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Clerk, Supreme Court of Appeals
Richmond, Va.

Vol. II Pages 239-458
(In Two Volumes)

Record No. 6873

In the Supreme Court of Appeals of Virginia at Richmond

M. H. SHARLIN

v.

NEIGHBORHOOD THEATRE, INCORPORATED

FROM THE CIRCUIT COURT OF ARLINGTON COUNTY

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a.m.; Adjourns at 1:00 p.m.

Q. Certain of these exhibits—did you pick up any of this stuff yourself, from Dominion?

A. I believe I went up and picked up some of the panels; some of the equipment was delivered—most of it was delivered by Dominion.

Q. Was any of this equipment for new lighting fixtures that were not previously in the building?

A. No.

Mr. Simmonds: Read that question and answer?

(Question and answer were read by reporter.)

page 446 } By Mr. Harrigan:

Q. What does that A-17 represent?

A. These are the fixtures for the marquee. They were supplied by Dominion and installed by us.

Q. Supplied and then installed by you?

A. Yes.

Mr. Simmonds: Is A-16 in evidence?

The Court: Yes, as are A-1 through A-13.

Mr. Simmonds: All right.

By Mr. Harrigan:

Q. This is A-1.

A. These are the Exit lights.

Q. Did you receive and install those?

A. Yes.

Q. How many Exit lights were in that theatre?

A. Nine. There were nine existing.

Q. How many of them were recessed?

A. All 9 were recessed originally.

Q. Were there any Exit lights in any of them?

A. No.

Q. Do you recognize A-2, as being furnished and installed by you?

A. Yes, those are lamps.

page 447 } Q. Do you recognize A-3 as being furnished and installed by you?

A. Yes. This is a panel trim and fuses.

Q. Do you recognize A-4 as being furnished and installed by you?

A. Yes.

Mr. Simmonds: If your Honor please—

The Court: Didn't you ask him to look at the whole group, and he answered the same question?

Mr. Harrigan: Yes, but there was some controversy about it before that Mr. Simmonds raised.

The Court: If you have asked him to look at A-1 through 13, and A-16, "Did you recognize and install them?" and he says, "Yes," there is no need to go back over them one by one.

Mr. Harrigan: Now, I would like to offer this bill in evidence, B-7 and the attached sheet which represents the worksheet.

Mr. Simmonds: Mr. Dougherty, I take it you would make the same answer to this when I asked about the previous worksheet, this was not in your handwriting, but done by someone in your office?

The Witness: That's right, from a listing I made.

page 448 } Mr. Simmonds: I object to it.

The Court: Sustained.

Mr. Harrigan: Same exception made as before.

By Mr. Harrigan:

I have the worksheet and bill for $3595.83, which I offer for identification.

Mr. Simmonds: What's that being marked B-8?

The Court: B-8 for identification.

(Plaintiff's B-8 marked for *identifica.*)

By Mr. Harrigan:

Q. I show you this bill marked B-8, for $3595.83 and this worksheet and ask you if you can identify it.

A. Yes. This represents the labor and material and markup for wiring for the booth equipment, furnishing and installing motorized dimmers, and all the necessary equipment to put the booth in operation.

Q. Have you worked on projection booths before?

A. Yes, we have. I have.

Q. How is equipment supposed to be disconnected—equipment such as projectors, motor generators, and equipment of that nature?

A. Just open the joints at the equipment and disconnect the open splices and tape up the ends of the wire and leave them.

Q. How was the equipment disconnected in this

page 449 } particular case?

Mr. Simmonds: If your Honor please, I don't like to make too many, what look like petty objections; but there is going to be quite an issue in this case as to the difference between what was found there by this gentleman and the way it was disconnected. There is going to be a marked difference in the testimony.

Now, I think the only testimony he can give is the way he found it rather than the manner in which it was disconnected.

The Court: Unless through expert knowledge he is entitled to reach a conclusion.

Mr. Simmonds: I don't see how he could very well say how it was disconnected. He can say how he found it; but I mean if he is talking about disconnected by Neighborhood—I object to that.

The Court: True. The description must be of what he sees at the time. But I think an electrician can tell if wiring was undone or whether something was clipped off, this sort of thing.

By Mr. Harrigan:

Q. From what part was it disconnected in this
page 450 } particular case as you observed?

A. In most instances, it was cut at the panel and wires were removed.

Q. Describe where the panel is in relation to the equipment that's connected up.

A. This panel was located up in—

Q. Well, generally, the general wiring description.

A. You would have a line coming up to feed a panel.

Q. Is this a line from the main source of power?

A. That's right.

Q. Then, you have the panel?

A. That's right, distribution panel and branch circuits are run to the equipment.

Q. From the panel to the equipment?

A. That's right.

The Court: The distribution panel, was that inside the projection room?

The Witness: Yes, your Honor.

The Court: All right.

By Mr. Harrigan:

Q. And circuits are run from the panel to the equipment?

A. That's right.

page 451 } Q. Now, where was the wire disconnected in this particular case?

A. Well, I found the wires were cut in the panels, in some cases removed.

A. The wires from the panel to the equipment were removed?

A. Yes, in some cases.

Q. What was it necessary for you to do in order for you to put the projection booth in operating order?

A. We had to install all the material listed on this sheet, for instance, the trough around the front fact of the booth, or the inner side; run conduit or wiring to the motor generator set.

Q. None of that wire was there?

A. No, it was not.

Q. Were there any dimmers there?

A. The dimmers we installed—We installed a dimmer rack and a set of dimmers, ran the wiring from the dimmers around the conduit.

Q. No conduit?

A. No.

Q. Is a dimmer part of what is commonly termed in the trade "booth equipment"?

A. No. We supply the dimmers; booth equip-
page 452 } ment we don't supply.

Q. Do electrical contractors ever supply the booth equipment generally?

A. No. That's a theatre supply.

Q. A dimmer, is that something that is peculiar to a theatre?

A. It's used in all theatres, but it is also used in other locations, restaurants and office buildings.

Q. What's the function of a dimmer?

The Court: The Court is familiar with it.

By Mr. Harrigan:

Q. All right. Directing your attention to the bill, is the bill broken down as to materials and labor?

A. Yes, it is.

Q. How much of this material would you need if the equipment was just, if the wires were disconnected from the equipment itself? What part of the bill would it be?

Mr. Simmonds: If your Honor please, Mr. Harrigan has

been leading the witness for the greatest part of this examination. I ask that he not be allowed to do so.

Mr. Harrigan: I don't think that's leading.

The Court: It's a leading question, all right.

page 453 } By Mr. Harrigan:

Q. What portion of your bill is for the placement of wires to the projectors, from the panel to the projectors?

The Court: That's all right.

By Mr. Harrigan:

Q. What portion of it?

A. All of this wiring and equipment here was necessary except there was one charge of a generator repair.

Q. What was that charge?

A. $31.20.

Q. That was something over and above the material necessary to run from the panel to the equipment?

A. That's right.

Mr. Simmonds: Excuse me. I thought the question was, what was the additional cost of the wires from the panel to the equipment.

Mr. Harrigan: That wasn't the question. The question was, how much of the material on that list was necessary to run from the panel to the equipment.

Read back the question.

Mr. Simmonds: That's all right.

(Question and answer read back.)

page 454 } By Mr. Harrigan:

Q. Would this material have been necessary if the equipment were disconnected right, at the equipment?

A. I say no.

Q. What is the total amount of that bill for equipment?

A. Material was $810.17, before it was marked up.

Q. You had an item of $31.80.

A. $31.20.

Q. What was the total amount of that material again?

A. $810.17.

Mr. Simmonds: I object to any of the testimony of the

costs of any wiring done within the projection booth. The only responsibility of Neighborhood was with respect to keeping the same service as previously existed to the panel box; and that any testimony for any work done from the panel box to reconnecting the equipment is not any charge to Neighborhood, and I move to strike any evidence that has already been given with respect to those items for labor and material.

The Court: Lease paragraph 2 says, "booth equipment is to be put in by tenant, and then "all such equipment remains lessee's property." I am not aware of any lease provision about the wiring from the panel to the equipment, so it seems to me, again, I have to admit it on the Plaintiff's

page 455 } theory of the case. Objection is overruled.

Mr. Simmonds: Exception.

By Mr. Harrigan:

Q. If you take out that $31.20 figure for the repair on the generator, your total materials would be how much?

A. $810.17, less $31.20, which is—

Q. $778.97.

A. Yes, that's right.

Q. Would there be any addition to that figure?

A. 15 percent overhead and ten percent profit.

Q. Plus 15 percent—

A. —for overhead and ten percent profit.

Q. If you took 15 percent, you'd add them together and get a sub-total, and from that sub-total—

A. That's right.

Q. You would add 10 percent of the sub-total to get a—

A. —a grand total, that's right.

Q. Generally, if you were to go in and just rehook up booth equipment, presuming the wires were there, what sort of expense would you have?

Mr. Simmonds: If he is in a position to state that, if your Honor please. It seems to me that it is quite a guess to make.

page 456 } The Court: If he knows.

By Mr. Harrigan:

Q. Have you ever hooked up booth equipment before this?

A. Yes, we have.

Q. Do you estimate, in your profession, the amount necessary to hook up booth equipment and sound equipment?

A. Yes.

Q. Do you know what the normal amount would be to hook up booth equipment and sound equipment if the other remaining wires were left in tact?

A. Yes.

Q. How long would that take, and how many men and what figure?

A. I would say a booth of this size, two projectors, would run around, take 2 men about a week—there would be a total of 80 hours, at $5.20 an hour. That's $416.

q. And added to that—

A. —would be 12 percent insurance, 15 percent and 10 percent profit.

Q. Do you have a total figure of what that estimate would be?

A. Roughly $589.

Q. That work would have to be done in any
page 457 } event on the booth? Right?

A. Yes.

Q. What was your labor charge in this particular case?

A. $1847.63.

The Court: That was your—?

The Witness: Total labor.

By Mr. Harrigan:

Q. That's total labor. Would that be the final total or do you have to add something to that?

A. The same applies—12 percent insurance and taxes; 15 percent to the sub-total; and 10 percent of the sub-total for grand total.

Q. All right. How much of this labor in excess of the $589 figure which you would ordinarily have to expend to hook up equipment was necessary to repair and replace the wire from the junction box to the equipment?

A. All of the labor was necessary.

Mr. Harrigan: I would like to offer these bills in evidence, your Honor. I assume there would be the same objection, the same ruling?

Mr. Simmonds: I make the samt objection, plus the further fact that none of this could possibly charged to the defendant in this case because he had a perfect right to re-
page 458 } move the equipment; and in removing the equipment from the booth, it was perfectly proper to

move the wires, if they were removed at the panel box. I object to that.

I further object that it includes in there labor for installing dimmers which would certainly not be the responsibility of the defendant.

The Court: Mr. Dougherty, is this another one Mr. Hampton made up?

The Witness: Same thing, your Honor, from a listing that I supplied.

The Court: Objection is sustained.

Mr. Harrigan: Same exception.

I would like to offer the bills on the front here, your Honor, which have been previously marked: $3595.83 bill and the $2,358.54 bill.

Mr. Simmonds: I object to the admission of those. They are not properly proved as being chargeable against the defendant, and I think they were offered last Thursday and they were refused. It included items not chargeable to defendant in any event, and I object now to the re-offering and object to their being admitted in evidence.

Mr. Harrigan: Your Honor, they show what the total amount was. We have presented evidence under page 459 } our theory that the defendant is chargeable for, and in that connection I think that they are admissible.

Mr. Simmonds: He admitted some of the items were not chargeable to the defendant. What good does it do to put in a bill which includes items we are not responsible for?

The Court: I am thoroughly confused or else I missed something this morning to follow the Plaintiff's theory of this witness's testimony. I have to take materials $76.37; I have to compute 15 percent, plus ten percent; maybe there is something else to get a grand total for materials. Let's see. That's materials.

Then, I have testimony of a normal hook-up but that includes various 10 percents, and whatnots, to reach $589. Then, there is a total labor bill, but I am not sure what it is.

Mr. Harrigan: He testified—

The Court: Then, you say by deducting $589 from something—I'm not sure what figure—then, the Court would know —that's your theory of how much is attributable to the defendant on your theory of the case. By Gingoes, nobody has worked out the mathematics for the Court.

This is a $37,000 case, by a claim. They have

page 460 } had months to get it ready, and you leave a judge floundering around like this.

Mr. Harrigan: I will work out the mathematics for you, your Honor.

The Court: Have your witness tell me.

Mr. Harrigan: All right. Which bill?

The Court: I do not understand your witness' testimony in dollars as to what part of his gross bills, how many dollars were for taking wiring from panel to booth equipment.

Mr. Harrigan: All right.

The Court: One dollar figure.

By Mr. Harrigan:

Q. What was *you* total labor bill on this $3500-bill?

A. It might be simpler, your Honor, if I just deduct—

The Court: I don't care how you reach it, sir. What's your testimony? Mr. Simmonds may care how you reach it. I just want one figure as a starting point.

The Witness: $3595.83, grand total of the bill. From this should be deducted $589.39, what I feel would ordinarily be necessary.

The Court: —which gives you $3006.24.

The Witness: $3006.24.

page 461 } The Court: That's the cost of wiring from the panel, in the projection booth?

The Witness: To the projectors, including labor and wiring, yes.

The Court: I haven't broken the materials—

By Mr. Harrigan:

Q. Does that include labor and materials?

A. I stated there wouldn't be any material necessary. I have a charge of $31.20—

Q. —which should be deducted off there, also?

A. Yes. $36.04, with the markup, 15 percent and 10 percent.

Q. That should be deducted from the $3006.44?

A. $3006.24.

Q. What is that figure? Did you deduct it?

A. $2,970.20.

Mr. Harrigan: That is all.

Patrick Dougherty

FURTHER RE-CROSS EXAMINATION

By Mr. Simmonds:

Mr. Simmonds: May I see the notes that he was referring to during his testimony?

Mr. Harrigan: Yes, the ones that you referred to.

Q. Is that all you referred to?

A. No, this—

page 462 } Mr. Harrigan: I object to his looking at the notes, your Honor. He's testifying from his recollection.

The Court: If the witness looks at them to refresh his recollection, I am going to let opposing counsel see them once the witness has used them.

Mr. Harrigan: All right. Exception.

By Mr. Simmonds:

A. Suppose you show me the one you referred to in connection with the work on the installing the wire for the aisle lights?

A. I just referred to the bill.

Q. Did you refer to any of these to indicate how much was the cost of reattaching the seats to the wires?

A. This here—

The Court: I can't hear you.

The Witness: Six-and-a-half hours, yes, sir, I did. Top item—it was for the wiring of the seat lights.

By Mr. Simmonds:

Q. Where did you get the figures on this sheet that you have here to hook up seat lights?

A. These are estimates that I made after going over these items. These are charges that—they are not pressing, or things that we did that weren't going to be charged.

page 463 } Q. I say, where did you get the information from, out of your head?

A. My best recollection of what it took to connect the seat lights, actually.

Q. But you have no record of what it actually did cost to attach the seat lights, have you?

A. No.

Mr. Harrigan: Your Honor, I object to that. I don't think the question is proper, and I think—

The Court: Objection overruled. He said, "Where did you get the figures?" The answer is "from reconstructing it." That's what he says.

Mr. Harrigan: All right.

Mr. Simmonds:

Q. Still referring to the sheets you handed me in connection with the rewiring of the lights?

A. This is roughly a normal labor unit there for connecting the seat lights. If that was a new installation, that's what I would charge, 6½ hours.

Q. You mean that that would be your charge or your estimate of how much time it would have taken?

A. It would be my estimate of how much time it would have taken.

page 464 } Q. Six-and-a-half hours for how many, for each light?

A. Twenty.

Q. To do twenty lights in 6½ hours?

A. That's right.

Q. How many hours did it take you to do 16 marquee lights?

A. It took $950.20 actual cost to install.

Q. And you had added the pluses to it and it was almost $100 a light, was it not?

A. Just about.

Q. How much do you figure the total charge for all these aisle lights was for hooking them up?

A. 6½ hours.

Q. How much does that amount to, with your pluses approximately?

A. Roughly about $40-$45.

Q. At what point would you say that the lights were connected, or rather the seat lights were connected to the service in this estimated charge of 6½ hours?

A. At what point?

Q. Yes.

A. This is the final connection.

Q. From where to where?

page 465 } A. From the greenfield, coming out of the floor box, from the end that goes into the seat light, connect that to the seat light and make up the splice.

Q. And these are, as I say, not any actual figures from the records of the company but just estimates on your part?

Patrick Dougherty

A. That's right. I was asked—not what it actually did take to connect the seat lights—what it would have taken if I had estimated. If you would like a demonstration, I can connect the seat lights, 20 of them in 6½ hours.

Q. Your notes marked "Exit lights," where did you get the information for that from on your notes?

A. It was, to the best of my recollection, what it took to install the lights.

Q. But you have no actual records made at the time you did it?

A. The time was put on the job sheet weekly. We don't have that one. Each man's time is turned in weekly and was broken down for what portion of the theatre we were working on, whether we were working on the service outside, the parking lot light standards, on the booth, on the seat lights.

Q. Where does that show up? Where are you taking that from?

page 466 } A. For example, let's see—Do you have the other sheet, your Honor?

Mr. *Harrington*: Which one are you talking about?

The Witness: The seat light charges.

The time was given to Mr. Hampton. The week ending 6/2, Bevins had 86.27 cost; week ending—He also worked on the booth equipment at $40.80 charged. Yokes the same way, $91.80, week ending 6/16. There were other men there. Let's see. 6/23—These charges were broken by me when I turned the time in to them, so they could be charged.

By Mr. Simmonds:

Q. But you had no breakdown beyond the general description of what you were doing, whether it was parking lights outside or seat lights, or the inside fixtures, do you? I mean, these Exit Lights, I want to know where you got the actual figures that you put on this memorandum that you testified from as to the cost of putting in the Exit lights.

A. Those are figures, to the best of my recollection, it took to install them.

Q. The same is true of booth and dimmers, is it that you just made an estimate to the best of your recollection?

page 467 } A. This is what it would take to connect the equipment that was there if you just had gone in and reconnected the equipment. This is the balance of the labor.

Q. My question was, Where did you get the information

that you have written on this sheet of paper, "booth and dimmers"? Was that something you made up from your recollection?

A. It's what it would take to install a typical booth.

Q. You didn't have any actual records of what you did do in there, did you?

A. Yes, sir.

Q. I mean, with respect to—

A. I have an actual—what it took to connect the booth equipment.

Mr. Simmonds: Strike the last question. He didn't answer.

Mr. Harrigan: I move the answer be admitted.

Mr. Simmonds: I don't care.

The Court: Leave it in.

By Mr. Simmonds:

Q. This paper that I am referring to is strictly an estimate by you of what it would have taken had you had booth equipment which you had tied in at the equipment itself rather than from the panels?

A. That's right.

page 468 } Q. That was an estimate you made. Now, let me ask you when did you make these estimates?

A. I broke this out just the other day.

Q. Since you testified here before?

A. Yes.

Q. And how was it that you happened to do this?

A. I was asked to do this because these, I understand, are charges that are not attributable to them. They would say, "This was a charge that we would have normally charged them."

Q. They were made at Mr. Harrigan's request?

Q. Yes, they were.

Q. —since you testified?

A. Yes.

Did you make any effort in trying to break these things down—Instead of what was not chargeable to the defendant, Neighborhood, did you try to work out any estimates of what was chargeable?

Mr. Harrigan: Objectionable. I think the question is argumentative.

The Court: No. Instead of going from zero, adding up a total, deducting just—

By Mr. Simmonds:

Q. Instead of figuring what was not to be
page 469 } charged to *to* the defendant, figure up what was
to be charged in making your estimate.

A. Yes. I have the $950 that I say was on the marquee.

Q. How did you arrive at that?

The Court: This is a good breaking point. One hour for lunch.

(Whereupon, at 12:28 p.m., the case was recessed for lunch to reconvene at 1:30 the same day.)

page 470 } AFTERNOON SESSION

1:30 p.m.

The Court: All right.

Whereupon,

PATRICK DOUGHERTY resumed the stand and testified further as follows:

CROSS EXAMINATION (Continued)

By Mr. Simmonds:

Q. Mr. Dougherty, with respect to the wiring that you did in the booth at the theatre, did you install a generator in the booth?

A. Yes, we did.

Q. What was the capacity of that, or power of it?

A. 7.5 kw.

Q. Do you know the size of the generator that was there before?

A. I do not.

Q. You have no way of knowing whether it was a 5 or 7½ watt—

A. No.

Q. Did you install any additional circuits to the panel in the booth?

Mr. Harrigan: Objection, your Honor. How would he
know if he installed additional circuits unless he
page 471 } knew what circuits were in there to start with?

Mr. Simmonds: I said, within the panel.

The Court: That's within the realm of proper questions.

By Mr. Simmonds:
Q. From the service?
A. Installed circuits for the generators, yes.
Q. Were they any additional circuits or heavier?
A. I don't know.

Mr. Harrigan: I object. There isn't any evidence what the other circuits were.
The Court: Isn't this for the witness to say?
The Witness: I don't know what was there before.

