267.20
320 Cu. Yds. Excavation at reservoir @ \$3.17	1,014.40
117 Cu. Yds. concrete at reservoir @ \$37.50	4,387.50
Reservoir equipment complete	1,425.00
452 Cu. Yds. Excavation at well @ 2.75..	1,243.00
89.1 Cu. Yds. Excavation at well @ 40.00	3,564.00
Pumping Equipment complete	2,525.00
Pump House complete	1,625.00
Frost casing complete (force account)..	316.43
15 profit on above item	47.40
Printing bonds (Billings Gazette Prtg. Co.)	104.00
239 Cu. yds. extra rock excavation @ 3.00	717.00
Engineering @ 6% as per contract	3,240.00
	<hr/>
Total Cost of Improvements	\$57,619.22
Paid to contractor by previous estimates	\$42,341.24
Paid engineer by previous estimates	2,078.30
Balance due contractor	12,037.98
Balance due Engineer	1,161.70
	<hr/>
	\$57,619.22

Alderman Gregory moved that the final Estimate just read be allowed and in payment for the same the Clerk be instructed to pay out of the Treasury the sum of \$5,435.56 and that the balance be paid

(Deposition of Henry Thien.)

by Special Improvement District No. 4 Bonds numbered 79 to 91 both inclusive in the sum of \$500.00 excepting Bond numbered 91 shall be in the sum of \$602.40. Alderman Mellen seconded the motion and on roll call all the members voted "Aye." Whereupon the motion was declared to have carried."

The defendant rests.

DEPOSITION OF HENRY THIEN, FOR DEFENDANT (RECALLED IN REBUTTAL).

HENRY THIEN, a witness heretofore called on behalf of the defendant, being recalled in rebuttal, on direct examination by Mr. BROWN, testified as follows: [183]

"When on the stand a while ago, I testified that I knew the signature of Mr. Brown, the Town Clerk. As to the two letters you call my attention to, I believe that is his signature. I believe they contain his signature. One of these letters is dated October 16, 1916, but it refers to these Ryegate water bonds; there wasn't any Ryegate water bonds in existence at that time, so that date must have been in error. I am a banker at Ryegate. I met Mr. Roscoe at different times. Generally, I am interested in public bonds, and so forth, used as collateral for county and public deposits, and am interested in Town finances and improvements. No, I never knew and was never informed who was going to buy these bonds."

(Deposition of Henry Thien.)

Cross-examination by Mr. JOHNSTON.

“As to whether or not, I ever made any inquiry as to who was buying these bonds, well, it was naturally presumed—I presumed that they had some outlet for these bonds otherwise they would not take them. It didn’t particularly concern me who was taking them. I knew that Mr. Roscoe of the Security Bridge Company submitted the bid. Yes, I knew he submitted a certified check for \$15,000.00. That was the par value of the General Bonds.”

“Q. Then did you know what his proposal was with reference to taking the Special Improvement Bonds in part payment of his work?”

Mr. BROWN.—Objected to as not proper cross-examination.

By the COURT.—I think such cross-examination would be warranted. Proceed.

(Question read.)

A. Yes.”

DEPOSITION OF PARKER W. HASTINGS,
FOR PLAINTIFF (IN REBUTTAL).

PARKER W. HASTINGS, a witness on behalf of the plaintiff, being first duly sworn, on direct examination, in rebuttal, by Mr. BROWN, testified as follows: [184]

“I was one of the officers of the Security Bridge Company during the times there was up with the Security Bridge Company, the Town of Ryegate and the Lumbermens Trust Company, the matter of

(Deposition of Parker W. Hastings.)

waterworks construction and the sale of the waterworks bonds of Ryegate. During the time I was such officer, I requested the Town or Town officers of the Town of Ryegate to forward these certificates as to estimates to the Lumbermens Trust Company. These are certificates included in Plaintiff's Exhibit 'C.' "

Cross-examination by Mr. JOHNSTON.

"I requested that the certificate to the bonds be sent. I refer to the certificate that was issued with each bond issue. I made the request in person once or twice to the City Clerk, Brown. The Council was not in session when I made the request. I simply went to the Clerk's office and requested it. The estimate had been allowed."

"Q. You really went to him, personally, or write him, personally, a letter asking that this be done?"

A. Yes.

Q. Were any other officers—were the Mayor or any Councilmen of the Town, present at the time, as far as you know?

A. I think at one time I took the certificate to the Mayor, Mayor Northey to have him sign it.

Q. You didn't go into any explanation, you simply asked him to sign that certificate *did not*?

A. Yes, sir."

Redirect Examination by Mr. BROWN.