By Mr. Simmonds:
Q. Well, the wires from the main distribution box in the basement to the panel in the projection booth hadn't been disturbed, had they?
A. No.
Q. My question was, did you run any additional wires or circuits from the main distribution panel to the panel in the projection booth?
A. No.
page 472 } Q. Do you know whether any heavier wiring was brought into the building when changed from overhead to underground?
A. There was a new service installed.
Q. Was it any larger than the former one?
A. I don't recall. I believe it was larger. The old service was an overhead service. We installed underground. It's not charged on any of these bills. There was a separate billing for the service equipment and the parking lot lighting and the fire alarm.
Q. Did you all bring in the underground service?
A. Underground conduits, yes.
Q. Did you have a heavier capacity than the existing line coming into the building?

Mr. *Harrington*: Same objection, your Honor. Unless he knows what the existing line—
The Witness: Yes. The existing service was still in. The new service was heavier. This was a charge that covered the new electrical service, parking lot wiring, the fire alarm, and the rest of the wiring throughout the building. These weren't charged to—I don't have these bills—they weren't charged on any of this work that I have here.

Patrick Dougherty

Q. Did you run any additional circuits within the building from the main distribution box?

page 473 } A. In the booth we had to run the wiring for the generators.

Q. Where did you run that from, from the panel upstairs in the projection booth? My question was: Did you run any additional circuits anywhere in the theatre from the main distribution panel.

A. The circuit for the fire alarm equipment, the circuit for the parking lot lighting; I believe there was a new circuit for the boiler. As far as any of the distribution panels throughout the theatre, no.

Q. Do I understand you correctly to say that you ran a circuit or wire from the panel in the projection booth to the generator?

A. Yes, we did.

Q. But you don't know whether it was heavier than the old one or not?

A. That's right.

Q. Where are the controls to the dimmers that you put in, or I guess you call them the dimmers themselves.

A. The dimmers are located in the room adjacent to the projection booth, the mechanical equipment room.

Q. Did you all furnish the dimmers?

A. Yes, we did.

Q. Was that included in your bill?

page 474 } A. Yes, it is.

Q. Does your bill include wiring from the panel to the dimmers?

A. Yes, it does.

Q. Was this dimmer a motorized dimmer?

A. Yes, it is.

Q. You don't know what type dimmer was in there before, do you?

A. No, I do not.

Q. You wouldn't know whether it was a hand-operated or motorized, would you?

A. No.

Q. Would there be any difference in the size of the circuit between one that would be hand-operated and one that would be motorized?

A. No, not really. We put in, I believe it was a 6 kw. dimmer, 6,000 watt dimmer. I don't know what was existing before, what the size of the feeder to the dimmer was.

Q. Do you have to build some platform or something to put the dimmer or dimmers on?

A. Yes, we did.

Q. Is that included in your bill?

A. Yes, it is.

page 475 } Q. Do you know how much of the bill relates to that?

A. (Examining) The platform itself, the channel required for it cost us $20.67. This, again, is marked up, and the labor for it, you might figure about a day's labor.

Q. How about the dimmer itself, what's that?

A. $225.

Q. Did I understand you correctly to say that when you went in there you had to run wires from the projection machine to the panel, from the projection machines?

A. We had to run wire to the motor generators and a wiring to the projection equipment.

Q. From the panel?

A. From a trough that set on the face of the wall. There was a trough installed which carried these wires.

Q. Mr. Dougherty, I am anxious to find out exactly the condition of the wires that were left in there, or rather the amount of wiring that was left in the booth, and to where it extended from the panel booth out. Now, were there any wires extending from the panel out toward the equipment?

A. I believe that was taken out, too. I can't be positive, but the conduit was left in the floor, in the concrete floor—whether any surface conduits had been removed and run to the face of the walls.

page 476 to 480 (misnumbering) }

Q. Do you recall whether any wires were pulled out of the conduits that were in the floor?

A. Yes, there were.

Q. Going back to the canopy, or the marquee, in which you installed, I think you said 16 lights—I think you said 16.

A. Yes.

Q. —were those light fixtures in the canopy at all when you got there?

A. No, they weren't.

Q. Nothing at all. Where were the wires pulled from, or to put it another way, how far back were the wires which you could pick up?

A. The jumper wires between fixtures were cut; they weren't all removed, but they were cut too short to make a splice in.

Patrick Dougherty

Q. But all the fixtures themselves had been removed from underneath the marquee?

A. Yes.

Q. When you were there, were there any pig-tail attachments to the wires where the fixtures had been taken off?

A. In the marquee?

Q. No, not the marquee; inside the theatre.

page 481 } A. What do you mean by "pig-tail" attachment, temporary lighting or—

Q. Yes.

A. No.

Q. Mr. *Doughtery,* in your experience in the installation of electrical equipment in buildings, have you had any trouble with vandals coming in or thieves coming in and stealing the wire and copper?

Mr. *Harrington*: Your Honor, I object to this. There isn't any evidence that thieves came in here. Mr. Sharlin testified he came through the theatre the day after—

Mr. Simmonds: He may not be altogether correct, Mr. *Harrington.*

Mr. *Harrington*: I would like to ask Mr. Simmonds if he is suggesting vandals took the fixtures out of the theatre and vandals took the Glebe signs and attraction panels.

The Court: The objection is overruled.

Mr. Simmonds: Let's take them one at a time.

By Mr. Simmonds:

Q. All right, sir, will you answer that: Have you had any trouble with thieves or vandals taking wiring or copper or so forth?

Mr. *Harrington*: Note my exception on the ground stated, no foundation for it.

page 482 } The Witness: We have had cables stolen from jobs, but usually, it's been a case of new wiring, something that was on a reel. They very seldom go in and pull it out of a pipe.

Q. They sometimes do, don't they?

A. I couldn't say they wouldn't.

Q. Do you have a record of the day you first went in there?

A. It was sometime the first week in May.

Mr. Simmonds: That's all the questions I have.

Patrick Dougherty

RE-DIRECT EXAMINATION

Mr. *Harrington*: I have several other questions.

By Mr. *Harrington*:

Q. Mr. Simmonds asked you about additional circuits for a fire alarm system. Was the cost for installing that fire alarm billed in another bill?

A. Yes, it was.

Q. The cost for installing the fire alarm reflected in any of the bills you have testified to today?

A. No, it is not.

Q. How about the parking lot lights, was that a separate bill?

A. Separate billing.

page 483 } Q. Is any of the cost of that reflected in any of these bills?

A. No, it is not.

Q. This dimmer, you furnished the dimmer?

A. Yes, we did.

Q. You said the price of that was $225?

A. That's right.

Q. Was that included in the materials in that $3500 bill?

A. Yes, it is.

Q. Did you hook up this dimmer?

A. Yes.

Q. What would be the normal installation charge for hooking up a dimmer of that type?

Mr. Simmonds: If your Honor please, I am going to again object to the manner in which they are attempting to indicate what the cost of doing various things are by this process of every now and then finding out something should not be charged to the defendant, and then attempting to deduct that from the total bill.

Mr. Harrigan: We are not suggesting they should not be charged, your Honor, but I know Mr. Simmonds is going to raise this point, and as long as he is going to raise

page 484 } the point, the evidence might as well come in on what the charge for the dimmer was and the cost of installation, so the Court has the figures when it rules on it and knows—

The Court: Is it related to cross?

Mr. Harrigan: Motorized dimmers were included in the bill—that they were installed in the equipment room, so it is now subject to re-direct.

Mr. Simmonds: Exception please.

By Mr. Harrigan:
Q. The installation price for this dimmer would be how much?
A. Roughly, one day's labor for a man; an 8-hour day.
Q. At how much an hour?
A. $5.20 an hour.
Q. That installation cost, does that include installing this frame also?

The Court: What?

By Mr. Harrigan:
Q. The frame for the dimmer.
A. Yes.
Q. It does?
A. Yes.
Q. What is the cost for the frame?
page 485 } A. Roughly $20.00.
Q. Look on your bill, would you please?

The Court: Is there a difference between frame and this new platform for the dimmer?
The Witness: No.
The Court: He's already covered that, $20.67 for the channel and one day of labor—$20.67 was plus and plus.

By Mr. Harrigan:
Q. Mr. Simmonds asked you about the wires from the panel to the equipment. What would the wires be worth to anyone after they pulled them out of this job, as an electrician?

Mr. Simmonds: Wait a minute. You said, what would they be worth to an electrician?
Mr. Harrigan: To anybody.
Mr. Simmonds: Do you know? I mean, I don't think that's a proper question.
The Court: Again, if the witness knows.

By Mr. Harrigan:
Q. If you know.
A. To be used again it's probably worthless. It's not worth the time to pull them out and reinstall them somewhere.
Q. To vandals, if they were to sell this type of

page 486 } wire, what could a vandal get for this wire on the market?

Mr. Simmonds: If your Honor please, I think the word "vandal" sort of implies wrongful destruction of property without any effort to—

Mr. Harrigan: He mentioned the word "vandals."

Mr. Simmonds: I did.

The Court: Or thieves. I think the door is open on your question, Mr. Simmonds.

By Mr. Harrigan:

Q. What is this worth to vandals or thieves?

A. Just the price they could get from a junk dealer in copper.

Q. How much would that be?

A. I would have to know what it was and how much they pulled out, what size.

Mr. Harrigan: That's all.

Mr. Simmonds: If your Honor please, I move to strike all the testimony that Mr. Dougherty has given today on several grounds, one of which is that he was on the stand last Thursday and testified to the same matters that he was called upon to testify here today. It's highly improper that after he has testified and been cross-examined, to be allowed to sit down with counsel and work out estimates, to try to page 487 } plug up the spots in his testimony that he might have thought was not properly done.

I would like the record to indicate that he was on direct examination almost two hours this morning for exactly the same matters that he was testifying to last week.

In addition to that, if your Honor please, his testimony has been made up from his own estimates of what he *things* should not have been charged to the defendant. It is usurping the function of the Court to let him determine the amounts in dollars and cents of what was or was not to be charged to the defendant. It would have been proper for him to testify that "I did so and so" or "Our men did so and so, and the cost of that was so-much," and your Honor could then determine from that whether that's chargeable to defendant or whether it is not.

All of his notes, as he testified, had been made up from estimations that he made within the last day or two of what he thinks it might have cost to do these jobs which either

should or should not have been charged to the defendant. This certainly does not meet the test of certainty that is required of a plaintiff in determining, or in proving what should be recovered from the defendant.

And, thirdly, the worksheets which were prepared by somebody else have not been permitted to be admitted
page 488 } in evidence, but on the other hand, he has testified from those worksheets which were not prepared by him, and the validity of his testimony is not even as good as the worksheets themselves.

And further, with respect to his estimations, he has included in the amount from which he subtracted figures that he said were not chargeable to defendant, in the amount he subtracted from, there were included items that—the cost of the dimmers, the installation of the dimmers and the wiring of the fixtures within the booth; and we don't know how much it would have cost had either he done the work which was left to be done when Neighborhood left, or even if they had, we don't know, we haven't been able to determine from him the exact cost that was charged in these bills for the labor and for any material that might have been charged to *n*eighborhood.

We would respectfully submit that none of the testimony given today should be permitted and it should be stricken.

Mr. Harrigan: On Mr. Simmonds' point, your Honor, one of his objections goes to the fact that Mr. Dougherty has testified basically from those items which we are claiming for damage, and has not testified about the items
page 489 } which we are claiming for damage. I'm sure he would have been the first to object if I would have started a detailed analysis of how long it took us and the materials used, to put in a fire-alarm system which everybody concedes is not in issue in the case, and has no part in the evidence at all.

Mr. Dougherty has testified as to certain specific items that he fixed, on direct. He has testified as to the amount of materials he used in rewiring the 16 lights from the marquee. He testified the amount of labor that he used in rewiring the 16 lights for the marquee, and the sum-total of that labor.

He testified as to the labor that he used for installing the 16 fixtures into the marquee and the sum-total of that labor. He has testified as to the amount of labor it took him to install the Exit fixtures themselves, and that was all labor, and what that figure was, which is an item we are claiming.

He has testified as to what was necessary to hang the fixtures that everybody concedes were removed, and the item

for the amount of that labor. He's testified as to the amount of materials and labor it cost him to pull the new wires into the seat lights and the labor for pulling those wires in; and he's testified that the labor charged for hooking

page 490 } up the seat lights to the new seats was not part of that bill, and charged in another bill.

He's testified that the damage done to the booth which we are claiming, the cost of the materials from running the wires from the panel through the troughs, in a position where they could be hooked up to the machines, the two projectors and generator. He's testified to the materials necessary for that particular operation. He's testified that the total labor for that particular job was a certain amount, and he's testified that ordinarily a certain amount of dollars would have been necessary to hook up a similar type of equipment anywhere. All of these items relate to the amount of damage that we are claiming.

There's no objection to say that he has not testified about stringing the underground cable, or putting in a fire-alarm system when they are not even properly in the case, not charged, and there is no contest about them; there are separate bills on each and every one of those items, and the parties were billed for these particular items.

He makes the point about, that he is testifying from notes, from his own recollection. I know of no rule which says a man cannot make notes and refresh his recollection.

page 491 } He has testified he should not be able to testify from worksheets. The other day he objected because he said he did not have his worksheets, so apparently you can't testify with them or without them.

Then he's testified that the notes are not in his handwriting, on the worksheets. Mr. Dougherty has testified that he furnished every figure on those sheets for the material, that he furnished the figures for the labor, that he was a supervisor on the job and knows the materials were put in, and that the labor was done, and that those figures were accurate as to the materials and labor that he furnished.

I tried to offer each and every worksheet in evidence, and on that basis, I think they ought to go into evidence, and I again re-offer them in evidence.

That there has been no objection as to his testimony as to the accuracy as to whether the work was done, whether it showed that it was done, what it was done for—all of that is in evidence.

And he says as a last objection, that these are estimates. Here is a man about whom it is in evidence that he goes out and estimates jobs every day, gives estimates for work to be done. Now, certainly, if a contract for an estimate page 492 } of work done was not admissible, how could you have a measure of damages such as the measure in this case, that a landlord would be entitled to the amount of damage to his property whether the work was done or not? If the work is never done, certainly, the only way you can show damage is, "It costs so much," and "I estimate it costs so much to fix these things and do such and such," and I have never known of any case where estimates have been thrown out by—and certain estimates especially when they were followed up with actual repairs, that we feel the evidence is more than adequate.

There is no law that says you have to show damage down to the actual penny on every little screw that you put in and where it was put in. It has to be the reasonable cost of repair, and we think that this testimony is more than adequate to give to the Court as to form a basis on which to render a verdict.

Mr. Simmonds: Just one more word, and I will say no more about it. These are not estimates that are made by a man examining a job in determining how much work will be done, in making a bid for a job. This is after a job has been completed for an entirely different person—K-B Theatres, ordered by Mr. Goldman—trying to pick out, two page 493 } years later the various and sundry items which might be charged to this defendant and might be charged to someone else; and trying to say "This much is chargeable to him," or saying, "This much is not chargeable, and therefore we deduct it from the total bill," it's not adequate testimony, if your Honor please, and I still renew my Motion to Strike all the testimony he gave today.

The Court: Motion to strike all the testimony is denied. Witness was on the stand for a number of questions before objection was raised, so in one sense, it is too late, and it is discretionary, and the Court permits it.

Exhibits B-6, -7 and -8 prepared by Mr. Hamilton, was it—a person not here—for the witness were not received and still aren't received.

Mr. Harrigan: Same exception.

The Court: The last part of the ruling is that I receive the testimony of the witness who is presented as a witness who is apparently a field or job superintendent, estimator for his

company, the thrust of whose testimony is that he has looked back at work done, allocated it, and that someone has done the mechanical application of this, plus 10 percent, plus 15, and what-have-you. But where he carries the position in his company of an estimator, his testimony on the figures I think may be received in evidence.

page 494 } All of the other comments that you made, Mr. Simmonds, I will simply consider them as part of the final argument as distinguished from striking them out. In other words, weight is one thing and admissibility another.

Mr. Simmonds: Note my exception.

The Witness: May I say something?

The Court: I'm afraid not, unless your attorney asks a question.

* * * * *

page 495 } Thereupon,

JOSEPH BUNKER was called as a witness on behalf of plaintiff, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Harrigan:

Q. What is your name, please?

A. Joseph Bunker.

Q. What is your occupation?

A. I am a Project Engineer for United Industrial Associates.

Q. Did you have occasion to go to the Glebe Theatre?

A. I did.

Q. When was that, do you know?

A. Sometime early in May of 1965.

Q. For what reason were you to go down there?

A. My company had entered in a contract with Mr. Sharlin to remove the existing heating and air-conditioning and to replace it with new heating and air-conditioning equipment.

Q. Did you do that?

A. We did.

Q. Did you remove certain equipment from the premises, and air-conditioning equipment?

page 496 } A. Yes, we did.

Q. What type of equipment was removed?

Joseph Bunker

A. We removed an air-conditioning unit and cooling coil and evaporative condenser, compressor, a motor and some attendant refrigerant piping.

Mr. Simmonds: May I have that read? Go back over that.

The Witness: In addition, we removed an existing boiler, an existing flue, oil burner and attendant fire box which was really part of the boiler.

By Mr. Harrigan:

Q. What was necessary to remove? Was it a condensor? Where was it located?

A. On the roof, on steel supports.

Q. What you call the condensor.

A. Evaporative condenser.

Q. How big was it?

A. Approximately 8 to 10 feet long, by 2½ feet deep, and maybe 8 to 9 feet high.

Q. How is that connected up there?

A. That is bolted to the steel supports, bolted and welded and connected with refrigerant piping to the compressor and cooling coil in other parts of the building.

page 497 } Q. What was necessary to remove that, what type of equipment?

A. We had to hire a hydro-crane, which is a truck crane, to take the unit off the roof and place it on the truck, and we had to use burning torches to cut the unit from the supports.

Q. Was that unit removed?

A. It was.

Q. Did you testify there were some piping that were removed with it?

A. Yes.

Q. What was the function of that piping?

A. The piping was part of the refrigeration system necessary to complete the cooling cycle.

Q. Do you know what the cost was to remove that evaporator condenser?

A. I wrote a letter.

Mr. Harrigan: Let me show this—

By Mr. Harrigan:

Q. Can you identify that?

A. (Reading) This is the letter I wrote to Mr. Sharlin.

Joseph Bunker

Mr. Harrigan: I would like this marked, your Honor, and it has a K-1 on the bottom.

page 498 } The Court: All right. K-1 for identification.

(Document was marked Plaintiff's Exhibit K-1 for identification.)

By Mr. Harrigan:

Q. I show you Exhibit K-1 for identification. Is that the letter that you sent Mr. Sharlin?

A. Yes, sir, that's the letter.

Q. Is that signature on that letter?

A. That's my signature.

Q. What was the cost for removing that condenser and—

A. $567.

Mr. Harrigan: I would like to offer this into evidence, your Honor. You have a copy of it?

Mr. Simmonds: Yes, sir. I object to the admission of that in evidence. That item was included in a contract made by the witness's company with K-B Theatres as part of an over-all price for the removal of the air-conditioning and heating system, and the installation of a new and different type of system, and I object to the admission of this letter which apparently is an effort on the part of the plaintiff here to break down what didn't exist before in the contract, of a part of the price of the contract that he would estimate covered the removal of this particular item.

page 499 } Mr. Harrigan: I would like to ask one question:

By Mr. Harrigan:

Q. Who was the Project Engineer in this job?

A. I was the Project Engineer.

Mr. Harrigan: I offer the letter, your Honor.

The Court: I don't understand the connection between the Project Engineer and cost figures to remove something. I didn't think such foundation—So, on that basis, I reject it.

Mr. Harrigan: All right.

By Mr. Harrigan:

Q. Let me ask you this, Mr. Bunker, do you do estimating for the company?

A. Yes.

Joseph Bunker

Q. This $567. figure, was this your estimate of what the cost was necessary to remove this particular equipment?

A. This is my break-out by item from the estimate made by Mr. Cox of our company, a portion, this part of the work.

Q. Part of your function in the company is to break out prices such as this if there is any inquiry about them?

A. Yes.

page 500 } Q. This was broken out by you?

A. By me.

Mr. Harrigan: I offer it again, your Honor.

Mr. Simmonds: Did I understand you to say it was a breakdown of an estimate made by Mr. Cox? Is that correct?

The Witness: The estimate was prepared by Mr. Cox of our company.

Mr. Simmonds: What you did was took off his estimate sheet the items that related to the air-conditioning equipment?

The Witness: Yes.

Mr. Simmonds: I move it be not admitted into evidence.

Mr. Harrigan: Your Honor, I don't think it makes any difference whether it is broken out of an estimate. He testified he knew what work was done; he knew what equipment was necessary to do it, that the equipment was used and he even testified how it was burnt off, with a torch, and was lifted up—the holes were patched where the pipes went in, that it was put on a truck and the cost of that particular type of operation would have been $567. And it is a matter of semantics to argue—

He is breaking it out of a higher figure, or this is what it would have cost if you built the figures up. As

page 501 } long as that is a true cost of this particular operation, to which he has testified, I think it is admissible in evidence for that purpose, and we offer it.

The Court: Doesn't he say it is based on somebody else's estimate, and then he makes an engineering cost estimate from somebody else's estimate?

Mr. Harrigan: No, the other estimate was for a whole heating system, a $20,000 estimate.

The Court: You have to put that person on first if he is on your list of witnesses.

Mr. Harrigan: Let me ask you this:

By Mr. Harrigan:

Q. If you went down this and had to take that particular

equipment out, aside from whether you are going to put anything in or not—

Mr. Simmonds: If your Honor please, Mr. Harrigan has this gentleman on direct examination. I object to the manner in which he is asking the questions, leading questions and so forth. It is certainly improper.

The Court: I think I anticipate what the question is. It's a proper one. Overruled.

Mr. Simmonds: Exception.

By Mr. Harrigan:

page 502 } Q. If you had to go down there and take out the same equipment, and cut it free with a torch, and get a truck with a crane on it to lift it off the roof and put it on the truck, and to take it away, what would the cost have been?

A. In my opinion, $567.

Mr. Harrigan: All right. I offer that letter in evidence.

The Court: The letter is rejected. It is based on an estimate of somebody else.

I have heard his testimony as an engineer, his own estimate in a hypothetical type of question.

Mr. Harrigan: Note my exception to the rejection of the letter because Mr. Simmonds' argument is just a matter of semantics and—

The Court: Well, I have ruled on it, so let's end that.

Mr. Harrigan: All right. Exception.

Your witness.

CROSS EXAMINATION

By Mr. Simmonds:

Q. Mr. Bunker, did you look at the job before any work commenced in order to arrive at what the contract price should be or the proposal should be?

A. I had nothing to do with the preparation of the proposal.

page 503 } Q. I show you Defendant's Exhibit 14 and ask you if this is a proposal by your company.

Mr. Harrigan: I object to this, your Honor. It's a matter

that wasn't gone into in direct, what the whole job was. The only time it was brought up was when Mr. Simmonds brought it up. It's outside the scope of direct.

Mr. Simmonds: What was my question, Mr. Harrigan? I didn't think I had asked the question yet.

May I ask the question before your Honor rules on it?

The Court: Let me hear the complete question.

By Mr. Simmonds:

Q. I show you Defendant's Exhibit 14 which purports to be on the letterhead of United Industrial Associated dated April 9, 1965 addressed to M. H. Sharlin and I ask you if that is a proposal by your company.

Mr. Harrigan: Same objection, your Honor.

The Court: How does this relate to testimony in chief, Mr. Simmonds?

Mr. Simmonds: I want to get the date of this contract with respect to the removal of this equipment. They had made a contract for the removal of the air-conditioning equipment, even twenty days before the Lease was over and before Neighborhood had moved out, and it seems to me that not even knowing whether—

page 504 } The Court: It relates in part to the date he went to the theatre which he said was in early May. On that basis for dates you may answer now, sir.

The Witness: This is a copy of a document we describe as a contract together with which a letter of proposal setting forth detail what we proposed to do becomes a part of, that letter became a part of this contract. The letter was dated, according to the information here, March 29th. That was the letter of proposal, and then this contract was submitted and signed subsequent to that.

By Mr. Simmonds:

Q. As far as your company is concerned, it was based upon a proposal made March 29, 1965, is that correct?

A. That's what it says.

Q. This proposal is to remove existing heating and air-conditioning equipment, and furnish and install new equipment to provide year-round air-conditioning, is that correct?

A. That's right.

Q. Was a different type of air-conditioning system installed there?

Mr. Harrigan: Objection, your Honor.

The Court: This goes beyond the direct which was rather limited.

page 505 } Mr. Simmonds: If your Honor please, it seems to me that they are, by this witness, trying to establish the cost of removal of a particular piece of equipment that the defendant had furnished. I want to show that the removal of that equipment was occasioned by a desire on the part of the landlord and tenant to put in an entirely different type of system, and not because of anything that's chargeable to the defendant. There is nothing in the contract that required him to remove it, in the Lease.

Mr. Harrigan: Your Honor, on that, this was specifically mentioned in the contract as part of the type of equipment that remained the property of the lessee, which means that he had to remove it. It could have been a brand new piece of equipment, but it specifically mentioned the air-conditioning system, the motors, compressors, and so forth shall remain the property of the lessee; and what difference does it make for what reason it was removed if they were under duty to remove it?

The Court: Well, if the landlord treated it as his own, with his job to remove it before the lease expired, this shows an intention of the parties before there was any issue, the intention of one party, so I have let him show the date in the contract.

page 506 } Mr. Harrigan: Do they say it was ours?

The Court: I suppose, really, the proffer now is to simply carry it one step farther. I guess it is relevant—I'm not really sure how material. I am going to let it in. Objection overruled.

Mr. Harrigan: Exception. Grounds stated.

The Court: The question was, was the new air-conditioning system installed by your company, if you know?

The Witness: A new air-conditioning system was installed. I think you asked, was it a completely different type. No; it still used a cooling coil and the existing air ducts for distribution. The system became an air-cooled system with a compressor and condensor mounted together in one unit on the roof rather than a separate compressor and evaporative condenser in two different places. This is primarily due to advances in technological end of the business, and it is the best cost factor—the way to do it with present equipment.

The Court: Was it a better quality piece of equipment that

they put in?

The Witness: I would think it would be equal.

The Court: But the system itself was a better system, is that correct?

page 507 } The Witness: It wouldn't do the job any more than the other one would do when it was new. It was an equal system, used the same general distribution approach.

The Court: Same B.T.U.'s cooling?

The Witness: I don't remember, sir.

The Court: Or wasn't it measured? Are you saying it was a replacement because the other was worn out, or what?

The Witness: Yes.

The Court: Mr. Simmonds, if I may interrupt—You speak as though—Do you have an engineering degree, sir?

The Witness: I do.

The Court: And you are licensed as an engineer, mechanical engineer?

The Witness: Yes.

The Court: —in some state or other.

The Witness: District of Columbia.

The Court: All right.

By Mr. Simmonds:

Q. You say this was replaced because of being worn out?

A. That's my presumption. I did not make a survey of the other equipment as to its functionality before it was taken out.

page 508 } Q. As a matter of fact, you never saw the equipment until a month or so after your company had made the proposal to remove it?

A. That's correct.

Q. And you did not make an examination to determine its worthiness for continued use?

A. I did not.

Q. Your contract was a—

Mr. Simmonds: This is in evidence, not just for identification, is that correct?

The Court: D-14 is in evidence.

Mr. Simmonds: That's all the questions I have.

Joseph Bunker

RE-DIRECT EXAMINATION

By Mr. Harrigan:

Q. What happened to the old equipment that was removed?

A. To the best of my knowledge it was junked.

Mr. Simmonds: Did you know that? Do you know what happened to it?

The Witness: I didn't physically see it go to the junk yard, but we don't have it at our shop.

The Court: In your estimate, sir, which you give as an engineering estimate on your own, how many man-hours do you allocate to simply disconnecting this unit on the roof, roughly?

page 509 } The Witness: Disconnecting the unit, Oh, is probably 4 man-hours. Actually, dismantling it and handling it with the rigigng, we would figure 2 to 3 men, a day labor disconnecting.

The Court: Two or three man days?

The Witness: Two or three man days.

The Court: You mean it had to be disassembled, could not be taken down in one unit and hauled off?

The Witness: It's not physically practical to haul it together on a truck, and it generally does come apart in three pieces. As I know, it had a fan section and a base section and it was probably taken apart in that manner.

The Court: If a new system is immediately going on, does it have to be recapped, any ducts, or pipes that went from it?

The Witness: No.

The Court: What does the crane cost?

The Witness: The crane for that would be about $75.

The Court: That's what, a half-day?

The Witness: That's a minimum, yes.

The Court: The truck?

The Witness: The truck—probably allow $20 for the use of the truck.

page 510 } The Court: So that, then, is a maximum of 4 man days; a crane and truck would be $567?

The Witness: Well, there were other items in that letter which was not admitted that were—

The Court: The court is not looking at the letter. It is only considering Mr. Harrigan's question to you independent of what Cox's estimate was, what you say of those cost figures that it would cost to take that size equipment off the roof.

The Witness: I was referring at the $567 to all the items that were in the letter. That particular item there, approximately from $250 to $275.

The Court: The pipes that were removed, were they internal to the building?

The Witness: Partially. They went down the outside of the building from the evaporative condenser, went through an outside wall and below the main floor to the compressor.

The Court: Are there any questions based on the Court's?

Mr. Harrigan: Yes, your Honor.

By Mr. Harrigan:

Q. The Judge asked you, on the breakdown, the actual cost to remove it, and your estimate was $250, $275?

page 511 } A. Yes.

Q. Now, in addition to removal, what other patching did you have to do as a result of removing this?

Mr. Simmonds: I object to the leading question. Nobody said anything about patching.

By Mr. Harrigan:

Q. —if any?

The Court: He's rephrased it.

By Mr. Harrigan:

Q. What other work is included in this $567?

A. Refrigerant piping was removed and the exterior wall of the building where it went through was patched, and the air-conditioning compressor and its motor, which were in a room adjacent to the boiler room in the basement, were removed and taken out of the building.

Q. Do those items make up the difference between this $250, $275 and $567?

A. Yes.

Q. What is this thing in the boiler room? What do they call it?

A. Compressor.

Q. Compressor, and that's definitely part of the air-conditioning system, right?

A. Yes.

page 512 } Q. Where were the coils?

A. Cooling coil?

Q. Yes.
A. Was in a room at the second floor level, adjacent to the Projection Room, the small room that was used as an air-conditioning equipment room.
Q. Were those coils removed?
A. Yes.
Q. And they were part of the air-conditioning equipment?
A. Yes, sir.
Q. And the evaporative condenser was on the roof?
A. Yes.
Q. This $567 includes removing all those items—
A. Yes.
Q. —and patched—Thank you.

RE-CROSS EXAMINATION

By Mr. Simmonds:
Q. Mr. Bunker, do you actually recall your company removing a compressor out of the basement next to the boiler?
A. To the best of my memory, yes, sir.
Q. When did you first go to the building?
A. The early part of May in 1965.

page 513 } Q. You are here to testify to facts. Are you in a position to testify as a fact that your company removed a compressor from the basement next to the boiler?

A. To the best of my knowledge.
Q. You can't say it is a positive fact, though?
A. I have stated it to the best of my knowledge.
Q. Why didn't you use those refrigerant pipes that were still there?

Mr. Harrigan: Your Honor, I object. I don't think why they did not use them is in issue. I don't mind him answering them if he wants to. But I would object on the grounds that the question of why; it's a question of if they had a duty to take them out or did not. Why they didn't use them isn't here or there.

The Court: The trouble is the Court is going to get into this eventually, I suppose. Assuming there is a duty to remove the unit from the roof and units from the basement, whatever they might be in either location, it doesn't necessarily mean that piping could be taken if it would wreck the building, all the more so if it is usable piping because the right

to remove something one owns does not include the right to damage, which I think is part of what plaintiff claims on the wall partition, so I can't tell. I'm going to allow the question.

page 514 } Mr. Simmonds: The answer?

The Witness: The piping was no longer applicable to this system due to the location of the new equipment on the roof, due to the fact that the compressor was now on the roof and in a type of unit named as an air-cooled condensing unit rather than the basement—

Mr. Simmonds: Thanks.

The Court: Is the witness needed further in the case?

Mr. Harrigan: No, your Honor.

Mr. Simmonds: If your Honor please, I want to preserve my points in connection with this type of testimony, so I will now move to strike the Item claimed of $567 on the grounds that there is no requirement in the Lease that the tenant move the air-conditioning equipment or other equipment. The Lease provided in Section 2 that title remains in them, or it remains the personal property of the defendant, or the tenant. There is no requirement anywhere in the Lease that they have to move those chattels, even though they belong to the tenant, and certainly can't set a demand upon the tenant to move them—

The Court: If I abandoned something on your premises, you have got to make a demand of me before I am under a duty, and if I reject a demand before, you can spend my money to have it removed.

page 515 } Mr. Simmonds: Yes.

The Court: Yes, I think that's the rule.

Mr. Simmonds: And as Exhibit 14 shows, Mr. Sharlin had already undertaken a month beforehand to remove it.

The Court: I do not strike the evidence. I, again, will consider all these matters at the end of the case.

Mr. Simmonds: Exception please.

* * * * *

page 517 }

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Thereupon,

LEE RIGNEY was called as a witness on behalf of Plaintiff, and having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Harrigan:
Q. State your name, please.
A. Lee Rigney.
Q. Where do you work, Mr. Rigney?
A. K B Theatres.

The Court: Is it K B, or K and B?
The Witness: It is K dash B Theatres (K-B).

page 518 } Q. Calling your attention back to—

The Court: Your connection with them is what?
The Witness: Supervisor.
The Court: Of what?
The Witness: Twelve theatres.

By Mr. Harrigan:
Q. Supervisor of 12 theatres for K-B?
A. Yes.
Q. Directing your attention back to April and May of 1965, who did you work for then?
A. Neighborhood Theatres, Inc.
Q. At any time were you ever the manager of the Glebe Theatre, on Glebe Highway?
A. On two different occasions, yes, sir.
Q. What occasions were they?
A. September 19, 1952 to -53; then I left the chain October 1st, 1955 and I returned January, 1960.

The Court: The question is, what time did you serve as manager of the Glebe.
The Witness: January 1960 to about May of '63 I was manager of the Glebe Theatre. This is approximately the time.

By Mr. Harrigan:
Q. Were you at the Glebe in '52 and '53?

page 519 } A. Yes, sir.

Q. Do you remember the parking lot there?

A. Yes, sir.

Q. Was the parking lot paved then?

A. I will have to answer it in this respect, sir: It was not black-topped.

Q. Was not?

A. No, sir.

Q. How was it paved?

A. Well, it was—I am going to have to use some previous testimony: They said crushed stone, but it was hardened down till it's just a parking lot, just dirt; hard dirt I guess is all I can remember of it then.

Q. Hard dirt?

A. Crushed stone packed. I suppose that's the way it was, yes, sir.

Q. All right. Now, when you were manager, 1960 to 1963, was that at the Glebe—

A. Yes, sir.

Q. And after 1963, where did you go?

A. Well, I was Mr. Pearson's assistant in addition to managing the Glebe, and so I worked mostly out of the main office, checking theatres, filling in where I did not

page 520 } have a manager, so I was more or less travelling the circuit in Arlington and Falls Church.

Q. Did you have a problem with the front part of the theatre where the apron or sidewalk is, by the ticket booth?

A. The apron, which is between the box office and the County sidewalk—call it an apron; it was concrete—it was recessed an inch and a half to two inches, I suppose, from the main part of the building.

Q. When you say it was recessed, where in relation to the box office was this recess?

A. It was across the front, between the two picture frames and the—The box office sits in the center, and there is an entrance on either side.

Q. Was it slightly behind the box office, into the box office?

A. Well, the box office is a little forward of the actual building, I suppose.

Q. In relation to this recess where this inch-and-a-half recess was, was any part of the box office in front of that?

A. I believe it was right—No, the box office is forward of it a little.

Q. Was forward of it?

A. I think it was forward of it a little.

page 521 } Q. How far across the entrance-way did this recess exist?

Mr. Simmonds: Excuse me, just a minute. By "recess" do you mean "dropped down" or "pulled away?"

The Witness: Dropped.

By Mr. Harrigan:

Q. Dropped?

A. Yes. Well, it was, I would say, about 6 or 8 feet perhaps —I can't recall exactly—I know across, say from the box office to the right, to the frames, the picture frames there, I know that part was. And in front of the box office, I believe, because—

Q. Did the people that bought tickets necessarily had to cross over that area that was sidewalk?

A. Yes.

Q. They did?

A. Yes, sir.

Q. While you were manager there, what attempts, if any, did you make to repair that difficulty?

A. I think it was in 1963, about this time, I used a mixture of sacrete and sand mixed in water and tried to—well, I tapered it to keep persons from just bluntly hitting against it and falling. I just tapered it some and repaired

page 522 } it in that respect. It lasted for some time—I don't know how long exactly, but I did repair it myself once.

Q. So, you did repair it, attempted to repair it?

A. Yes, it was not a professional job, but it sufficed for the time.

Q. Did you have a water condition coming around there?

A. Well, yes. Any time we had a heavy rain, we had water running down and across some of the apron into the street there, yes.

Q. Where did that water come from, which side of the building?

A. Well, I guess you call it the north side in the front part of the parking lot, that area.

Q. Was that paved?

A. Yes. You mean the parking lot?

Q. Yes.

A. It was paved.

Q. Was it paved all the way up to the building?

The Court: Again, define what you mean by "paved?"

By Mr. Harrigan:
Q. Asphalt?
A. This was black-topped.

The Court: You are speaking of what year, sir?
page 523 } The Witness: This was in, well, '63. This was after I came back.
The Court: You are describing '63, now, when you put the Sacrete on?
The Witness: Yes, sir, but the lot had been paved with black-top.

By Mr. Harrigan:
Q. How close up to the building did this black-top go?
A. It was within, I would say 18 inches or 2 feet, something like that.
Q. Speaking about the front of the building, just around the corner from the ticket booth and so forth, around the side, was that where it was 18 inches from the building?
A. Yes. That was not paved; it was paved up to within about, I would say, 18 inches or 2 feet of the building.
Q. What problems did you have with water washing that area up?
A. Well, we had a lot of seepage into the basement of the building, which was beneath the box office. We had a lot that came through there, but—
Q. Beneath the box office?
A. Yes, the basement starts right there. I say that's back in the front part of the basement. Made quite a
page 524 } bit of—Well, heavy rains, we would have quite a bit of water coming in there.
Q. Was this water condition ever corrected?
A. It has been corrected. Is that what you mean?
Q. While you were there?
A. No, sir, it was not.
Q. Back in '52 and '53, was there any crack or was this sidewalk sunk back then?
A. No, sir.
Q. When was the lot paved, do you know that?
A. It was paved between October 1, 1955 and January of

1960 because I noticed this when I came back to the company, that it had been black-topped.

Q. In January, 1960, what was the condition of this recessed sidewalk? Was it there then?

A. I don't recall, sir. I don't know whether it was there or not. I don't remember.

Q. But it was there in '63?

A. Yes, it was.

Q. Did you paint the lines on this asphalt?

A. I had it done twice between 1960 and 1964.

Q. What type of lines were on this asphalt?

A. Well, it was marked off and line for automo-
page 525 } biles. White traffic paint is what we used.

Q. You had it done twice?

A. I did it once myself, and then I had someone else do it a couple of years later. I did it twice while I was there between 1960 and 1963-64.

Q. During the three years you were there as manager, who did the patching in the parking lot?

A. We had a maintenance man who did some of the patching; I believe Mr. Snarr did some—I think. It's been quite a while, but I think—

Q. Did you have any professionals come in and do it?

A. That's what I was going to say. I believe in '60 or thereabouts, I believe Mr. Pearson had, I don't know whether it was—I don't know the name of the company, but it seems to me a Mr. Campbell came in and did some patching once there for him. I think they do paving and repairs.

Q. So, as far back as '60 it was being patched?

A. Yes, sir.

Q. Directing your attention up to just prior to the time that Neighborhood moved out of that theatre, were you still employed with Neighborhood at that time?

A. Yes, I was employed with them.

page 526 } Q. And when is the last time you were in the theatre in relation to the time that they actually moved out?

A. Well, I was in there still sometime in April before they moved out. I would say the last couple or three weeks prior to their closing on April 30th.

Q. When did they move out?

A. They moved out on the Sunday before April 30th. Sunday night was the last show they had, and they started moving—

Lee Rigney

Q. What did they move, what did they take out? Do you know?

A. This I don't know because I wasn't in the building at all.

Q. You were there within a couple of weeks before that.

A. A couple of weeks prior to the closing of the theatre.

Q. Did you have occasion to see the lights of the marquee?

A. Well, I observed them at all times, yes.

Q. How were they working, the marquee and the lights of the marquee?

A. The marquee was all right. The lights were burning.

Q. Nothing unusual about it, everything was working?

A. These 16 recessed lights under the marquee that have been discussed, there were two that I had con-
page 527 } siderable trouble with—I say considerable trouble: We put a light bulb in—we used 100-watt light bulbs—and the light kept going out.

Q. The light bulb kept going out?

A. Yes. I suppose they were—

Q. Were the fixtures up inside?

A. Yes.

Q. Were they lit and working?

A. Yes, sir.

Q. How about the Exit fixtures, were they all working?

A. Yes, sir.

Q. And were pictures being shown, booth equipment was there?

A. Yes, sir.

Q. What kind of cameras did they have up in there, if you know, and how many of them?

A. Two.

Q. Two?

A. Two projectors.

Q. Do you know what Mr. Pearson did with these fixtures after they were taken out, where they were stored, or if stored?

A. The only statement that I could make on
page 528 } anything that was removed from the theatre was, I know that they had property close by that had a lot of things that they stored in there. I can't say honestly where anything went to, but I do know that they stored it, some things there, but I don't know what items. I have no itemized list or anything. But it could have been taken to other theatres. The seats I know were given to someone. I couldn't pinpoint any specific things except the seats

Lee Rigney

Q. Were you assistant to Mr. Pearson when they started to vacate?

A. Yes, sir.

Q. When did they vacate?

A. Well, it was 3 or 4 days before the end of the month, the end of April that they started to vacate. I believe this is the way it was, yes. They closed with a picture on a Sunday night and then, this was the last Sunday in April, I believe; and Monday—then they vacated the next three or four days, I believe.