"I got the Mayor's signature to one of the certificates, yes. I don't recollect explaining to him the details of what he was signing. I think it was evi-

(Deposition of Parker W. Hastings.)

dent what he was signing. I have a bare recollection of taking it to him.”

“Q. In answer to counsel’s question a minute ago; I may be wrong, but you gave me the impression you got the bonds [185] and these certificates at the same time, is that correct?

A. An issue of bonds and the certificates at the same time, yes, sir.

Q. For the purpose of refreshing your memory, I call your attention to a letter and ask you if there wasn’t an interval of time between the getting of the bonds and the forwarding of the certificates. (Witness examining letter.)

A. Evidently there was.”

WITNESS.—(Continuing.) “Evidently I sent the bonds and the clerk sent the certificates.”

The plaintiff rests.

“Mr. JOHNSTON.—I would like the record to show that the stenographer is authorized to make copies of the minutes and ordinances of the Town Council of the Town of Ryegate, which were introduced in evidence and when that is done, he then return the Minute Book and the Ordinance Book to the Town Clerk of the Town of Ryegate.

Mr. BROWN.—There is no objection to that order. I ask that the stenographer submit what he proposes to copy to counsel for the defense so we do not copy immaterial matter.

Mr. JOHNSTON.—Just the part of the minutes we made reference to in these matters. Mr. Prater may take that up with me and I will cut out any-

(Deposition of Parker W. Hastings.)

thing that does not pertain to the issues in this case.

By the COURT.—Only such matters that pertain to the issues here.

By Mr. BROWN.—And that he may return these exhibits without further order.

By the COURT.—Very well, it is so ordered.”

[186]

Said cause being finally submitted to the Court, thereafter upon the 15th day of May, 1931, the Court did file his findings and conclusions in words and figures as follows:

(Clerk please here insert copy of same.)

The plaintiff herein being allowed an exception thereto.

Thereafter and on the —— day of May, 1931, at the request of the attorneys for the defendant there was signed, filed, entered and docketed a judgment in said cause, in favor of the defendant and against the plaintiff, the same being in words and figures as follows:

(Clerk please herein insert copy of same.)

The plaintiff herein being allowed an exception thereto.

Now within the time allowed by law and orders of the Court herein, the plaintiff having presented the foregoing as and for a bill of exceptions herein, and a full, true and correct record of the proceedings had upon said trial and of all of the agreed facts, evidence and pleadings submitted to the Court and upon which it based its decision, the said parties hereto, acting through their respective attorneys,

do hereby stipulate and agree that the foregoing proposed bill of exceptions, or statement on appeal, may be signed, settled and allowed herein as and for a full, true, and correct record of the proceedings had in this cause, the agreed facts and evidence submitted to the Court and the records, evidence and agreed statement of facts before the Court in making its decision herein.

And the defendant hereby waives the right granted by the rules of the Court herein to propose amendments to the foregoing draft of the bill of exceptions herein.

Dated, June 18th, 1931.

STEWART & BROWN,
Attorneys for Plaintiff.

JOHNSTON, COLEMAN & JAMESON,
Attorneys for Defendant. [187]

United States of America,
District of Montana,—ss.

I, Chas. N. Pray, Judge of the District Court of the United States, in and for the District of Montana, and the Judge before whom the foregoing entitled action was tried, do hereby certify that the foregoing bill of exceptions is a full, true and correct bill of exceptions and statement on appeal in the above-entitled cause and the same is hereby signed, settled and allowed by me as a full, true and correct bill of exceptions and statement on appeal herein.

Dated this 19th day of June, 1931.

CHARLES N. PRAY,
Judge of the United States District Court, in and
for the District of Montana.

Filed June 19, 1931. [188]

THEREAFTER, on July 7th, 1931, order amending decision was duly filed and entered herein, as follows, to wit: [189]

ORDER AMENDING DECISION.

On application of plaintiff IT IS ORDERED that the decision heretofore rendered in the above-entitled cause may stand as the findings of fact and conclusions of law required under Equity Rule 70 $\frac{1}{2}$ to avoid any question that may arise as to whether said cause is an action at law or a suit in equity, and accordingly such decision is hereby amended to conform to said rule.

CHARLES N. PRAY,
Judge.

Filed July 7th, 1931. [190]

THEREAFTER, on July 31st, 1931, assignment of errors was duly filed herein as follows, to wit: [191]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Comes now Lumbermens Trust Company, a cor-

poration, plaintiff in the above-entitled cause, and by their solicitors, Stewart & Brown, of Helena, Montana, makes and files its assignment of errors, as follows:

I.