Mr. Harrigan: That is all.

CROSS EXAMINATION

By Mr. Simmonds:

Q. Do you know what day of the month April 30th fell on?

A. No, sir, I don't.

page 529 } Q. As I understand it, you continued to show moving pictures in the theatre until the Sunday night immediately preceding the 30th of April?

A. 30th of April.

Q. And it was after that Sunday night that Neighborhood commenced to take their fixtures out.

A. Yes, sir.

Mr. Harrigan: I object to the question. It assumes facts which are, I think, in dispute, that they took their fixtures out.

The Court: I didn't hear the word there.

Mr. Simmonds: That's all right. I didn't mean to suggest the ownership of them or get him to say anything about it.

The Court: I will treat it as t-h-e fixtures with the answer to that question.

By Mr. Simmonds:

Q. Then, your answer was they started immediately after Sunday night.

A. Immediately after.

Q. Do you know how many days it was before the building was ready to turn over to Mr. Sharlin?

A. Either Thursday or Friday following this Sunday.

Q. Did you turn the key over to Mr. Sharlin or

page 530 } to someone representing Mr. Sharlin?

A. I turned the key over to someone representing Mr. Sharlin, yes, sir.

Q. Where did that occur, can you recall?

A. Yes, at Neighborhood Theatres—Neighborhood Theatres had moved their division office to Falls Church, 1045 Park Place, and we were there a month or so before the Glebe closed, and the key was there; I had the key there. In fact, he had called for a key and Mr. Pearson told him if he wanted a key, you know, someone could come up and get it, so I turned it over to one of his men.

Q. Was that immediately after they stopped moving things out?

A. This must have been Thursday or Friday when they closed, or finished.

Q. As I understand your testimony, when you left the employ of Neighborhood in October of 1955, you were at that time manager of the Glebe, is that correct?

A. No, sir, I was manager of another theatre at the time. I left their employ at that time.

Q. Were you familiar with the Glebe in October 1955?

A. Oh, yes, the division office was located there in the Glebe.

page 531 } Q. And I believe your testimony was it had not been black-topped at that time.

A. Not at that time, no, sir.

Q. Your description of it is that it was crushed stone packed into gravel or dirt.

A. To the best of my recollection, sir, that was it.

Q. Did you have other trouble at the Glebe Theatre with water coming into the building other than at the front, the north front?

A. Yes, sir. We had trouble—

Mr. *Harrington*: Your Honor, I think this is outside the scope of the direct.

Mr. Simmonds: If your Honor please, when he testifies as to leaking from one source, it would seem to me it would open up—to find out if there were other leaks and the cause of the other leaks.

The Court: Yes; but if they are leaks at the ground level, because that was what the question in chief related to really, an effort to tie parking lot and the apron under the marquee to a—I assume you are getting ready to ask about a leak from the roof which I think was referred to in the pleadings.

Mr. Simmonds: I think there were some other leaks.

page 532 } The Court: At grade level, yes, because I think it is the same area of questioning that the plaintiff has offered the witness for, but they haven't offered this gentleman for other leaks.

Mr. Simmonds: If your Honor please, may I say this, that any questions that I might ask that are not directly related to what was asked on direct examination, I am willing to make him my witness for that purpose, and I think it will save a lot of time.

The Court: All right.

Mr. Harrigan: All right.

Mr. Simmonds: So, let's go back to Mr. Rigney.

Mr. Harrigan: I take it he is your witness at this time.

The Court: As to those questions which do not relate to plaintiff's questions—I will sort it out.

(Witness testified on behalf of defendant.)

The Witness: The roof condition was very bad. When we had heavy rains or moderate rains, the back of the theatre, in back of the screen there is an area all the way across the back of the screen, and the left Exit-way, water would pour in this area; and then there was an area about, I would say just inside the auditorium on the left-hand side, 5 or 6 rows down that we had some trouble there with water

page 533 } coming in.

There was one other spot: This came through the lower part of the building, though.

By Mr. Simmonds:

Q. Explain that, too.

A. This was near—in the auditorium on the right-hand side, and it was about 6 rows from the front. The water came in. There was a hole probably an inch or so in diameter where water had come through, and on heavy rains—One time, I remember we had quite a downpour and water came through there, and we had considerable water in the front part. I would say 4 or 5 rows, considerable water came in.

Q. Can you, in point of time, indicate about when that trouble was that you last referred to?

A. I would have to see my copy of a letter that I wrote to

Mr. Sharlin, I believe, to get the—I believe it's D-9, your Honor.

Mr. Simmonds: Your Honor, the letter dated January 20, 1964, I believe he has reference to.

(The Court handed document to witness.)

By Mr. Simmonds:
Q. I hand you Defendant's Exhibit 9 and ask you if that is the letter you referred to?
A. (Examining) Yes, sir, this is it, January 20th.

page 534 } Mr. Harrigan: May I see it? Are you going to offer this?
The Court: It's already in, sir, as D-9.

By Mr. Simmonds:
Q. I take it, you recall from this letter dated January 20, 1964 that you reported this condition to Mr. Sharlin and asked him to repair it?
A. Yes, sir, I did.
Q. Was it taken care of?
A. Well, no, this was not taken care of, no, sir—this part right here.
Q. You refer to what?
A. This is on the right side, 20 feet back from the stage and toward the front of the building. No, that was not taken care of.
Q. Going back to the parking lot a minute, I believe you testified that maintenance men did a good deal of work on the lot.
A. Yes. We had a maintenance man that did do, covered some of the pot-holes and—
Q. Was he on the regular payroll of Neighborhood—
A. Yes, sir.
Q. —in addition to the regular men on the payroll? Did I understand you to say that you also had con-
page 535 } tractors coming in and doing work on the parking lot?
A. I think at one time—

Mr. Harrigan: I object. I would object to what he thinks "at one time."

The Court: I think he developed it in chief.

Mr. Simmonds: Go ahead, sir.

The Witness: It seems to me back around 1960, in that area, there we had someone—I think it was Campbell—representing some paving company that came in there and did some work on the lot, but most of the maintenance for three years prior to the closing, I think the maintenance man did it. I'm sure his name was Mr. Pullen, he did considerable work on the lot there, filled in the pot-holes.

Q. Mr. Rigney, while you were manager of the Glebe and later Assistant Superintendent, how would you say the theatre was maintained?

A. You mean repair-wise?

Q. Repaired.

A. Well, we kept our carpets in shape; we kept our seats in good condition; we kept it clean as best we could. Is that what you are—

Q. And did you make repairs to the building?

A. Yes; I believe at one time, after we had

page 536 } some damage in the auditorium, I believe Mr. Golf who did work for Neighborhood Theatres did some repair work where water had seeped in and damaged the auditorium—I don't know exactly what material they call it.

Q. Do you know whether any work was done on the Exit doors?

A. On the Exit doors?

Q. Yes, sir.

A. Well, the outsides were painted.

Q. Have new doors been put in the Glebe Theatre now, new Exit doors?

A. New Exit doors, yes, sir.

Q. Could you tell me whether or not you can see light through those doors at the present time?

A. Yes, you can see light through them, yes, sir.

The Court: That is centered with the doorway?

The Witness: Yes.

The Court: All right.

By Mr. Simmonds:

Q. Would you describe how those doors are locked or attempted to be locked, the panic doors?

Lee Rigney

A. Well, there is a metal bar that comes down from the top to the bottom; then there is a catch at the
page 537 } bottom and the metal bar drops down, like this (indicating) and you can't get them open from the outside, should not be able to; but someone leaving through those doors, just pushing the panic handle down—the bar lifts up and the doors open.

Q. How secure are those doors from someone trying to get in from the outside?

The Court: Which doors?

Mr. Simmonds: The Exit doors.

The Court: The new ones or the old ones?

Mr. Simmonds: Either one. I will ask about both of them.

The Witness: Just about anyone with a crow-bar can get into one if they want to.

By Mr. Simmonds:

Q. Are they locked from the inside at all?

A. There is no lock on them except these bars drop back behind this catch and if a crow-bar can get through any crack, they can trip—they can kick them up.

Q. How would you describe the condition of the parking lot the last time you were at the Glebe before the Lease was up?

A. It would be very hard for me to pinpoint it. This was in April, and possibly there were pot-holes in there because you can't do too much repair in the wintertime, you know, with the freezing and the thawing. There were
page 538 } some pot-holes, yes, I'm sure.

Q. Was the parking lot otherwise in fair condition?

Mr. Harrigan: Objection. It's his witness now, your Honor. He's leading.

Mr. Simmonds: I beg your pardon. You brought up the parking lot

The Court: This question was on cross.

Mr. Harrigan: All right.

By Mr. Simmonds:

Q. Would you say the parking lot was in fair condition?

A. It would be very hard for me to say if it was in fair condition or good condition because I honestly—I really can't

remember. I don't remember whether it was.

Q. Could you estimate the average weekly traffic in the Glebe Theatre?

The Court: Admissions?

By Mr. Simmonds:

Q. Yes, number of people, or maybe you can tell us between what it would vary from week to week when you had a good picture and when you did not.

A. Well, if you had a good picture, that lot would be full.

Q. I really meant the traffic within the theatre, the number of people coming in the theatre is what I had reference to—admissions, in other words.

page 539 } A. I would say anywhere from—this is average for a year—I would say average of anywhere from 2,000 to 3,000 people per week.

Q. Do you know whether there was ever a water heater in the basement to heat hot water?

A. No, sir, there was not a hot-water heater.

Q. Not while you were there?

A. No, sir.

Q. You, of course, have been in the theatre since it's been renovated by K-B, have you not?

A. Yes, sir.

Q. Has there been any change in the men's toilet, as far as the fixtures are concerned in the toilet—the toilet facilities?

A. Yes.

Q. What changes have been made?

A. Well, they took out one urinal. One urinal was taken out and two installed.

Q. Was there any change in the wash basin?

A. Well, yes, a wash basin was installed to the right of the two urinals, whereas before the other one was over to the left.

Q. Do you know whether that caused any dis-
page 540 } turbance of the tile in the bathroom, the toilet?

A. Well, in order to install the two urinals, I'm sure, yes, they had to get through the tile.

Q. Was any tile on the wall disturbed as well as on the floor?

A. Well, yes, they had to take some of it out to get, you know, pipe through there.

Q. Mr. Rigney, could you tell us whether or not the light fixtures that are now in the foyer, I guess it is—the foyer

being the part immediately back of the auditorium, is it not—are the light fixtures that are in there now the same type as were in there before, before K-B moved in?

A. Not exactly. We have two chandeliers in there now that weren't there before.

Q. What type of light fixture was in the foyer before?

A. It had a—Well, it was a—Had thre sockets with a dish-like cover, I call it, that fits up—You put your bulbs inside the dish and there is a nut you turn that holds the dish cover. There were about five of them, I believe, in the foyer.

Q. And as I understand, some of them have been replaced by chandelier-type fixtures?

page 541 } A. There are two chandeliers and then the same type of a fixture in two places. Yes, we have two chandeliers and two other fixtures of the same type that used to be in there.

Q. Are the others in the lobby the other chandeliers now at the present time?

A. Yes, we have two chandeliers in the *foywer* and two covered types.

Q. In the foyer, you have two chandeliers and two covered types?

A. Two cover-types.

Q. In the lobby what do you have?

A. In the outer lobby we have two chandeliers, yes.

Q. Did you have chandeliers in the lobby before?

A. In the outer lobby we had two chandeliers, yes.

Q. Did they have any additional—

Mr. Harrigan: Objection. He is leading now. Is this his witness?

The Court: Yes.

By Mr. Simmonds:

Q. Do the chandeliers at the present time have any covering over the light bulbs?

A. Yes, glass chimneys, we call them over the—

Q. Did the chandeliers that previously were there, did they have chimneys over them?

page 542 } A. No, sir.

Q. While you were manager for Neighborhood there, were there any breakings in during the nighttime, of the theatre?

A. We had a rash of them. We had 3 or 4 within 18 months, I think it was.

Q. Do you know how they would get in?

A. Mostly through the back Exit on the left.

Q. Do you know whether there have been any since K-B opened up, any breakings in?

A. We had one, yes, sir.

Q. Are you using any different security measures at the present time than you did previously to prevent break-ins?

A. Well, I have chained all of the Exit doors at night with a lock.

Mr. Simmonds: That is all.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Mr. Rigney, on these leaks that you have given some testimony about, did these leaks start when the parking lot was paved with asphalt, after that?

A. These leaks occurred while it was there—yes, asphalt, yes, sir.

page 543 } Q. And there was this gap where you did not pave between the building and the parking lot?

A. It was paved up to within a couple of feet of the building.

Q. Couple of feet.

A. Yes, sir.

Q. And the water used to wash out this *durt* in this couple of feet, too, didn't it?

A. Well, I don't think it washed it out, but it ran down, you know—there was a—

Q. There *wan't* any expansion joints used like ordinarily would be used when you are paving?

A. I don't think so. There was a down-spout that came down and water dropped off *an* run to the front.

Q. You talked about break-ins—in one of these break-ins the door was knocked off the hinges, wasn't it, right down to the frame?

A. Yes, sir, that occurred in the outer lobby, the left Exit door; yes, as you entered the theatre, the first Exit door on the right.

Q. Who repaired that?

A. The maintenance man for Neighborhood Theatres. What happened, they had forced the whole door and the

page 544 } jam out. This occurred shortly before the clos-

ing of the theatre, within 2 or 3 weeks, I think it was, so he put the jam back.

Q. In other words, he just nailed it back?

A. Yes, he put the jam back in.

Q. It wasn't any professional repair job, was it?

Mr. Simmonds: I object to that.

Mr. Harrigan: I will withdraw it.

By Mr. Harrigan:

Q. Was the panic bar broken or bent in that particular instance?

A. The bolt in the left door was bent, but it was straightened out to where it would drop behind the thing, and you could lock it. This was a door that had a lock in it, with a key.

Q. Regarding the parking lot, did there come a time when you attempted to fill up this space between the lot where it was paved and the building? Did you ever do that?

A. I never did, no, sir.

Q. As I understood your testimony, was it safe to say that in the last five years, if there was any patching work done on the parking lot, it was done by the janitor?

A. The maintenance man, yes, patching pot-
page 545 } holes—that was about it, yes, sir.

Q. The fixtures, when you talk about chandeliers, what you really are talking about, you're talking about a brass fixture that comes down—not the sparkley—Isn't it just a brass fixture with five lights on it, on them?

A. Yes, but they call them chandeliers because they have these decorated bulbs and glass chimneys.

Q. Sort of like colonial brass-type fixtures?

A. That's right.

Q. Did you notice any difference in the Exit lights? Same quality as before, weren't they?

A. Same type only—Yes, same type Exit lights, yes, recessed.

Q. How about in the 16 recessed lights under the marquee, are they of a similar type, design, as the other ones were?

A. The other ones, they had a reflector recessed with a louver tin, I called them tin louvers, that fitted up over them to direct the light so that—I don't know what's up in these because I haven't seen—I know the type, but I haven't, you know, looked into these.

Q. In the outer lobby you have two chandeliers there, right?
A. Yes.
page 546 } Q. And you had two there before?
A. Yes.
Q. And these are both brass chandeliers?
A. Right, yes.

Mr. Harrigan: That's all.

RE-DIRECT EXAMINATION

By Mr. Simmonds:
Q. You mentioned some roof drains coming down from the roof. Where did they empty, in the ground or on top of the ground?
A. Well, one down-spout, it emptied on the ground. There was a little concrete slab to throw it off, the water off.
Q. Was that on the north side of the building?
A. That's on the north side, yes, sir.
Q. How many drains were there altogether, from the roof on the north side, do you recall?
A. Let's see. One that I know of, back in the back of the building. I believe there was one on the corner, and then to the far left of the building in the back there was a drain
Q. Was there a drain on the north wall that
page 547 } emptied out onto the ground, or this concrete slab, was that toward the front of the building?
A. Yes.
Q. And about how far from the front, would you say?
A. Perhaps 15, 20 feet.
Q. Was this in the area in which you had leakage into the basement?
A. Well, the leakage into the basement, most of it was in the corner, down—
Q. About 15 feet away from the drain?
A. Yes, toward the front (nodding).
Q. Does the topography of the land drain toward the front?
A. Drains toward the front, yes, sir.
Q. Were you there when the Commonwealth of Virginia widened the road and put in the sidewalk?
A. No, sir.
Q. Well, prior to the time they did widen the road, was there a drain in front of the theatre building at the street?
A. There was a—

Mr. Harrigan: If he wasn't there when they widened it—

page 548 } Mr. Simmonds: I said prior to the time—

Mr. Harrigan: If he doesn't know when they widened it, how does he know whether he was there prior to that time.

Mr. Simmonds: I understood he said he was there on two different occasions.

The Court: He was there in '62; I think that's pretty safe.

By Mr. Simmonds:

Q. When you were first there with Neighborhood, was that before the State had widened the road?

A. Yes, sir, it was.

Q. Was there a drain for surface water right in front of the theatre?

A. Right in the corner, yes, there was.

Q. The north corner of the building?

A. North corner, and almost toward, where the sidewalk intersects with that apron, in that very area there was a drain going down into the ground.

Q. When you returned with the theatre, had the road been widened then?

A. Yes, sir.

Q. Did that drain, was that drain still there or was another drain there?

A. No, there wasn't; there was no drain there.

page 549 } Q. Was it after the State had made *it* changes in the road and drained the sidewalk that this recessing began to develop?

A. I can't remember it wasn't there, I know, back in the early fifties. That was not recessed, I know that.

Q. And then in the early sixties it was becoming—

A. Yes, in the sixties it was recessed.

Q. And at that time the State had removed its drain, is that correct?

A. Well, the drain wasn't there.

Mr. Harrigan: Your Honor, I haven't heard any testimony that the State even went through there, or what they removed or what they put in. I understand they put in drains; didn't remove any.

The Court: Well, there has been other testimony relating to the change of electric service. Mr. Dougherty was asked

about going from overhead to underground service at the time the Highway was widened. But in any event, the question is proper.

Mr. Harrigan: Exception.

RE-CROSS EXAMINATION

By Mr. Harrigan:

Q. You don't know what the State did, really?

page 550 } A. The only thing I know is, Glebe Road, in the early fifties, 52-54, you could drive down it, but you could not pass anyone. There were just two lanes, one going, one coming back, with a line down the middle of it. That's all I can remember back in the early fifties. I don't know what they did after that.

Q. After you noticed this sinking, up around the ticket booth, the sidewalk of this foyer, the concrete, there wasn't any sinking out by the public sidewalk was there, or out in that area?

A. No, not out—You mean the sidewalk itself.

Q. That's right.

A. Not to my knowledge.

Q. No problem with that?

A. No, sir.

* * * * *

page 551 }

* * * * *

Mr. Harrigan: I have a deposition, your Honor, of Mr. William E. Sellars. I would like to read this into the record.

The Court: I will read it to myself and tell you what page I am on when I come to an objection.

(Judge reading deposition.)

The Court: I am on page 5 now. Now 6, now 7.

On page 8, what are nemostats, counsel?

Mr. Simmonds: You're asking what they are? I explained, well, it's on cross-examination. You tell them what it is.

Mr. Harrigan: It's for the heat and air-conditioning.

Mr. Simmonds: The openings, or conduits.

Mr. Harrigan: Openings for the heat and air-conditioning.

The Court: page 9, 10, 11, 12. There is an objection in the middle of page 13.

Mr. Simmonds: I think we can waive that.

The Court: Page 14, 15, 16—the objection on 16 appears to be proper. The answer in the record really isn't quite of the question. Do you maintain the objection on page 552 } page 16, Mr. Simmonds?

Mr. Simmonds: In view of the fact that I don't understand that answer that was made over my objection, maybe I will stick to it. The answer to it doesn't make sense to me maybe somebody can explain who is satisfied with it. I might waive it.

The Court: It's sustained.

Mr. Simmonds: I take it, we strike out the answer to the question on the top of page 17?

The Court: I do.

Mr. Harrigan: Exception that it is struck out.

The Court: The answer to the question which he objected to?

Mr. Harrigan: —on the top of 17.

All right, then.

The Court: There is an objection on 18, but the question turns to what is the standard in an average theatre, so it seems, unnecessary to rule on it.

Mr. Simmonds: Which is that, the one in the middle of the page?

The Court: Middle of 18 on housekeeping standards.

Mr. Simmonds: I think that objection is good.

page 553 } The Court: Mr. Harrigan modifies that to, "What do you find in the average theatre?"

That would be proper. Objection overruled.

The Court: Page 19. The witness, on 19, was asked: "How much cost could have been eliminated if housekeeping standards had been those of an average theatre?"

Do you want to be heard on that, Mr. Simmonds, further?

Mr. Simmonds: I haven't anything further than what is stated in the objection.

The Court: It's overruled and received.

Mr. Simmonds: Exception.

What page are you on?

The Court: Looking at page 20.

Mr. Simmonds: I'll withdraw that objection at the top of the page.

The Court: All right. 21, 22. Page 22 objection going over to 23.

Mr. Simmonds: If your Honor please, I think I followed that up by a Motion to Strike later on.

The Court: All right, I will hold on that. 24.

Objection at the top of 25 will be overruled.

Mr. Harrigan: Exception.

The Court: The bottom of 31, there is an objection of Mr. Harrigan. The witness had said he thought it page 554 } was from a leak. That objection should be overruled and it is.

Mr. Harrigan: Exception.

The Court: Page 32.

Mr. Simmonds: I renew objection at the top of page 33.

The Court: He states his ground. You can be heard, Mr. Harrigan.

Mr. Harrigan: Your Honor, there is no provision in evidence that a man has to testify from records if he says he can testify from his own memory. As a matter of fact, it is preferred that he testify from his own memory rather than records, if he can do so.

On at least three occasions, Mr. Sellers stated he is the man who makes the estimates; he is the one who knows what went into the job, what the costs were, and he can testify from his own recollection, and I think that is sufficient.

Mr. Simmonds: If your Honor please, the original claim made by the plaintiff here was for approximately $9800. the entire Sellars' bill, and then it was reduced to $1152, eliminating all but certain items relating to the preparing of surfaces for painting, et cetera. It seems to me we are certainly entitled to see his original proposal and all his page 555 } records to find out whether or not that was a proper allocation to the preparatory work; and for him to just take off a Memorandum before he comes over to testify, of just certain little *itmes* that he did do, and testified from, is not fair to the defendant in this case.

We had a perfect right to find out what proportion of this bill was related to redecorating which the K & B Theatres wanted to do and how much, if any, was due to a condition that was beyond the ordinary wear and tear on the interior decorating. I feel, for that reason, that all his testimony should be stricken and I so move.

The Court: To hold this would be to say any witness who comes without his office file can't testify. If a question rises in cross-examination concerning what's in his office file. Objection is overruled.

Mr. Simmonds: Exception.

I renew the objection in the middle of the page.

The Court: It's sustained.

Mr. Simmonds: And I move that the answer be stricken.

The Court: Page 33, in the middle.

Mr. Harrigan: The question and the answer, "Yes" are stricken.

The Court: Plus, "Did you answer that?" "Yes,
page 556 } I said yes, I wrote the specifications."

Then, the further question: "Do you recall what you're testifying from, your recollection?"

"Answer: Yes."

That's where it is stricken.

Mr. Harrigan: Exception.

Mr. Simmonds: Your Honor, on page 37, instead of that bill—for tung-and-*grove* wood—

The Court: Page 37, tung-and-*grove,* I was just reading that before I take up the objection at the bottom of page 36.

The bill is not attached to the deposition.

Mr. Harrigan: No. I have the bill.

The Court: The bill offered on page 36?

Mr. Simmonds: I renew the objection, if your Honor please. It has no relation to the claim.

Mr. Harrigan: Your Honor, I believe it has relation to show the total amount of work that was done in relation to the amount—

The Court: Well, isn't it correct that the claim in Item F, on this informal sheet counsel and I are following, is now $1152?

Mr. Harrigan: That's correct.

page 557 } The Court: Of what value is the bill to me in deciding the case, really?

Mr. Harrigan: I think it would show that a great deal of work was done.

The Court: I would let you put it in to show a great portion of work was done and only a portion charged.

Mr. Harrigan: It's offered solely for that purpose.

The Court: Solely for that purpose, I will receive it.

Mr. Simmonds: Objection—exception.

The Court: F-1 is received in evidence.

(Plaintiff's Exhibit F-1 was received in evidence.)

The Court: Page 37.

Mr. Simmonds: What was the comment you made, for what purpose did you admit it? I would like to make a note.

The Court: Plaintiff offers it to show that they are not charging defendant with all the work done, that much other work was done as shown by this larger bill. So for that purpose solely, I received it. The $1152 was included in the gross bill.

Mr. Harrigan: That's correct, your Honor.

page 558 } The Court: Page 38. No further objections.

On the face of the deposition, I will *note* note, "read in evidence," and initial it.

All right, Mr. Harrigan.

Mr. Harrigan: You have that marked, "read in evidence," your Honor?

The Court: Yes.

Mr. Harrigan: —stipulate we will do this instead of reading it in evidence.

The Court: Absolutely.

Mr. Harrigan: That's all we have. That's our case, your Honor.

Mr. Simmonds: Your Honor, before I start putting on testimony, I would like to sort of go down the items that we are claiming to find out which ones there is evidence on and items which they are not claiming—items not in issue.

I guess as to Exhibit A they have put in evidence on that. B, they have put in evidence. No evidence on C.

The Court: No, sir.

Mr. Simmonds: Your Honor, may I go over again the items on Gly Construction, which is D? Some of them, I believe you said, were not being claimed. I don't have a list of them. Do you have a list handy?

page 559 } That's right. We don't need to go into that, if your Honor please. I have it marked.

Your Honor, do you have Exhibit D in front of you at this time?

The Court: It seems to me that's one I marked as Plaintiff's D, to keep it straight.

Mr. Simmonds: If you have some memorandum which of those numbers consisted of, I would like to have them. It's got 14 items on the bill, if your Honor please.

The Court: This is a bill of Gly Construction?

Mr. Simmonds: Yes.

Mr. Harrigan: I could tell what evidence was presented.

The Court: I think I found it.

Mr. Harrigan: Item 2, 7—

The Court: I will turn to my notes because I want to follow it. The witness's name at this point was—

Mr. Harrigan: DeLisio, your Honor.

The Court: All right. Number one was out.

Mr. Simmonds: Out, you say? Oh, yes.

The Court: That was new work. 3, 4, 5 and 6 were out. 9, 11, 12, 13 and 14, according to my notes.

Mr. Harrigan: 13 and 14 were struck out, I believe.

page 560 } The Court: Might be. I have numerals "X".

Mr. Simmonds: The ones in contention now are 2, 7, 8.

Mr. Harrigan: That's right, 2, 7, 8 and 10. That would be the $427.50; $20 item, $640. item and $5,880. item.

Mr. Simmonds: Number E is out altogether—no evidence.

Mr. Harrigan: That's right. Sellars, number F is for $1152.

The Court: Correct.

Mr. Simmonds: Are you still relying on Number H for the signs, the manufacture of the signs?

Mr. Harrigan: Sure.

The Court: You have ruled out the Glebe signs, I think. Two Glebe signs I have ruled out.

Mr. Simmonds: I don't think there is any evidence on Number I (Eye).

The Court: I have a check-mark, Mr. Simmonds. There was some evidence, but I can't find it momentarily.

Mr. Simmonds: I think Mr. Sharlin did testify about it, if your Honor please.

The Court: That may be.

page 561 } Mr. Simmonds: But you did not allow the bill.

The Court: Harvey Construction Company, Number J, I guess that is still in.

I received the Harvey bill, J-1, on a limited basis as to the gross bill.

Mr. Harrigan: Yes, because it was divided into two sections, the exterior and interior. We presented evidence on the interior only, in the sum of some $216 or $260—I forget the figure, but there was a total bill of some $1600.

Mr. Simmonds: How much of your exterior part of the bill are you claiming?

Mr. Harrigan: All of it. That was for the materials and labor.

Mr. Simmonds: Exhibit K-1 is still in, I take it?

The Court: Yes.

Mr. Simmonds: And K-2—

The Court: —is out.

Mr. Simmonds: All right. If your Honor please, I can start now and put our electrician on or wait til tomorrow morning.

The Court: It's 10 to 5 now. It seems to me it would be wise to have Mr. Stowell (?) called and remind him before 5 today the approximate time he will be wanted tomorrow.

page 562 } The Court: Mr. Harrigan, I don't see on the bench, Exhibits B-6, -7 and -8 for identification.

Those were work sheets which I did not take in evidence, but they stay in the file—worksheets that Mr. Dougherty had.

Mr. Harrigan: He may have taken them back with him. I can get them back.

The Court: B-6, -7 and -8.

Mr. Simmonds: Work sheets.

The Court: Work sheets Mr. Dougherty had. They were for identification; they are not in evidence yet. Strictly speaking, they should be in the file.

Mr. Harrigan: I will have to get them back.

* * * * *

Dep.
2/20/67

* * * * *

Deposition of WILLIAM E. SELLARS, called for examination by counsel for the plaintiff, pursuant to notice, at the office of Thomas J. Harrigan, Esquire, Suite 207, 2007 N. Fifteenth Street, Arlington, Virginia, before Edith C. Geiger, a notary public in and for the County of Arlington, beginning at 11:00 o'clock a.m., when were present on behalf of the respective parties:

FOR THE PLAINTIFF:

THOMAS J. HARRIGAN, ESQ., 2007 15th Street North, Arlington, Virginia; and

FOR THE DEFENDANT:

Dep. 2/20/67 JAMES H. SIMMONDS, ESQ., 15th Street North and N. Courthouse Road, Arlington, Virginia

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page 3-4 }

Whereupon,

WILLIAM E. SELLARS, was called as a witness by and on behalf of the plaintiff, and having been duly sworn was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Harrigan:

Q. State your name, please.

A. William Edward Sellars.

Q. Where do you reside, Mr. Sellars?

A. Baltimore, Maryland.

Q. Do you have a business?

A. I do.

Q. What is the name of that business?

A. William E. Sellars.

Q. What kind of business is that?

A. Manufacturing, decorators. Primarily theatrical.

Q. Where is that business located?

Dep. 2/20/67 page 5

A. 601 East Patapscon Avenue, Baltimore, Maryland.

Q. And how long have you been engaged in this type of business?

A. Theatrical business?

Q. Yes.

A. Specifically theatre business I would say off and on about 15 years.

Q. And now, calling your attention to approximately April, 1965, did you have occasion to go to a theatre called the Glebe Theatre on Glebe Road in Arlington, Virginia?

A. Yes, I did.

Q. And what date did you go there, if you recall?

A. The fifth, April the 5th we surveyed and took the measurements.

Q. With whom did you go?

A. My son, which is William B. Sellars, and Gene Anthony, who is now in the armed forces.

Q. And when you arrived there what, if anything, did you do?

A. Well, we were instructed by the K-B Theatre chain to pick up the key and begin surveying the theatre and take measurements for the renovation of the theatre. My son—I went over in my own car and my son stopped by

Dep. 2/20/67 page 6 } the Dominion and I met him on the lot and we entered and went down to the stage area on the righthand side.

We had put a ladder, or extension *latter* up against the cloth and measured the depth of the cloth.

Incidentally, this general procedure in surveying *an* measuring a theatre is the height of the cloth from dado to the ceiling which is the width of the theatre and the length of the theatre.

We're in the process of getting the height of the cloth and a gentleman came in and he was a little perturbed and he said, "Well, what right have you in here" or something to that effect and they still possessed the theatre and I immediately told him, I said, "Well, drop the ladder" and I walked over to the gentleman. I told him "Well I was—we were instructed" I said, "I'm sorry if we did anything improper. We were instructed to take these measurements." And he turned around and I thought he said, "well, being you're here, go ahead and do it."

So we proceeded to take the measurements.

Q. Do you know who the gentleman was? Was it Mr. Pearson?

A. I think it was.

Dep. 2/20/67 page 7 } Mr. Simmonds: Perhaps if you describe him.

The Witness: Well, he was a heavy-set gentleman and he had a hat on. If I'm not mistaken, he had a mustache. I may be a little—but I'm sure he had a mustache.

By Mr. Harrigan:

Q. All right.

Now, would you describe the general condition of the theatre as you observed it at that time?

A. In exceptionally poor condition.

Q. All right.

Now, after you took your measurements, what did you do then?

A. We surveyed, the measurements—during the process of taking measurements — you take the measurements of the theatre in its entirety. That would include a lounge area, concession area, and the lobby, and whatever other public areas there. All except, generally we just don't as a rule take—unless it's an especially large powder room, which in

this case it wasn't—and a toilet areas, we don't. We just look them over and the conditions of them.

Q. Now, when you say especially poor condition, would you go into some detail of what you observed?

Dep. 2/20/67 page 8

A. On the right cornice—Will term this an interior cornice. On the righthand side facing the screen of the stage area it was badly in need of plaster, intermediately all along the edge.

Now, this is the ceiling itself, not the wall. And the color of the ceiling was light pink.

Around the anemostats there was a heavy filament of dust residue all around the anemostats and, if I recall correctly, I think there were two, may be three. It was a hundred feet long. I think there were two anemostats.

The wall fabric was intact but ripped away from the batters and also had a very thick coating of dust.

Now do you want something that just doesn't pertain to my business or just what? In the condition, the condition in the theatre. I know what is pertaining to me, you understand.

Q. I understand.

Anything that you saw pertaining to your business or did not, if you saw a condition which did not pertain to your business.

A. The flooring was in very bad condition; there were no seats. The flooring itself, the surface flooring—

Mr. Simmonds: Excuse me. Off the record.

(Discussion off the record)

Dep. 2/20/67 page 9

Mr. Simmonds: Get back on the record.

The Witness: I can check this evening or the first thing tomorrow morning on our measuring—that's our measuring file, but I looked on it and I'm quite sure it was the 4th or 5th, I'm almost positive. I checked that before I left the shop.

But the theatre was—I was there and it was a gutted theatre. There was no screen, no track in the theatre, there were no seats in the theatre, there was no concession stand in the theatre.

On the second floor level, in that second floor level area was one continuous area when you get to the top of the stairwell, all the way through. There was a partition formerly there, an "L" shaped partition that had been removed because the ceiling was damaged. It was ripped out right in that area where it was removed.

William E. Sellars

Q. All right.

Now, did there come a time when you and your company actually went in there and did work on the theatre?

A. Yes. We went in after that, we went in on payroll. The first was on the 11th. Let's see, the ending of the payroll was on the 11th. That's—yes—now, I know this. In other words, this is going to be hard, I'll have to confirm but let's see, it was the first week ending the 11th and that was the 11th of June.

Dep. 2/20/67 page 10

Q. 1965?

A. 1965.

Q. And did you go in at this time and do certain work?

A. Yes. Well, I can give you a resume of that, the painting end of it. This was prior to—this was after all the ducts system had been cleaned out. That's the duct system leading to the anemostats.

Now that necessitated the whole ceiling area to be cleaned and brushed down and during the brushing—there were loose particles on this pink paint, and the whole auditorium, that's the exit doors and wherever the painting had to be, had to be cleaned out. And the plastering had to be done before we went in.

The plasterers came in—the K-B chain had the plasterers come in and plaster the ceiling and the painters put an undercoating over it. The ceiling had chipped and peeled and all that area had to be undercoated. The whole ceiling area of the auditorium had to be, had to be cleaned out before *the out before* the finished coat of paint was placed.

Dep. 2/20/67 page 11

And also the lobby ceiling and the concession—this is an undercoating now that was applied to these areas. The concession area, the lobby, the managers office, the entire floor area which comprised the lounge and the—let's see, the rest rooms, a powder room and a ladies lavatory and the mens lavatory. That was all undercoated before any paint was applied and spackled and treated as it should be.

Q. And then—

A. Now. Go ahead.

Q. Go ahead.

A. And the *vinyle* and the wall paper—the lobby—had wall paper on the lobby, it had wall paper in the concession area, it had wall paper going up the stairwell and on the second level. Also had wall paper in the powder room area.

Now, the vinyl men came and had to remove all this wall paper and finish the walls.

William E. Sellars

Q. What was the condition of that wall paper?

A. Cracked on some of the wall, and was cracked and gutted. In other words, gouges in the paper where it was cracked. The guys plastered that and so forth. That was above and below the dado areas.

Q. Now, what was your total bill for?

Dep. 2/20/67 page 12

A. Well, in preparatory costs, and this is labor included and materials was $646.85. And the vinyl labor on the preparatory work end of it and the *sizening* which is incidentally part of that plastering material because you thin and dilute it and use as a size. That was five hundred five fifty-two, making a total of eleven fifty-two twenty-two.

Q. What was the total bill for the entire job?

A. Ninety-eight hundred dollars, if I'm not mistaken.

Q. What was that figure again that you said, the one thousand figure?

A. Eleven fifty-two twenty-two.

Q. All right.

If the theatre would have been left in normal shape—

Mr. Simmonds: I object to the question on the ground it assumes a conclusion which is for the court to decide and it's a leading question.

Mr. Harrigan: All right. I withdraw the question.

How much of this bill was attributed to something other than new work?

A. You see, in the *sizening,* when you prepare a wall, the only expenditure is for vinyl, the only expenditure would be the actual application of whatever is going on the wall whether it would be paper or whether it would be vinyl, you understand.

Dep. 2/20/67 page 13

Now these figures that I have quoted was actual cost figures, no profit entered into these figures.

Now, I would say—there was a Friday, a Saturday, a Sunday, three days, that would be about three hundred in vinyl work and the preparatory work end of the painting, I don't know, close to three hundred.

Q. All right.

Now, this $1,151 figure that you mentioned for painting, preparing, and vinyl, would it have been ordinarily necessary to expend this amount of money if the theatre had been in good shape?

William E. Sellars

Mr. Simmonds: I object to the question on the same ground.

By Mr. Harrigan:
Q. Subject to your objection. Would you answer that?
A. You want me to answer that?

Mr. Simmonds: I've got my objection in the record, go ahead.

A. Normally in a theatre that's in good maintenance, when you go in you have anemostat to clean. You'll have a plaster problem where someone has put their foot through the ceiling changing light bulbs. These things are generally fairly well maintained but in the case it isn't you go in, you don't have to clean an entire ceiling and rarely you come in you have to go over a third of the ceiling with an undercoating where the paint has peeled or something like that.

Dep. 2/20/67 page 14

In the event—well the theatre normally when you go in a theatre you clean the anemostats and you go ahead, as you're going along, the spray, airless spray comes out under such high pressure, it comes out under eighty-five to ninety-five pounds of pressure and the fans under these old guns is from fourteen to sixteen inches in width. Now from that—I'm explaining this to show you—any dust particles cumulated on the ceiling is generally blowed off before the spray hits it by the pressure.

The anemostats, and we do paint all the anemostats, same as the ceiling, they do have to be cleaned out in any theatre around the edges of it where the anemostat is. But you do not have to undercoat the ceiling and so forth like that.

Q. Now, what work did you do, if any, in the cashier's booth?

A. Renovated it in and out. Removed all the old finish off of the exterior and—

Q. Why was that necessary?

A. It was cracked, I suppose by the weather, as well as the lobby doors. All of that was removed also.

Dep. 2/20/67 page 15

Q. All right.

A. That was down to the finish and to the natural wood.

Q. Now, this undercoating that you have talked about. Is

this ordinarily necessary to put on in the fashion that you had to put it on in this case?

A. Yes—not always—you mean. Repeat that question.

(Reporter read back the last question)

A. Explain what you mean by "fashion".

Q. What was the main reason for having to do this undercoating work in this particular theatre, in the auditorium, concession, lobby, and lounge, and stairwell?

A. Well, it was to give an adhering base.

Q. In relation to the condition of the theatre, what reason?

A. Because of the paint chipping. The paint didn't chip off the entire ceiling. It wasn't falling or flaking off, not the entire ceiling, but in the areas where it does flake off that has to have an undercoating in it for the paint to adhere to it. Had the paint not chipped or not flaked then it wouldn't have been necessary to put it on.

Dep. 2/20/67 page 16

Q. Now, the paint job that was on the ceiling and various areas, could you determine how old a paint job that was?

A. I wouldn't care to state on that for the simple reason that I don't know the type of paint that was put on it and without an analysis you'll never find out whether it was casing or oil-base paint, and as to age, I wouldn't even venture a guess. I couldn't. But in my opinion it had been there for a while due to the condition of the anemostats and so forth.

Q. Now, you've broken your bill down in your testimony to $646.85. $505.52, you've broken this amount out of the total figure of 98 hundred dollars.

What relation did this amount, these two amounts that I just talked about have to do with the statement that the theatre was in exceptionally poor condition?

Mr. Simmonds: I don't recall that that was—read that question back.

(Reporter read back the last question)

Mr. Simmonds: Object on the ground that is not the statement made by the witness and secondly, the statement of its being in poor condition related to other things that had been taken out and used the word gutted, so I think the

Dep. 2/20/67 question is improper, in view of the witness' testimony and I object to it.

page 17 } By Mr. Harrigan:

Q. Subject to that objection, would you answer the question?

A. Well, I just quoted that the additional cost would amount to $600.00, further back there. The one, the vinyl work; and additional, removing of the paper off the wall and refinishing it would run three hundred.

Q. All right.

Now most of the balance of the bill, what did that—what type of work did that entail?

A. Included applying vinyl.

Mr. Simmonds: At this point of the record I'm going to ask that the witness testify from his records.

I believe that in your statement of Mr. Sellars, there was reference to bill as per specifications and I ask that he testify from his specifications rather than his memory.