The Court erred in ordering this action dismissed and in entering a decree in favor of defendant and against the plaintiff and for the dismissal of said cause in its entirety.

II.

The Court erred in making any findings whatsoever relative to whether or not there was notice given to property owners within the district of the letting of the contract for the construction of the improvement in the Town of Ryegate, which is the subject of this action.

III.

The Court erred in making any finding relative to the estimated cost of the improvement in the Town of Ryegate.

IV.

The Court erred in making any finding as to whether or not protests were filed after the contract was let for the installation of the improvement in the Town of Ryegate, which is the subject of this action. [192]

V.

The Court erred in limiting its findings to a question of the improvements and the improvement district and in finding that the improvements were within an improvement district and for the use and benefit of the improvement district's inhabitants alone.

VI.

The Court erred in not finding that the water system was for the use and benefit of the municipality and the Town of Ryegate and for certain portions of the inhabitants thereof and for the purposes set forth in the resolutions creating the improvement district in question.

VII.

The Court erred in finding that the defendant, Town of Ryegate, did not, and has not become indebted to the plaintiff, on account of moneys advanced by it and had and received by the Town of Ryegate, the benefits of which the defendant, Town of Ryegate is now using and enjoying.

VIII.

The Court erred in holding that the indebtedness sought to be imposed upon the defendant, Town of Ryegate, is unconstitutional and in violation of any provision of the Constitution of the State of Montana, including Section 6 of Article XIII of said Constitution.

WHEREFORE, plaintiff, now appellant herein, prays that the judgment of the District Court of the United States for the District of Montana, Billings Division, may be reversed and the cause be remanded to said District Court with orders to enter a judgment for the plaintiff, this appellant herein, Lumbermens Trust Company, a corporation, for the sum of \$38,762.56.

STEWART and BROWN,

Attorneys for Appellant, Helena, Montana.

Filed July 31, 1931. [193]

THEREAFTER, on July 31st, 1931, petition to appeal was duly filed herein as follows, to wit:
[194]

[Title of Court and Cause.]

PETITION TO APPEAL.

Now comes Lumbermens Trust Company, a corporation, plaintiff in the above-entitled cause, and respectfully asking to become appellant herein, and conceived itself aggrieved by the decree of the above-entitled court, made and entered in the above-entitled suit on the 16th day of May, 1931, does hereby appeal from said decree and judgment entered herein and from the whole and every part thereof, to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, State of California, and prays that its appeal be allowed; and that a transcript of the records and proceedings and papers upon which said decree was made, rendered and duly authenticated, and all the papers upon which said decree was entered and rendered may be sent to the United States Circuit Court of Appeals at its place of sitting at San Francisco, in the State of California.

Dated, July 31st, 1931.

STEWART & BROWN,

Solicitors for the Above-named Plaintiff and Appellant, Helena, Montana.

Filed July 31, 1931. [195]

THEREAFTER, on July 31st, 1931, order allowing appeal was duly filed and entered herein, as follows, to wit: [196]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

And now, to wit, upon this 31st day of July, 1931, IT IS ORDERED that the appeal of the plaintiff in the above-entitled cause be allowed as prayed for, and IT IS FURTHER ORDERED that a bond in the sum of Five Hundred Dollars, in form and with sureties approved by the Court, be given for the payment of all costs which may be hereafter assessed against said plaintiff and appellant in the United States Circuit Court of Appeals for the Ninth Circuit; and IT IS FURTHER ORDERED that all proceedings under said decree entered on the 16th day of May, 1931, as aforesaid, be stayed from the date of this order, and that upon the giving and filing in the office of the Clerk of this court of the bond now ordered in the sum of five hundred dollars in the form and with sureties approved by the Court and conditioned that the said plaintiff and appellant will prosecute such appeal with effect, and answer all damages and costs if it fails to procure a reversal of said decree by the said United States Circuit Court of Appeals for the Ninth Circuit, within ten days from the date of this order, all proceedings under the aforesaid decree entered on the 16th day of May, 1931, be stayed,

pending said appeal and until the further order of this court.

Dated, July 31, 1931.

CHARLES N. PRAY,
Judge District Court of the United States, District
of Montana.

Filed July 31, 1931. [197]

THEREAFTER, on July 31st, 1931, bond on appeal was duly filed herein as follows, to wit:
[198]

[Title of Court and Cause.]