By Mr. Harrigan:

Q. Well, I ask you this: can you testify from your memory?

A. I think I can. I'm the man that quotes the prices.

Mr. Simmonds: I object on the ground not the best of evidence.

Dep. 2/20/67 page 18 } By Mr. Harrigan:

Q. Subject to that objection, would you answer the question?

A. Now, just what is the question?

(Reporter read back the last question)

Mr. Harrigan: I withdraw the question.

By Mr. Harrigan:

Q. Now, in relation to this housekeeping standards that the building was kept in, how were the housekeeping standards?

Mr. Simmonds: I object to that question as being indefinite, calls for a conclusion and not a specific fact. We haven't defined what standards of housekeeping are.

By Mr. Harrigan:

Q. I'll have him explain it.

Subject to his objection, how is the housekeeping standards?

A. What I think the standards are?

Q. Right.

A. My personal opinion?

Q. Yes.

Dep. 2/20/67 page 19

A. Or do you want it on what, on what the average theatre you see or come in contact with?

Q. The average theatre.

A. The condition of the walls and paint and ceiling and so forth, I would say very poor.

Q. Okay.

Now, in order to bring this theatre up to what the average condition of theatres are that you know of—strike that.

How much of the cost could have been eliminated if these housekeeping standards would have been brought up to what the average theatre is?

Mr. Simmonds: Now, for the record I object to that question on the ground it has no relation whatsoever to the cause of action brought by Mr. Sharlin against the Neighborhood Theatres.

The claim made is the building was not surrendered in the same good condition, ordinary wear and tear excepted.

The question posed to the witness is not relevant to that issue.

Mr. Harrigan: On that point, for the record, I would like to say the term ordinary wear and tear is certainly relevant to the standard of the particular industry and relation to that standard the question is propounded.

Dep. 2/20/67 page 20

By Mr. Harrigan:

Q. How much of these costs could have been eliminated out of the total ninety-eight hundred dollar figure?

Mr. Simmonds: I object to that.

The claim now made by the amended interrogatories was eleven hundred fifty-two dollars and I object to any question as to how much of the ninety-eight hundred dollars might be saved.

By Mr. Harrigan:

Q. How much of the eleven hundred dollars—

A. I just said.
Q. How much?
A. $600.00, because you can't just give—begin one area and do that and ignore the additional work involved, and the additional material used would amount to about $600.00.

Mr. Harrigan: All right. That's all.
The Witness: I haven't given a quotation on the finished product. This is preparatory work, but out of the preparatory figure, overall figure, it would amount to $600.00, being additional which normally wouldn't be included in a normal job for additional work.

CROSS EXAMINATION

By Mr. Simmonds:

Dep. 2/20/67 page 21

Q. Mr. Sellers, do you have with you the specifications of the work that you proposed, that you proposed to do for K and B?
A. No sir, I don't. What would you like to know in them, sir?

Q. I believe you stated your total bill to K and B Theatres for the work on the job was 98 hundred dollars.
A. That's right. Plus $128.00, that was an additional item, extra.
Q. All right, sir.
I show you what purports to be a copy of your bill dated June 23, 1965, referring to the Dominion Theatre and it says, "complete renovation as per specification, May 1965, 98 hundred dollars and 63 cents."
A. And 63 cents, yes.
Q. The question I'm asking you: do you have those specifications with you?
A. Not with me, no.
Q. They're in your office?
A. They are.
Q. Why didn't you bring them with you, sir?
A. Frankly, I didn't know it was necessary.
Q. Did you bring any records with you on this job?

Dep. 2/20/67 page 22

A. No, only the labor, only the labor end of this claim for payment.
Q. May I see the record?
A. You sure may, you sure may. It's a note to myself, a memo not which pertains to the painting.

William E. Sellars

The only part of the project—preparatory work, vinyl and *and* paint; $97 for material, 17 gallons of undercoat, 485; and 4 gallons of remover at 360 a gallon and $80 for a change of ten doors in and out, that's both sides, $50 was the cost for the booth and $420, cost of labor; $56.85. The vinyl was a flat $500.00 and $5.25 was for 24 pounds of plaster, that keywick plaster. That's why I didn't separate the prices because some of this plaster was used as a *sizening* after the walls were finished. This was broken down—

Q. May I see your memorandum?

A. Yes, sir.

Q. Is this memorandum you been reading from in your own handwriting?

A. It sure is.

Q. What was it taken from?

A. My books, a breakdown—

Q. Excuse me. Were you told not to bring your books and records over here?

A. No sir, I was not. I positively wasn't. I didn't see any necessity to them.

Dep.
2/20/67 page 23 } Mr. Simmonds: For the record, I'm going to object to the oral testimony and the testimony from the memorandum made when the witness has not produced his total specifications and all the records of the work done on the job.

Now I would like to ask you just a few more questions, Mr. Sellers.

By Mr. Simmonds:

Q. I believe when you first started telling us about the poor condition of the building, you referred to some condition of the ceiling in the righthand side as you go toward the screen, was it?

A. Yes, walking into the theatre.

Q. Now, could you tell by looking at it the cause of that?

A. Well from—

Q. The problem in the ceiling.

A. In the areas of the ceiling at the top cornice, the interior, generally its either caused by one or two things, caused by a leak in the roof, a bad gutter or a leaking wall.

Q. Now, did this ceiling area constitute a fairly large area that would have to be undercoated?

Dep. 2/20/67 page 24

A. That would be 5,300 square feet.

Q. That had to be undercoated?

A. Not the entire ceiling, as I stated before.

Q. Well, I was trying to get you to estimate the amount of a ceiling area that had to be undercoated because of this condition you observed in the righthand front cornice.

A. That was a plaster. That was an area that was plastered.

But over some of the areas of the ceiling where the paint had flaked and in the cleaning process after the ducts had been cleaned, and then you take a brush, you take a stiff brush and long handled brush, you work the ceiling over and any ceiling paint flaking will come off.

But those areas you don't spray, you roll.

Q. Getting back to the condition you first mentioned being in the righthand ceiling of the front cornice—

A. It's a sidewall area.

Q. Side wall area?

A. Yes, but it was a side wall area, and best of my recollection it went from a third, two-thirds to the back of the wall and spotted the wall area.

Q. When you gave your answer about what it was caused by, you referred to the wall?

Dep. 2/20/67

A. Not necessarily. I don't know what actually caused it, but whenever you get a leak on the top of a wall—

page 25

Mr. Harrigan: Object to the speculation.

By Mr. Simmonds:

Q. All right, go ahead.

A. Whenever you get a leak on the side of a wall, coming out from the wall, it generally is caused from an overflowing gutter, a bad cornice outside the building or a leaking roof and generally those roofs are gabled or convex and it leaks down that corner and leaks on the ceiling there.

Q. Whatever the cause—

A. I wouldn't know.

Q. —Whatever the cause, the conditions that you had to take care of was in the area of that you just described?

A. Yes sir. That would be the auditorium area.

Q. All right.

Where was this vinyl that you put down, where was that located?

A. The vinyl was in the powder room, the wall in the ladies

room; the entire lounge; the stairwell wall; dado; in the concession area; and lobby, the lobby wall, that's the entire lobby wall.

Dep. 2/20/67 page 26 } Q. Is that a painted on vinyl or put on like wall paper?

A. Just like wall paper. The walls have to be smooth because if it isn't you see every indentation in the back of it where it's put on.

Q. Well, if you hadn't put on vinyl, I'll call it wall paper for a better word—

A. Sure.

Q. Put the same type of material that was there before, would you have to do as much undercoating as you did do?

A. You wouldn't apply undercoating. Undercoating doesn't go where wall paper or vinyl goes. Undercoating goes only where you paint not where you apply wall paper or vinyl.

Q. My question was if you had applied the same type of material to the walls that had been there before.

A. Yes, sir.

Q. You wouldn't have had to have done the same amount of undercoating as you do where you used the vinyl, would you?

A. I can't answer that because you're using the word undercoating. If you talk about vinyl, you don't undercoat. You only use undercoating where you paint. You follow?

Dep. 2/20/67 page 27 } Are you trying to ask if we were applying wall paper over the same areas where we applied wall paper?

Q. Where—

A. Could we do it?

Q. Could you paint over it without doing something to the wall?

A. Yes, you can, except where you have paper. Where you have the paper the paper has to be cleaned and the condition of the powder room, in all fairness, the condition of the powder room was crayoned from one end to the other.

The paper on that wall was just crayoned with lipstick and what have you.

Q. Now, I believe when you first went in there to observe the theatre and to make your measurements, to use your word the place had been gutted, meaning the fixtures were taken out and the seats taken out and the screen?

A. Yes sir, there was nothing in there.

Q. You don't know whether or not the former tenant was permitted to take it out?

A. I don't—

Q. Just answer the question.

A. I do not.

Dep. 2/20/67 page 28

Q. All right, sir.

Now, you used the word anemostat or hemostat.

A. Anemostat.

Q. What is an anemostat? I never heard of it.

A. It's a cylinder, pie-shaped, louvered unit that's applied to a ceiling which air conditioning and heating is conveyed into certain areas.

Q. All right. Not knowing what an anemostat was I was a little confused when you were talking about cleaning the anemostats. Tell me that again.

A. Well, around—there's generally an accumulation of dust and dirt in the anemostat—in the duct work and naturally through a period of time the heat coming in, this goes down through the louvers. As a rule there's generally three to four of these rings incorporated into one area and these anemostats vary in sizes. The larger they are, there's a tendency, the larger area of the ceiling will be soiled and it's rarely seen in most theatres you walk in but they are periodically cleaned, they have to be.

In this case there was quite a bit of dust from the anemostats on the whole ceiling area and after they cleaned the ducts system then the whole ceiling had to be cleaned because of the dust.

Dep. 2/20/67 page 29

Q. That would be true in any theatre you decorate would it not?

A. Not the extensive dust that was in the theatre. Around that anemostat it was about as thick as—but in answer to your question, yes sir. In every theatre you go in, around the anemostats you have to clean. When you paint a ceiling you must.

Q. Now the $600.00 of your statement was excess cost due to the cleaning of the hemostats or taking care of the condition of the ceiling and walls after the anemostats had to be cleaned?

A. Yes sir, I estimated $600.00 additional money. For the paint and vinyl about three each; for additional time and labor involved in it.

Now if they were to replace wall paper and the paper on the walls for the vinyl man, as far as the wall paper people were concerned it would have been necessary for them to remove the paper throughout the theatre.

Q. You say would not have been?

A. It would not, and resurface the walls if it had been in good condition and the paper had been in good condition.

Dep. 2/20/67 page 30

Q. But your particular customer had wanted to put vinyl around the walls?

A. That, I wouldn't know.

Q. He did do it?

A. He did do it. He decided on doing it after he saw the walls, I don't know. But the walls were in bad condition.

Q. You know how old this theater was when you went in there?

A. Sir?

Q. You know how old this theater was when you went in there?

A. I don't know anything about it, sir.

Q. Was the color of the ceiling changed when you repainted?

A. Yes, sir.

Q. What color was it before?

A. Pink.

Q. Yes—

A. It was a pinkish color.

Q. What color was applied?

A. Satin red, vivid red. And normally the cleaning process wouldn't have been needed and the only area and the undercoating wouldn't have been needed under the surface of the ceiling other than the plastered areas, which I assume was caused by a leak.

Dep. 2/20/67 page 31

Q. As I understand your testimony, what you estimate as the additional cost which you described as being due to the poor condition of the building totaled $600.00, and of that?

A. A portion of it was undercoating and the labor involved in applying it, and cleaning of the ceiling, and the removal of the paper, and resurfacing of the wall, and that's it.

Q. You haven't made any breakdown of the $600.00 as to how much applied to the conditions that caused by what you think was a leak, have you?

A. Oh, no. No, I haven't. I didn't—we don't have anything to do with the plaster. I mean, they don't supply plasterers in any theatre.

Q. I'm not talking about the cost of plaster but my question to you was: of the $600.00 that you estimate to be the ad-

ditional cost because of the poor condition, how much of it was attributable to what you had to do by reason of the condition of the ceiling, of the wall, and of the leak, what you thought was a leak?

Mr. Harrigan: I object to the statement that it was a leak. There's no evidence there was a leak.

Dep.
2/20/67 By Mr. Simmonds:
page 32 } Q. My question: have you made a breakdown?
A. It would be primarily labor. Let's see, twelve, that would be four, that would be eight, and that would be five is fifteen; I would say $20.00 of it *wouuld* be in—close to $20 would be probably undercoating, the balance would be a labor charge.

Q. But you can't break that down as to how much?

A. No, sir. It would be rather hard to do. I mean, take a square footage. You say a gallon to a square foot, it's according to who applies it and so forth.

Q. Mr. Sellers, did you bring any records with you at all that would help refresh your recollection as to when you went in the building the first time?

A. I can give you a call and tell you exactly. I can call you this afternoon if you would be there. I have one more stop to make after I leave here and then I'm going back to the office. I can give you a call and clarify it.

I looked in the work folder this morning. You see, each individual theatre has it's own folder and I looked in there on the measurement sheets, when we first walked in the theatre.
On that sheet I saw four-five-sixty-five.
Dep. Now, that is a must. We generally do it. Now,
2/20/67 it could have been an error.
page 33 } Q. All right. Well I—
A. I will be glad to call you Mr. Simmonds.

Mr. Simmonds: For the purpose of the record I again object to all the testimony of Mr. Sellars regarding costs and application of costs on the ground that proper records were available to him but were not brought to this hearing. Off the record.

(Discussion off the record)

William E. Sellars

RE-DIRECT EXAMINATION

By Mr. Harrigan:

Q. With regard to these record, you feel you can testify from your own knowledge as to the amounts?

A. Yes.

Mr. Simmonds: For the purpose of the record I object to the form of the question. It's a leading question and not proper.

By Mr. Harrigan:

Q. Did you answer that?

A. Yes. I said yes. I wrote the specifications.

Q. And do you recall what you're—you're testifying from your recollection?

A. Yes.

Dep. 2/20/67 page 34

Q. Now one other question Mr. Simmonds brought up, and that is one time when you went in you said the theatre was gutted?

A. Yes. That term is used when there is nothing in it.

Q. When you say nothing in it, you mean no seats?

A. No seats in there when I was in there.

Q. Any fixtures in there, electrical fixtures that you observed?

A. When I first went in I didn't observe that, but I observed there was no screen, no seats, and no curtain, no track, and no concession stand. I do recall, as I stated, the fabric was intact but loose in a very small area of the wall.

Q. Did you repair it?

A. Repair it; no sir. We removed it in the course of renovation and put in an all together different type of decoration.

Q. Could it have been repaired?

A. Sure; and cleaned.

Mr. Harrigan: That's all.

RE-CROSS EXAMINATION

By Mr. Simmonds:

Dep. 2/20/67

Q. You say entirely different type of decoration that went in there?

A. There, this time. Wasn't the same fabric.

page 35 } Q. Different fabric was put on the wall, a different color?

A. Yes, sir.

Q. But the other fabric, it could have been used if the new tenant wanted to clean it?

Q. If he wanted to clean it and renovate it and replace—incidentally, and replace the back fabric on the back wall. But on the back wall it would probably have to be replaced.

Q. Mr. Sellars, you did notice there was some light fixtures left in the ceiling of the auditorium?

A. Light fixtures in the ceiling of the auditorium; that I couldn't say, sir. Truthfully, I don't recall.

You see, when we go into a place—let me clarify this.

When we go into a place to take measurements, lighting in a theatre at best is poor. We take a thousand watt bulb lamp with us and with the extension cord and generally set them off and flood the wall. We flood the area in which we're working and that same thing applies when we paint, we take a light and flood the whole area so we don't miss spots from the paint. Truthfully, I couldn't state that on the day I walked in—

Dep. 2/20/67

page 36 } Q. Did you have occasion to notice whether or not light fixtures were left in the marquee?

A. In the marquee?

Q. The ceiling of the marquee.

A. No, I didn't.

Q. Now, Mr. Sellars, of course you don't know what the condition of the building was when the former tenant moved into the building or whether the screen was there intact?

A. No, sir. The first time I ever saw the building and the first time I ever been to that area of Glebe Road was when I went to take the measurements of the building.

Mr. Simmonds: That's all the questions.

FURTHER EXAMINATION

By Mr. Harrigan:

I have just one.

Q. Is this your bill you submitted?

A. Yes sir, it is.

Mr. Harrigan: I would like to mark that Plaintiff's 1.

Mr. Simmonds: I'm going to object to the admission of

the bill into evidence in that that is not relevant
Dep. at all to the work that might be charged to the
2/20/67 defendant in this case.
page 37 } Off the record.

(Discussion off the record)

Mr. Harrigan: This is a bill dated June 23, 1965, from Sellars and Co. in the amount of $989.63.

The Witness: And that's—

Mr. Harrigan: This $128.35, what does that represent?

The Witness: That's what I was just going to tell Mr. Simmonds and yourself.

You have shutters on the exterior of the building, and as an afterthought after everything was finished inside the building and going out—there were—the rear exits were painted white leading out on the parking lot from the screen area. The rear exits were painted and the exit doors were painted and also the shutters were painted and then on that—

Incidentally, that's not included in the eleven fifty-five. That wasn't included in there because it's only interior and this is only a small portion of the interior; around in the concession area there was tung and *grove* wood put above the dado in the
ceiling in that whole area and went to the side exit
Dep. and that $128 includes fire-proof paint approved
2/20/67 by the fire marshall.
page 38 } Mr. Simmonds: Was that put in?
The Witness: Yes sir, that was put in.

Mr. Harrigan: Did you install a curtain?

The Witness: We did.

Mr. Harrigan: Did you install a screen?

The Witness: No sir. The stage hands—that's National Theatre Supples. They supplied the motor, the track motor and screen and the Washington stage hands installed the screen. We, as a matter of fact, installed the curtain fabric, on the wall.

* * * * *

page 564 }

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Thereupon,

ROBERT GIBSON was called as a witness on behalf of the defendants, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Simmonds:

Q. Will you please state your name and address?

A. Robert Gibson, 7249 Parkwood Court, Falls Church.

Q. What is your occupation?

A. Electrician.

Q. How long have you been an electricain?

A. Five years.

Q. By whom are you employed?

A. Marvin C. Cowherd.

Q. Is he an electrical contractor and located in Arlington?

A. Yes, he is.

Q. What is your capacity with his firm?

A. I am an electrician.

page 565 } Q. Did you have occasion to go to the Glebe Theatre in the latter part of April 1965?

A. Yes, I did.

Q. For what purpose did you go there?

A. To disconnect the equipment.

Q. Will you explain to the Court what you took out of the premises?

A. Took out fixtures in the lobbies, disconnected the aisle lights from the seats, and we took out the air-conditioning compressor and took out the fixtures, light fixtures in the projection room; and we took out the electrical switches that controlled the air-conditioning equipment. That's about it. Took down the two Glebe signs, too.

Q. Being a little more specific, will you state with respect to the aisle lights, at what point you disconnected and how you did it.

A. We disconnected 'em, cut the wire above the floor; We took the greenfield out of the connector that's holding it, cut the wires off at the bottom of the greenfield, which is above the floor.

Q. About how many inches above the floor was the point at which you made the disconnect?

A. If I remember right it's about 2 inches.

page 566 } Q. Where was that point with respect to the junction box?

A. The junction box was directly under it.

Q. Mr. Gibson, could you or any other electrician use the service lines into the junction box to reattach the wires to reconnect the aisle lights?

Q. Yes, sir. The top of the plate on the junction box would have to be removed and new wire connected from it up to the seat, which the new greenfield would have had to be put in and the wire run up through the greenfield to the seat, the seat light.

Q. Did you open the junction box at all on any of those aisle lights?

A. No, sir; there is no reason to.

Q. Would you try to describe to the judge the conduit above the junction box which you have just indicated was about 2 inches high?

A. The best I can remember, there was a brass plate which is connected to the junction box—it's screwed onto the junction box. You have this rigid nipple that is screwed into this plate, and you have your coupling and a greenfield connector which your greenfield is connected to, is held tightly to keep your bond. This greenfield is connected into the seat light and your wire is pulled up through the greenfield from the junction box up to the light socket.

page 567 } Q. Mr. Gibson, how would an electrician reattach aisle lights to new seats that were put in? What would be necessary to be done after what you had done?

A. You would have to remove that plate and install new greenfield and new wire from the junction box up to the seat light.

Q. Would it be necessary to put new wire in the service lines between the junction boxes?

A. Not unless it was deteriorated so bad that it would have had to be replaced.

Q. It wouldn't have had anything to do with your cutting wires, would it?

A. No, sir.

Q. If we assume that wires were replaced in the service lines between the junction box, can you give the Court an estimate of how much of an electrician's time it would take to replace those? First, let me ask you, did you take a look at the electrical blueprint plan showing the wires to the junction boxes?

A. Yes, sir, I did.

Q. Could you give us an estimate of how much time it would take an electrician to replace the wires in those conduits within the building between the junction boxes?

page 568 } Mr. Harrigan: Objection, your Honor. I don't think he has laid a foundation that this man is any more than just a mechanic at this point, that he is just an electrician; and if he is an estimator for Cowherd. I think he should lay that foundation first.

Mr. Simmonds: Your Honor, I'm asking him how much time it would take an electrician, and since he is an electrician, he ought to know better than anybody.

The Court: If time is the question, it's all right. If how much money, no.

The Witness: Junction boxes back to main panel, you mean?

By Mr. Simmonds:

Q. Yes.

A. I would say four hours maximum for two men.

The Court: Eight man-hours?

The Witness: No, excuse me. That's 4 hours.

The Court: Total man-hours?

The Witness: That's four hours.

The Court: For one man or two men?

The Witness: Two men.

By Mr. Simmonds:

Q. So that would be a total of 8 man-hours?

A. No. Four hours for the pair.

page 569 } Q. In other words you would you two men to do the job, is that what you have in mind?

A. Yes, sir.

Q. And it would take two men four hours?

A. Yes, sir. It would be hard to do for one man.

Q. What is the rate of pay per hour for an electrician to do that type of thing?

A. In our shop it is—

Mr. Harrigan: Your Honor, I still object to the whole line of questioning that no foundation has been laid. They are trying to get this in to show this man is an estimator and the

rate of pay, through the back door when they haven't laid the foundation to show he ever estimated the job or has any idea how long it would take, or whether he has ever worked on seat lights before.

Mr. Simmonds: To me, that is entirely beside the point. He knows how much time it would take a man, and how much electricians get. It seems to me, that's in rebuttal of their testimony.

The Court: If he knows what electricians generally get, as distinguished from what is charged in his shop, all right. Otherwise, the objection is sustained.

Mr. Simmonds: If your Honor please, it seems
page 570 } we can use his shop. They have used a shop—

The Court: Suppose his shop charges $100 an hour, Mr. Simmonds. That doesn't make it a fair and reasonable charge. That would not be a good standard.

Mr. Simmonds: If your Honor please, we are only required to—If it was $100, he wouldn't be talking about it. But they have put in evidence of one firm, what they actually charged, not what was generally charged in the industry. If we were called upon to do that, the same electrician would have done the work, and it seems to me that that would be the maximum charge that could be made against us, and I think we have a perfect right to show in rebuttal of their testimony, what it would have cost to have done the job that they—

The Court: You can point to $5.20 an hour in the other testimony for the plaintiff, make use of it because that came in without objection, if I recall it.

Mr. Simmonds: That's right.

The Court: But, no objection, to show the price in one shop is not the standard.

Do you know what electricians generally get per hour in this area?

The Witness: Not in a union-run shop. We are non-union shop.

page 571 } The Court: Do you know what they get in non-union shops in this area?

The Witness: Around $3.75.

The Court: If he knows, you can go on from there. Keep moving.

By Mr. Simmonds:

Q. You say it is generally $3.75 per hour in non-union shops?

A. That's right.

Q. Getting down to the fixtures you took out in the foyer—and that has been described here, as you probably heard, as the area behind the auditorium.

A. Yes.

Q. —at what point, did you make the disconnect in those lights?

A. We took the screws out of the canopy, mounted the fixture to the seal of the box.

Q. Excuse me. I didn't hear.

A. We took the screws out of the canopy which is mounted the fixtures to the junction box; then we disconnected the splices, took the fixture out, and we hung a pigtail up there for temporary lighting so we could see to work by.

Mr. Harrigan: Where are we talking about now? Is this the canopy?

page 572 } Mr. Simmonds: Fixtures in the foyer.

By Mr. Simmonds:

Q. What?

A. The canopy is the top of the fixture.

Mr. Harrigan: Which area of the building are we talking about?

Mr. Simmonds: The foyer.

Mr. Harrigan: All right.

The Court: The foyer is at the rear of the seats?

The Witness: Right.

The Court: That's the rear of the auditorium?

The Witness: That's right.

The Court: Then, there is another part of the building we call a lobby, and yet another called a lounge on another floor, and a marquee, sometimes referred to as "canopy" out front. Those are the terms we are using in this trial yes.

By Mr. Simmonds:

Q. The word "canopy" you used a while ago has nothing to do with the marquee?

A. No, that's just a part of the fixture itself.

Q. You said you undid the splices that were already there?

page 573 } A. That's right. That's to fully disconnect existing fixtures.

Q. Did you cut any wires back from the existing splices?

Mr. Harrigan: Objection. It's leading.
Mr. Simmonds: Let's ask the question this way:

Q. Could you tell whether or not the point at which you disconnected was the same point at which the fixtures had originally been connected?
A. Oh, sure.

Mr. Harrigan: That's leading. It's suggesting the answer to him. I think he could ask him whether, or where he made the severance, and instead of letting him point it out at what particular point—
The Court: He already testified he disconnected them at the present splice, so the present question is harmless. Objection overruled.
Mr. Harrigan: Exception.
Mr. Simmonds: Read the question.

(Question read by reporter.)

The Witness: Yes, sir.

By Mr. Simmonds:
Q. Did you cut any wire back of that toward the service—?
A. No, sir.
page 574 } Q. Tell us about these pig-tails you mentioned, what are they?
A. That's just a positive light socket with two pieces of wire coming out of it that you put a light bulb in the socket just for temporary lighting so you could see to work by.
Q. Where did you attach those pigtails to the (service)?
A. The same places that the fixtures were connected to.
Q. Do you know how many of those you put in the foyer?
A. In the foyer, probably about two. I don't really recall, but at least two in there.
Q. With respect to the manner in which you took out the fixtures in the lobby, was there any difference in the manner in which they were disconnected than what you have testified to as to the foyer?
A. No, sir.
Q. Do you recall whether they put any pigtails out there?
A. Yes, sir, there were at least 2 down through there.

Q. Calling your attention to the marquee, were there any lights in the marquee ceiling when you went there?

A. Yes, sir, there were.

Q. Did you remove any?

A. No, sir, we never touched the marquee.

page 575 } Q. And when you left, were there marquee lights still there?

Mr. Harrigan: I object to his leading. All he's said is "No, sir," and "Yes, sir," in this whole string of questions. He hasn't—

Mr. Simmonds: I don't think so.

The Court: That's the sole test of a leading question. Do you know whether they were there when you left?

The Witness: Yes, sir, they were.

The Court: When did you leave there?

The Witness: About two days after we started work.

The Court: Did you begin work on a Monday?

The Witness: Yes, sir, about the 27th or 28th of April. I don't remember exactly.

By Mr. Simmonds:

Q. Is it at that time that you started or that you left?

A. That I started—that was on a Monday.

Q. Were there any other electricians removing fixtures other than yourself?

A. I had a helper who was helping me.

Q. Did he come and go at the same time you did?

A. Yes, sir.

Q. What other fixtures did you remove that I haven't gone into specifically? You said something about the

page 576 } switches that controlled the air-conditioning equipment. Where were they located?

A. Those were in the basement, the main disconnect switches on the air-conditioning unit.

Q. Going back to the aisle lights just a moment, did you make any disconnect at the panel box for the service running to those lights?

A. Yes. I disconnected them from the fuses so that they wouldn't be turned on again by accident, so someone would not get hurt on the wires that were sticking out.

Q. In other *sords,* that kept them from being hot?

A. That's right.

Robert Gibson

Q. I believe you said something about taking down the Glebe signs. Did you take those down?

A. Yes, sir.

Q. How did you take those down?

A. There were four bolts holding each letter, and we took the bolts out, took the signs and stored them and disconnected the service to it from the junction box that was on the fornt of the building, right on top of the marquee.

The Court: Excuse me. Where did you say this box is?

The Witness: Right on top of the marquee.

The Court: Out from the building or at the building wall?

page 577 } The Witness: It was right on the building wall. It was the main service coming through for the marquee lights and the Glebe signs.

By Mr. Simmonds:

Q. Did you remove the attraction panels?

A. No, sir.

Q. When you removed the Glebe sign, you said you made the disconnect at the junction box?

A. That's right.

Q. Is that where it had been connected before—

A. That's right.

Q. —and was the junction box in shape to reconnect at that point?

A. The box was rusted but it could have been re-used.

Q. You said you did not remove the attraction panels. Did you remove the electrical connection to the attraction panels?

A. No sir, we did not do any such a thing on the marquee, other than on the Glebe signs.

Q. So the record will be clear, what words were on the sign that you removed, or what letters were on the signs you removed?

A. Glebe spelled out, and each letter had a neon

page 578 } tube around it so it would light up and you would see it at night.

Q. What, if anything, did you do at the main distribution panel in the theatre?

A. I would have disconnected the main switch for the air-conditioning which would have had to be disconnected to remove the switch. That's all around the main distribution

panel.

Q. Where would you have disconnected the line that led to the aisle lights?

A. At the distribution panel in the manager's office.

Q. What other disconnections did you make other than what I have asked you about specifically?

A. Just the 3 or 4 fixtures in the projection booth we took down, and I disconnected some of the line voltage equipment that operated the projection—

Q. Just what did you do in the Projection Booth again? I didn't understand that.

A. Disconnected some of the line voltage equipment for the sound man.

The Court: Lines going from what to what?

The Witness: From the distribution panel to the Projection Room equipment.

page 579 } By Mr. Simmonds:

Q. When you say the distribution panel, you mean the distribution panel in the projection booth?

A. That's right.

Q. Who else, if anybody, worked in the Projection Room in removing the equipment?

A. Neighborhood's sound man was there.

Q. Is that Mr. Snarr?

A. "Skip" is all I know him by.

Q. Did you remove the Exit lights in the building?

A. Yes, sir.

Q. Will you describe how you removed those and at what points you made the disconnect?

A. We took the plastic face off of them, and there was two sockets inside the fixtures that we took out. They was on a little metal tray—and disconnected them at the splice.

Q. Did you cut back of the splice toward the service line?

A. No, sir, just at the splice.

Q. Did you remove any of the lights in the ceiling of the auditorium?

A. No, sir, not in the ceiling. In the auditorium there was three or four work lights up on the wall behind the seats we took off.

page 580 } Q. Were they taken off in the same manner that the ones in the foyer and lobby were taken off?

A. Yes, sir.
Q. At the splice?
A. Cut at the splice, yes, sir.

Mr. Simmonds: That's all the question I have.

CROSS EXAMINATION

By Mr. Harrigan:
Q. I take it that you have been an electrician for five years, is that right?
A. That's right.
Q. How long have you worked for Cowherd?
A. Five years.
Q. So in April of 1965 you had been an electrician for three years?
A. That's right.
Q. Were you an electrician then or an electrician's helper?
A. I was an electrician's helper for about six months of that three years.
Q. Who called you in to do this job?
A. Neighborhood Theatres.
Q. Who?
A. Mr. Pearson.
page 581 } Q. What instruction did he give you?
A. He was there on the job with us.
Q. I didn't ask you that. I asked what instructions did he give you?
A. He just asked us to go in and disconnect the equipment and take the fixtures down.
Q. Did he tell you which fixtures to take down?
A. Yes, he did.
Q. What about the auditorium lights, he didn't say take those down?
A. No, sir, he did not mention them.
Q. You couldn't reach them, could you?
A. Yes, sir, you could get in the attic and take them down.
Q. Beg pardon?
A. You could get in the attic and take them out.
Q. When you went through there, how many people did you have helping you?
A. There was just one electric helper.
Q. How long had he worked at that business?
A. I guess about a year prior to that job.

Q. About a year?

A. Yes, sir.

page 582 } Q. What was the first place in the building that you went to?

A. When I first got there, I guess I just more or less looked around. Mr. Pearson showed me what to do, what he wanted done, but as far as the first thing I took out, I don't recall.

Q. All right. You got to the seat lights eventually, is that right?

A. Yes, sir, we disconnected the seat lights.

Q. Did you take out, disconnect all the seat lights?

A. Yes, sir.

Q. Yourself?

A. Yes, sir.

Q. What did your helper do?

A. He just stood by and watched.

Q. He just stood and watched you?

A. That's right.

Q. Did you show him how it was done?

A. Yes, sir.

Q. Did he do any of it?

A. No, sir.

Q. None at all?

A. No, sir.

page 583 } Q. I take it you just took a pair of cutters and cut the wire?

A. That's right, above the floor.

Q. Isn't there connections that you can just unhook?

A. Yes, sir.

Q. Why didn't you do that?

A. Just wasn't enough time. This was the fastest way to do it.

Q. *Ther* wasn't enough time? What do you mean by that?

A. There were just a couple of days there before—

Q. Did Mr. Pearson tell you—

Mr. Simmonds: Let him finish his answer.

The Court: Let him finish.

The Witness: There was just a couple of days before they had to vacate the building; they wanted to get the seats out because the trucks were waiting to load them. This was the fastest way to get them out.

By Mr. Harrigan:

Q. This was a rush job, is that what you are telling me?

A. That's right.

Q. You weren't taking any pains on the job other than just cutting the wires?

A. That's right; everything would have had to

page 584 } be replaced for new seats anyway.

Q. Now you say you cut it about 2 inches above the conduit, is that right?

A. Yes that's very close to it.

Q. You mean you're not sure?

A. 1 to 2 inches.

Q. One to two inches?

A. Yes.

Q. Well, if it was a rush job, why wasn't your helper cutting some of them too? Why would he be standing around watching you?

A. There wasn't enough room for us to get working around each seat.

Q. Couldn't he work on a set and you work on one if that's all you had to do was cut wire? Is that complicated?

A. No.

Q. So, is there any other reason why he wasn't working on it?

A. No, unless he might have been gone to the truck for me to get something I might have needed.

Q. Didn't you just say he was standing around watching you?

A. Yes, sir.

page 585 } Q. So, it's your testimony at no time any time did he cut any of the wires?

A. That's right.

Q. And as an electrician, what does the Code say about picking wire up that's only an inch or two inches out of the conduit?

A. There has to be at least six inches sticking out of the box.

Q. So, you knew that could not be respliced, didn't you?

Mr. Simmonds: First, he's talking about two different things. He said there had to be six inches sticking out of the box, not out of that conduit.

The Witness: That's where—

The Court: Just a minute. Greenfield is a type of conduit,

then there is a box and then there is a conduit from the box to another box, line tying in, or back to the service? Counsel will have to be very specific when they use a given term.

By Mr. Harrigan:

Q. These covers on the boxes, were they ever ripped off, any of them? Be frank about it.

A. On this particular job—

Mr. Simmonds: Just a minute. I suggest that page 586 } he not be allowed to bully the witness by telling him to be frank.

The Court: That's correct. The witness is under oath—doesn't need to be reminded.

Mr. Harrigan: All right.

By Mr. Harrigan:

Q. Were some of those covers pulled off?

A. It seemed like there was about 2, if I remember right.

Q. Well, try and remember.

A. That's right, there was two.

Q. In other words, there were two covers pulled off?

A. That's right.

Q. And you pulled those off?

A. No, sir.

Q. You were the only one working on it.

A. They have people coming in and watching the moving who could have kicked them off.

Q. You mean they were already off?

A. Yes, sir.

Q. So, you didn't pull those off?

A. No, sir.

Q. What sort of pliers did you use, big cutting pliers?

A. A pair of side cutters.

page 587 } Q. Could these wires have been disconnected up by the seats and left that greenfield in there?

A. They could have. They would have had to be put in when the seats were put in.

A. I didn't ask you that. I said, could they have been disconnected up by the seats and left the greenfield in there?

A. They could have. It would have taken longer.

Q. It would have, but it would have taken longer?

A. That's right.

Q. And that could have been used to reconnect the seats, could it?

Robert Gibson

A. Not very likely.
Q. Why not?
A. Because the seats probably would have been different.
Q. You're assuming that. Suppose the seats were the same that would have been used.
A. They wouldn't have been the same.
Q. You didn't listen to me, did you?
A. All I have seen so far have not been hooked up the same yet.
Q. How many seats have you hooked up?
A. I have hooked up several.
page 588 } Q. Tell me where?
A. Arlington Theatre, State Theatre.
Q. You have hooked up seats in the Arlington and at the State?
A. Yes, sir.
Q. When was this?
A. It's been through the five years that I have been with the company.
Q. Could you tell me when it was?
A. Just off and on, different dates.
Q. You don't remember, is that what you're telling me?
A. That's right. I get several calls, in every once-in-a-while.
Q. In otherwords, once in a while you go in and replace a bulb or something in a seat?
A. No, sir. Lots of times, in the State particularly, the plates will get kicked off by the people—they just kick them with their feet—and I have to replace that.
Q. That's replacing the plate?
A. Putting it back on the box, yes.
Q. That entails putting it on and putting a screw in it, right?
A. *Rhat's* right. The screw may have been
page 589 } broken off or kicked so hard. At the Arlington Theatre—I just don't remember what year—we replaced the pipe and everything on the aisle lights on that job. We channelled the concrete floor, put new pipes, new boxes in, new wire.
Q. Did you string new wire in that theatre?
A. Yes, sir.
Q. Do you remember what you charged them for that?
A. No, sir, I don't—have no idea.
Q. O.K. So, how was the lighting in the theatre when you

were cutting these wires? Could you see what you were doing?

A. In the Glebe?

Q. Yes.

A. Oh, sure.

Q. You could? What lights were you using?

A. All of them I had to disconnect plus the temporaries I put up after I took the old fixtures out.

Q. What lights were you using to see by when you were doing this work?

A. In the foyer, you had, I think, three lights across the ceiling.

Q. Let's talk about the seats.

page 590 } A. We had work lights in there on that one.

Q. You did?

A. —plugged in from the foyer and just had a big stand with lights to work by.

Q. All right. You didn't use a flashlight or anything just to cut, did you?

A. No.

Q. How many seats did you cut? How many wires did you cut?

A. Seemed like there was about 16 or 18 of them. I don't really recall.

Q. How long did it take you to cut 18 or 20 wires?

A. I was probably on the aisle lights about 45 minutes to an hour.

Q. Forty-five minutes to an hour to disconnect all the lights?

A. That's right.

Q. Did you take the trouble to tape up the ends of the bare wires?

A. No, sir, not since we were disconnecting from the fuse panel.

Q. Wouldn't it be normal if you had bare wires to tape the ends of the—

page 591 } A. Not if there isn't any chance for current to get in there isn't.

Q. In order to make sure there was no current, you went to the main panel?

A. Yes, sir.

Q. And cut the wires there?

A. I didn't cut them; I took them out from under the screws—the fuse—

Robert Gibson

Q. Pulled them out the panel?
A. Still in the panel; I took them off the fuse screws.
Q. Did what?
A. Took the wire off the fuse screw, which when you screw the fuse in, that screw is hot and has current on it. I took the wire off the screw.
Q. How did you take that off, cut it off?
A. No, sir, took the screwdriver and blocked the screw off, and took the screw off.
Q. Isn't this the panel where the screw comes out and wire comes into the panel?
A. That's right.
Q. And you are supposed to unscrew this screw and this wire will pull out, right?
A. Yes.
page 592 } Q. You're telling me that on this rush job, you took the time to unscrew the screw?
A. On something like that, yes.
Q. You did?
A. Yes.
Q. You didn't just cut the wire?
A. No, sir.
Q. All right. Did you do that?
A. Yes, sir.
Q. What was your helper doing during all this time?
A. He was carrying the stuff out that I had taken down.
Q. Like what?
A. Some of the fixtures, and he was probably putting up some temporary lighting. He stayed busy.
Q. All right. So, on the seats all the wires were cut and then it was disconnected from the panel, right?
A. Yes.
Q. You're telling us absolutely that no wires were cut to disconnect them from that panel, is that what you are saying?
A. That's right, yes, sir.
Q. All right. If you would have gone onto that job with the idea that you were just to take out one set of
page 593 } seats and put in another set, would you have disconnected the wires in the same manner?
A. If I had had plenty of time, I probably would have taken the top off the box and—
Q. —and done it right?
A. Probably would have done it right, yes, sir.

Mr. Simmonds: I don't think there is any justification for that characterization.

The Court: It's cross-examination. It's permitted.

Mr. Harrigan: He answered it.

By Mr. Harrigan:

Q. One more question on that last, that panel for the seat lights You said you were concerned about current running through, right?

A. That's right.

Q. That's why you disconnected it, right?

A. Yes, sir.

Q. Why didn't you just take the fuse out or throw the breaker?

A. It would have been easy to throw it back.

Q. It wouldn't if there had been a fuse?

A. Why put the fuse back in?

Q. You were concerned, is that what you are telling us?

A. Yes, always.

page 594 } Q. If you were so concerned, why didn't you tape the end of the wires up?

A. Because I knew there wasn't any way for the current to get in there if the wires were connected.

Q. If you destroyed the panel, there wouldn't be anyway, would there?

A. The panel wasn't destroyed.

Q. All right. Let's go to the Exit lights.

The Court: Just before this question of aisle lights is left, let's take the base of the pen—we'll use the pen base as the box, talking about aisle lights.

The Witness: Yes, sir.

The Court: And the pen is the greenfield. Somewhere below it is a service wire in a conduit or loop wire to other boxes, and then to a service wire.

The Witness: Yes, if—

The Court: Just point to it and show me where you cut it off?

The Witness: You would have had a nipple coming up somewhere 2 inches.

The Court: On the greenfield.

The Witness: Coming out of this plate—it would be about here (indicating) and you connect it and your

page 595 } greenfield went from here to the seat. I pulled

this greenfield out of this connector and cut the wires.