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS:
That we, the Lumbermens Trust Company, a corporation, as principal, and the National Surety Company, a corporation, duly authorized under the laws of the State of Montana and its compliance therewith, to act as surety and indemnitor upon bonds upon appeal, do acknowledge ourselves to be indebted to the Town of Ryegate, a municipal corporation, defendant in the above-entitled cause, in the sum of five hundred dollars (\$500) conditioned that whereas on the 16th day of May, 1931, in the District Court of the United States for the District of Montana, Billings Division, in a suit pending in that court wherein the said Lumbermens Trust Company, a corporation was plaintiff and the Town of Ryegate, a municipal corporation, was defendant, numbered 224 of the Records of that

Court, a decree was rendered and judgment entered against the plaintiff, Lumbermens Trust Company, a corporation and in favor of the defendant, the Town of Ryegate, a municipal corporation, and said plaintiff, Lumbermens Trust Company, a corporation, having obtained an appeal to the United States Circuit Court of Appeals of the Ninth Circuit, and filed a copy thereof in the office of the Clerk of the said District Court of Montana to reverse said decree, and a citation directing and admonishing the said Town of Ryegate, a municipal corporation, defendant to appear within thirty days at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the city of [199] San Francisco, State of California, on the — day of ———, 1931, next.

Now, if said plaintiff, Lumbermens Trust Company, a corporation, shall prosecute their appeal to effect, and answer all costs, if it fails to procure a reversal of said decree by the United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation shall be void, otherwise to remain in full force and virtue.

LUMBERMENS TRUST COMPANY, a
Corporation,

[Corporate Seal] By JOHN G. BROWN,
Its Attorney Hereunto Duly Authorized.

NATIONAL SURETY COMPANY.

By H. L. HART,
State Manager and Resident Vice-president,
Attorney-in-fact.

Filed July 31, 1931. [200]

THEREAFTER, on July 31st, 1931, a citation was duly issued herein, which original citation is hereto annexed and is in the words and figures as follows, to wit: [201]

[Title of Court and Cause.]

CITATION ON APPEAL.

To the Town of Ryegate, a Municipal Corporation,
GREETING:

You are cited and admonished to be and appear at the session of the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco, State of California, within thirty days from the date hereof, pursuant to an appeal taken, allowed and filed in the office of the Clerk of the United States Court for the District of Montana on the 31st day of July, 1931, in that certain suit being No. 224, wherein Lumbermens Trust Company, a corporation, is the plaintiff and The Town of Ryegate, a municipal corporation, is the defendant, to show cause, if any there be, why the judgment made and entered in the above-entitled action in said appeal mentioned should not be corrected, and why speedy justice should not be done the parties in this behalf.

Dated this 31st day of July, 1931.

CHARLES N. PRAY,

United States District Judge for the District of
Montana, Eastern Division. [202]

Filed July 31, 1931. [203]

THEREAFTER, on July 31st, 1931, an agreement of statement of evidence was duly filed herein, as follows, to wit: [204]

[Title of Court and Cause.]

AGREEMENT OF STATEMENT OF EVIDENCE.

We have examined and read the "Stipulation as To Trial and Facts" and the bill of exceptions settled in the above-entitled action, and, do state that said stipulation as to trial and facts and bill of exceptions herein does comprise all of the evidence taken in the above-entitled action which is relevant and material to the hearing of the appeal on said action; the said evidence being set out in simple and concise form, all of the evidence not essential to the decision and the questions presented by the appeal being omitted and the testimony of the witnesses being stated in narrative form.

AND WE AGREE that all parties hereto have received due and legal notice of the statement of evidence as required by equity rule number 75, and we accept service of such notice, and hereby waive further notice of filing of said statement, and we agree that said statement as made may be approved by a Judge of the United States District Court, District of Montana, without further notice to the parties hereto, and when so approved, may be filed in the Clerk's office and become a part of the record

for the purposes of appeal in said action taken by the above-named plaintiff.

STEWART & BROWN,
Helena, Montana,
Attorneys for the Plaintiff.

JOHNSTON, COLEMAN & JAMESON,
Billings, Montana,
Attorneys for the Defendant.

Filed July 31, 1931. [205]

THEREAFTER, on July 31st, 1931, order approving statement of evidence was duly filed and entered herein, as follows, to wit: [206]

[Title of Court and Cause.]

ORDER APPROVING STATEMENT OF EVIDENCE.

It appearing that the herewith and foregoing statement of evidence was lodged in due time with the Clerk of this court, and that the attorneys for all parties to the said action have agreed that said statement may be approved without further notice to any of said parties, and it appearing that said statement is true, complete, and properly prepared, and that it contains all of the evidence relevant and material to a hearing of the question to be presented on the appeal in said action,—

IT IS THEREFORE ORDERED that the same be allowed, settled and approved as a true, complete and correct statement of the evidence of said action.

Dated this 31st day of July, 1931.

CHARLES N. PRAY,

Judge.

Filed July 31, 1931. [207]

THEREAFTER, on July 31st, 1931, affidavit of mailing of appeal papers was duly filed herein, as follows, to wit: [208]

[Title of Court and Cause.]

AFFIDAVIT OF MAILING OF APPEAL PAPERS.

State of Montana,
County of Cascade,—ss.

John G. Brown, being first duly sworn upon oath, deposes and says:

He is a member of the firm of Stewart & Brown, who are solicitors for the plaintiff, now the appellant in the above-entitled cause; that on the 31st day of July, 1931, I deposited in the United States mail at Great Falls, Montana, in an envelope with postage prepaid thereon addressed to the firm of Johnston, Coleman and Jameson, Montana Power Block, Billings, Montana, known to me to be the address of the attorneys who are now attorneys and solicitors for the defendant, now respondent, in the above-entitled cause, true and correct copies of the following papers, which were on the same day filed with the Clerk of the above-entitled court in said cause, to wit:

Petition to appeal.

Assignment of errors.

Order allowing appeal.

Bond on appeal.

Citation on appeal.

Praeceptum for transcript of the record on appeal.

JOHN G. BROWN.

Subscribed and sworn to before me this 31 day of July, 1931.

[Seal]

C. G. KEGEL,

Deputy Clerk U. S. District Court, District of Montana.

Filed July 31, 1931. [209]

THEREAFTER, on July 31, 1931, order extending time to file transcript on appeal was duly filed and entered herein, as follows, to wit: [210]

[Title of Court and Cause.]

ORDER EXTENDING TIME FIFTY DAYS TO
FILE TRANSCRIPT ON APPEAL.

For good cause appearing, IT IS HEREBY ORDERED that the time for filing the record on appeal in this case be, and the same is hereby extended for a period of fifty days from and after the time allowed by law and the rules of this court.

Dated, this 31st day of July, 1931.

CHARLES N. PRAY,

Judge of the District Court of the United States
for the District of Montana.

Filed July 31, 1931. [211]

THEREAFTER, on July 31st, 1931, praecipe for transcript of record was duly filed herein, as follows, to wit: [212]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the United States District Court for the District of Montana, Having Reference to the Billings Division:

Please prepare a record for the purpose of an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and include the following:

1. Plaintiff's bill of complaint, including its exhibits.
2. Answer of defendant, including its exhibits.
3. Reply of plaintiff, including its exhibits.
4. All minutes of the court having to do materially with said cause.
5. Stipulation as to trial and facts.
6. All bills of exception and statements of evidence which have been signed, settled and allowed.
7. Court's opinion and findings.
8. All orders of Court made in said cause as distinguished from the minute entries hereinbefore requested, including order amending opinion.
9. The judgment and decree.
10. Assignment of errors.
11. Petition to appeal and allowance thereof.
12. Bond on appeal.

13. Citation on appeal.
14. Agreed statement of evidence.
15. Order extending time for filing transcript.
[213]
16. Affidavit of service of appeal papers.
17. This praecipe.

All captions and endorsements may be omitted. Provisions of act approved February 13, 1911, are waived and you are requested to forward type-written transcript to the United States Circuit Court of Appeals for the Ninth Circuit for printing under the rules of Court.

Dated this 31st day of July, 1931.

STEWART & BROWN,

Solicitors for Appealing Plaintiff, Helena, Montana.

Filed July 31, 1931. [214]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
District of Montana,—ss.

I, C. R. Garlow, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 215 pages, numbered from 1 to 215, inclusive, is a full, true and correct transcript of the records and proceedings in the within entitled cause, and all that is required by praecipe filed, to be incorporated in

said transcript, as appears from the original records and files of said court in my custody as such Clerk; and I do further certify and return that I have annexed to said transcript and included within said pages the original citation issued in said cause.

I further certify that the costs of said transcript of record amount to the sum of \$31.60 and have been paid by the appellant.

WITNESS my hand and the seal of said court at Great Falls, Montana, this 4th day of August, 1931.

[Seal]

C. R. GARLOW,

Clerk U. S. District Court for the District of Montana.

By C. G. Kegel,
Deputy. [215]

[Endorsed]: No. 6564. United States Circuit Court of Appeals for the Ninth Circuit. Lumbermens Trust Company, a Corporation, Appellant, vs. The Town of Ryegate, a Municipal Corporation, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Montana.

Filed August 7, 1931.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.