The Court: Then, that's toward the seat light bulb from the box?

The Witness: That's right.

The Court: Do you know what kind of connection was down inside the box?

The Witness: I don't know for sure, but it would have been—

The Court: If you don't know, don't tell me.

By Mr. Harrigan:

Q. But you did know if you did not leave more than six inches worth of wire, it would have to be restrung?

A. No, sir, not on that hook-up.

Q. Isn't that what you just said?

A. Six inches of wire is required to be inside the box, not sticking up out of the floor.

Q. That wire could be pulled up out of the box with the greenfield, if you pulled it, couldn't it?

A. No, sir.

Q. Let me ask you something: You have the greenfield which is a conduit, right?

A. That's right.

Q. And you cut through the greenfield, right?

page 596 } A. I did not cut through the greenfield.

The Court: He said he pulled that loose from its connector.

By Mr. Harrigan:

Q. You pulled that loose?

A. Yes, sir.

Q. —which left exposed wire?

A. That's right.

Q. When you pulled that loose, wasn't it possible also to pull wire up?

A. No.

Q. That wire is loose in there?

A. It's loose, but the wire would not have moved.

Q. Wouldn't have moved?

A. No, sir. The greenfield is flexible and will give a little bit.

Q. So how did you pull this wire up, yank it?

A. I did not pull the wire in; I pulled the greenfield.

Q. You just yanked it?

A. Just enough to get it up where you could get the side cutters in where it was a half-inch wide.

Q. I said, "Did you yank it up"? You didn't hear my question.

A. Yes.

page 597 } Q. Pull it real easy up?

A. That's right.

Q. Real easy, is that what you are telling me?

A. That's right.

Q. One other question as to the location: Isn't the box recessed in the concrete?

A. Yes, sir.

Q. —on that job?

A. That's right.

Q. Now, the Exit fixtures, did you take those out, or did your helper help you, or did you both take them out?

A. We both worked on them. I don't recall which one of us took it out, but we both worked on them.

Q. How many Exit fixtures were there?

A. The best I remember there was about 8 or 9. I don't—

Q. There were three over the doors, as you go into the foyer, right?

A. That's right.

Q. They were recessed Exit fixtures, weren't they?

A. Yes.

Q. Who took those out?

A. I don't recall.

Q. Well, there were only two people there, you and your helper, right?

page 598 } A. I don't recall who took what out, though.

Q. But you do recall that you took them out?

A. Oh, sure.

Q. In order to take those out, they had frames on them, right?

A. Yes, sir, it had a glass or plastic side on it.

Q. And isn't there a frame around that side?

A. Yes.

Q. How is that taken out?

A. By screws. It has a screw on either side.

Q. Did you unscrew those?

A. Yes, sir.

Q. How do you know if you know you didn't take them out?

Robert Gibson

A. It's the only way you would have gotten 'em out.
Q. —other than rip 'em?
A. Other than rip them, yes.
Q. Do you know whether they were ripped out?
A. I know they weren't. I took the signs and stored them, that is, the face of them.
Q. What did you do with the frames?
A. The frames went with the sign part.
Q. So, the frame, you took that out and you kept it, right?
A. Yes, sir.
page 599 } Q. And then the plastic sign, the Exit thing—you kept that?
A. That's right.
Q. And then you had the inside of it?
A. Yes, there is a metal box, you might call it, inside there.
Q. And you had, what else?
A. Metal box recessed in the wall, and you have this little tray that the two sockets are hooked onto, and it is arranged so it covers the wires, which is according to the Code.
Q. This covers the wires?
A. Yes. That's so arcing can't get out and start a fire. We took that out along with the sockets. We disconnected them at the splices.
Q. Then, you worked on all of them, did you?
A. No, sir.
Q. How do you know they were disconnected at the splices if you don't even know which ones or how many you worked on?
A. Because the helper did what I told him to.
Q. What did you tell him to do, disconnect them at the splices?
A. That's right—which he knew, to start with.
page 600 } Q. In any event, aren't there just wires that you hook to those fixtures inside?
A. Yes. They have sockets on them, sort of like these temporary lighting sockets that I used.
Q. Don't the wires screw on or attach somewhere to those fixtures?
A. The older type probably they were, just had the screws on the sockets, but the newer types had pigtails that come right off of them.
Q. You could have unscrewed it where it was hooked onto the fixture itself, right?
A. You could have, but there would have been more wire there than was needed.

Q. So, then you took your pliers and just cut the wire.

The Court: He said the helper did this work. He didn't say he did it. Correct me if I am wrong.

The Witness: I said I didn't know which one of us did. We both worked on it.

The Court: I see.

By Mr. Harrigan:

Q. So, did you break any of the glass things or bend any of the frames taking them out?

A. There was a couple of them was already

page 601 } broken, the plastic part.

Q. Is that right?

A. But other than this—us breaking, getting them out, we didn't break 'em.

Q. You didn't break them getting them out?

A. No.

Q. That was three by the door?

A. Yes.

Q. How many were in the theatre itself? The Auditorium?

A. There was one at the side entrance and there were 1 or 2 up front, and the stage, at the Exit doors; and there was one leading upstairs.

Q. I'm talking about inside the auditorium.

A. Inside the auditorium? Excuse me.

Q. That's right.

A. You had two at the front entrance at your stage and there was two at the back of the auditorium.

Q. Yes. Four?

A. Yes, sir.

Q. Were they recessed?

A. Yes, sir, they were.

page 602 } Q. You and your helper took those out in the same manner, I guess?

A. That's right.

Q. And cut the wires in all four of those?

A. Yes, we cut them off at the socket.

Q. At the socket?

A. At the splice.

Q. Where did you cut them off?

A. At the splice.

Q. That's at least what you think happened?

A. That's what I know happened.

The Court: I'm confused if they were wired directly, right out of the conduit to the fixture, then there wouldn't be any splice.

The Witness: No, this had the pigtails coming off the screws on the socket, and they were spliced together with the—

The Court: Was this true for all Exit lights?

The Witness: Yes, sir.

The Court: What kind of splice was it?

The Witness: They were taped together because they did not have wire nuts back them.

The Court: Was it cut down, down which side
page 603 } the splice was made on?

The Witness: Most of them are cut right in the center of the splice, center of the tape.

The Court: Through several thicknesses of wire rather than just cutting through one?

The Witness: Sure, and through the tape, too.

By Mr. Harrigan:

Q. Now, just to make sure we understand you, these sockets in there, how were those sockets set in there?

A. How were they mounted?

Q. Yes.

A. They had a little metal tray, which if you had looked at it from the end angle, it would have looked like an "L"—something like that (indicating); it was flat on the bottom and came up straight on the front. It screwed in with the sockets, screwed onto the plate, onto the platform, I'm speaking of.

Q. Where was this splice in relation to this plate?

A. It was under, between the plate and the box, the Exit box itself.

Q. How did the wire come through the wall or into the box? Was it in some conduit of some sort?

A. Yes, it was. It came right in the end of—
page 604 } Let's see. It came into the end of the box, the Exit box.

Q. Was that a steel conduit?

A. Yes, sir.

Q. That's to prevent it fraying around the metal portion of the box, where it comes in, right?

A. No. You run your conduit from your service panel to the Exit light, then you have your bushing on the end of that

pipe to keep it from fraying, but the pipe itself isn't meant just to keep it from fraying.

Q. But that comes right up to the box right under the fixture?

A. Right.

Q. Then, the fixture is hooked on with screws generally, the wires are hooked on the fixture with screws?

A. Yes, in this particular case, they were.

Q. And you say it was cut at the plate, is that what you are telling us?

A. Yes, that's right.

Q. If this were new equipment and the wires had been run in particularly for that equipment, wouldn't they just hook it up to the equipment? Why would there be any necessity for a splice?

page 605 } A. I don't know about what is new, but these had been serviced several times. These sockets might have been a little different.

Q. What are you, guessing now?

A. No, sir.

Mr. Simmonds: You asked him about a hypothetical question. He tried to tell you what the existing situation was. I don't think he is required to answer the hypothetical question he asked about—if they were, would they just be hooked up to the equipment.

The Court: Next question.

By Mr. Harrigan:

Q. But if it were new, and run into the box, there wouldn't be any necessity for a splice, would there?

Mr. Simmonds: I object for the same reason.

The Court: That's conjectural.

Mr. Harrigan: He's an electrician.

The Court: If someone puts new wires in that's, as you phrase it, it's not the issue before me. Sustained.

Mr. Harrigan: My point is, your Honor, I'm going to show he says there was a splice in every single wire in this building—he's already testified about that—that he cut, and most of them he cut at he splice; and our position is that if they

page 606 } are new wires—I'm just trying to get—If originally, when they came in, would he splice every fixture in or just hook the wires directly in the fixture?

Robert Gibson

The Court: I have heard him say that, way back then the fixtures normally didn't have pigtails, and normally were wired directly.

In answer to your recent questions he said he saw evidence of work having been done on these lights, and maybe the fixtures were new. You may ask him more.

By Mr. Harrigan:

Q. In response to that, what evidence did you see that led you to believe that work had been done on those fixtures?

A. The sockets were different in a lot of them, and I worked on a lot of them myself.

Q. This wasn't the first time you had been down to that theatre?

A. No, sir, I had been there several times.

Q. And you're telling us you worked on Exit fixtures on that theatre before.

A. Yes, sir.

Q. Really, what did you do on them?

A. Replaced—Sometimes might just replace a bulb and sometimes a bad socket on them.

page 607 } Q. You're telling us you replaced sockets on them?

A. Yes, sir.

Q. Which Exit fixtures were you referring to?

A. I don't recall right now.

Q. When was that?

A. It's been within the five years I have been with the company.

Q. You have no idea, is that it?

A. That's right. I have been on 3,000-4,000 different jobs since that job.

Q. Are all Exit fixtures the same inside?

A. No, sir.

Q. So, the inside of one might not fit in the inside of another one, if it's a different box?

A. Not a 20-year-old fixture won't.

Q. What?

A. Not with a 20-year-old fixture, the new Exit fixtures would not.

Q. I didn't understand. The ones you took out, if they were the old ones—

A. —they wouldn't fit on this.

Q. They wouldn't fit on any one today?

A. If you find a fixture the same model, they
page 608 } would have, yes, sir, like they had in some of the other buildings.

Q. In the foyer, what kind of fixtures were hanging there? Were they Colonial-type fixtures or do you know what I mean by "Colonial-type?

A. Right behind the auditorium, is that right.

Q. Yes.

A. They were the type that fitted up against the ceiling, had the round white glass globe on them.

Q. Did you take those off?

A. Yes, sir.

Q. And took the fixture out?

A. Took the fixture out?

Q. Yes.

A. Yes, sir.

Q. Who did that, you, too?

A. Yes, sir; I did that.

Q. What was your helper doing while you were doing that?

A. Holding the ladder and taking the fixture when I handed it down to him.

Q. You cut the wire on that, too, right?

A. Yes, I cut it at the splice.

Q. You are sure?

A. I took the splices loose on them.

Q. No question there was a splice there?
page 609 } A. Sure there was a splice in that.
Q. How many fixtures were in there?

A. I think there were three of them.

Q. How long did it take you to take those three down?

A. To take the three down, I would say, and we hung temporary lighting on them at the same time which—maybe 45 minutes on the three of them.

Q. That includes *handing* the temporary lights?

A. Yes.

Q. All right. Now, the temporary lights were for what?

A. Just to work by, to see, walk back through there. There was a lot of commotion going on around the building, just wanted to light it up so everybody could see.

Q. When you left, you took the temporary lighting out, didn't you?

A. I think so, yes, sir.

Q. Did you tape up the ends of any of these wires?

A. Yes, we put wire nuts on them.

Robert Gibson

Q. Weren't you in the same rush there as you were before?
A. Yes, but these sockets weren't charged, so we took them out with us.
Q. What was that?
A. The sockets weren't charged to anyone, so we took them with us to be used aagin somewhere.
page 610 } Q. The sockets weren't charged?
A. That's right.

The Court: What do you mean by "charged"?
The Witness: They weren't billed to anyone.
The Court: Tell me something—this is just a ceramic that surrounds the place you screw in the light bulb.
The Witness: Porcelain light socket.
The Court: What do they retail for today? Between 50 cents and a dollar?
The Witness: Somewhere like that.
The Court: Doesn't it take more to take them out as exit lights than leave them—I mean, why would anybody want them?
The Witness: That is just the way we always do it. I do—use them for temporary lighting anl take them off. It doesn't take no time to take them back off.
The Court: But they do go bad from time to time. Would you use them ever in new construction?
The Witness: I don't know what everyone else uses. But there are several different sockets you can use. That is just the particular type I had on the truck, so I used them.
The Court: All right.

By Mr. Harrigan:
Q. Now, in the lobby how many fixtures were in the lobby?
page 611 } A. There were three other ceiling and there are two lights on either wall.
Q. On the ceiling were they chandelier-type, brass Colonial-type chandeliers?
A. It seems like two of them were.
Q. The other three were what?
A. One other in there was of the same type that was in the foyer, and the four that was on the walls were just the brass Colonial-type that has a light bulb in them.
Q. Did you cut those wires, too, when you took them out?
A. At the splices.

Robert Gibson

Q. Did you do this or your helper?
A. I did that.
Q. He stood there and watched you do that?
A. He stood there, held the ladder and took the fixtures when I handed them to him.
Q. How high off the ground are these fixtures?

The Court: Which ones?

By Mr. Harrigan:
Q. In the lobby?
A. The ones in the lobby are, I would say, around eight to ten feet high.
Q. You know where the ticket office was?
A. Yes.
page 612 } Q. You remember the lights that were over top, in front and back of the ticket office?
A. Yes, those round jobs.
Q. What type of lights were they?
A. Just old-style recessed lights.
Q. Go ahead.
A. They had a little wire grate sort of affair on the body for the light to shine through and the ones that weren't broken had a glass reflector that came from the light bulb down to this deflector, you might call it.
Q. They are wired in above at the top of this canopy?
A. Yes. They have a box up there to a pipe that comes into the greenfield or whatever it was, I didn't notice.
Q. You don't remember what it was?
A. I didn't take those out, didn't work on them.
Q. You didn't, huh?
A. No, sir.
Q. What about your helper, he took them out?
A. No, sir. We never touched the marquee in any way other than taking the Glebe signs off.
Q. O.K. Were they in there when you were there?
A. Yes, sir.
Q. Obviously, you were looking at them, right?
A. Sure. It was right down there.
page 613 } Q. But you were instructed to take the Glebe sign out?
A. Yes, sir.
Q. Did you take that out with a torch?
A. No, sir.

Robert Gibson

Q. How did you take it out?
A. We used wrenches, took the bolts off.
Q. You say "we," you mean you and your helper?
A. That's right.
Q. Did he stand there and watch you this time?
A. He held the letters while I took the bolts out so I wouldn't fall.
Q. He held the ladder?
A. The letters.
Q. The letters?
A. The sign letters.
Q. Each one of these letters was bolted with four bolts?
A. That's right.
Q. Weren't these bolts rusted?
A. Yes, sir; in some cases we had to take a chisel and hammer and took—knocked them off. Two or three were like that.
Q. Did you have a torch there with you?
A. No, sir.
Q. But you did take a chisel and hammer and
page 614 } knocked the bolts off?
A. On two or three, yes, sir.
Q. How many bolts did you have to take off?
A. 40 bolts.
Q. How long did it take you to take 40 bolts?
A. We worked on those about two—two and a half hours.
Q. Are you telling me you took these 40 bolts off in two and a half hours?
A. Yes, sir.
Q. That was unscrewing them?
A. Yes, sir.
Q. And knocking them off with a hammer?
A. Yes—there were two or three bolts that we had to knock off with a hammer.
Q. Was that a rush job, too?
A. No, that particular part of it wasn't necessarily too rushed, because we did that right at the last of the job.
Q. Now, this—did you go back to the panel on the floor and lobby to make sure the building would be safe by cutting the wire in the panel?
A. There wasn't any panel in the foyer.
Q. It was in the manager's office?
A. That's right.
Q. You went in there and cut the wire?

page 615 } A. No, sir.
Q. You disconnected it?
A. No, sir.
Q. What did you do with it?
A. Put the cover back on and left it.
Q. Did what?
A. Put the cover back on the panel.
Q. Who took it off?
A. I did.
Q. What for?
A. I had to, to disconnect the aisle lights.
Q. That's the same panel, then, where you disconnected the aisle lights?
A. Yes.
Q. Did you disconnect the foyer lights to make sure nobody would turn those on?
A. No, sir.
Q. You didn't?
A. No, sir.
Q. Take the fuses out?
A. May have, I don't recollect.
Q. Don't you recall that?
A. No, sir.
Q. You did definitely recall you didn't disconnect it though?
page 616 } A. That's right. There was no reason to.
Q. Now, you say you started this work April 27 or 28?
A. Close to that date.
Q. How many days were you there?
A. Best I remember, about two days.
Q. So that would take most of the Month of April, is that right, 28th, 29th?
A. Yes, sir.
Q. What is your helper's name?
A. That was Junior Dean. He isn't there any more, he is in the Navy.
Q. Junior Dean?
A. Yes.
Q. You said you did go up in the booth, didn't you?
A. Yes, I went up in the booth.
Q. Huh?
A. Yes, I did.
Q. And were you helping disconnect equipment?

A. Yes.
Q. The projector—
A. That's right.
Q. Generator?
A. Yes, sir.
Q. Dimmer?

page 617 } Mr. Simmonds: I can't hear, Mr. Harrigan.
The Court: The last word was "dimmer."
Mr. Simmonds: What's your question about dimmer?
Mr. Harrigan: He disconnected it?
The Witness: No, sir; I didn't, didn't touch the dimmer.

By Mr. Harrigan:
Q. You helped, then, disconnect the projectors?
A. Yes, sir, higher voltage going through this.
Q. What question are you answering?
A. I disconnected the line voltage going to the projectors.
Q. The line voltage would be the voltage going from the panel, right?
A. Yes, sir.
Q. And generators, you disconnected those?
A. No, seemed like just pulled the switch on them, which is the main service switch.
Q. That would be from the panel?
A. Yes, where it comes off from the trough through the celluloid—through the panel.
Q. Then there was a trough in there?
A. Yes, sir.
Q. And that trough carried the wires to the various equipment?
page 618 } A. Yes.
Q. Who took the trough off? Did you take it out?
A. No one that I know of.
Q. That you know of?
A. That's right, it was there when I left.
Q. Who else was there when you left?
A. I guess everyone else that had been working there. I don't know who left first. All I know is—
Q. Were the projectors out when you were there?
A. No, they were already gone.
Q. Beg pardon?
A. They were already gone.

Q. So when you first went up, the projectors were already gone?
A. No, sir.

The Court: Please don't repeat.
Mr. Harrigan: He is going back and forth here.
The Witness: I am just answering your questions.
The Court: Will the counsel start over, because I will have to admit the witness blurts the answers. That is the opposite to what I heard before.
The Court: Don't go back. Start forward when you got there with the projectors there.
The Witness: Yes, sir.
page 619 } The Court: Who disconnected them?
The Witness: I disconnected the line voltage from the fuse panel—distribution panel.
The Court: Who disconnected the projector and carried them out?
The Witness: Skip, I guess.
The Court: Do you know?
The Witness: No, sir. He is the logical man to do it.

By Mr. Harrigan:
Q. And you were the logical man to disconnect from the panel, right?
A. That's right.
Q. If he disconnected from the equipment itself, then the equipment could have been taken out, right?

Mr. Simmonds: I don't understand your question, Mr. Harrigan.

By Mr. Harrigan:
Q. If Skippy disconnected the wire from the equipment, he could have just taken the equipment—the equipment could just have been removed at that point, couldn't it?
A. That's right, sir.
Q. Why was it necessary for you to go back to the panel and take the wires off?
page 620 } A. Had to so the wires wouldn't be hot while they was working on them.
Q. In other words, you cut the wires at the panel, didn't you?
A. No, sir; just cut the switch off at that point, as I said a while ago.

Robert Gibson

Q. But doesn't that take the current out of the wires?
A. Sure it takes the current out of the wires. That's why we cut it off.

The Court: When you say "cut the switch off"—
The Witness: Just turned it off.
The Court: All right.

By Mr. Harrigan:
Q. Did you disconnect the wires from the panel.
A. As well as I remember, no.
Q. Didn't you just tell me a moment ago you did, you disconnected it from the panel?
A. I said I turned the switch off.
Q. Couldn't Skippy turn the switch off?
A. He probably could have if he knew which one.
Q. He works in the booth, doesn't he?
A. No, sir; just on the sound equipment and he doesn't work there all the time.
Q. Is this a complicated mechanism, turning this switch off?
page 621 } A. No, sir; I was there so I was naturally the one to do it.
Q. Now, what are you telling us? You are telling us that you didn't do any work in there at all except turn the switch off?
A. Took down some fixtures.
Q. That is all?
A. That's about it, yes.
Q. You didn't disconnect any of the equipment?
A. No, sir.
Q. You didn't—you just said some moments ago you helped disconnect the equipment.
A. I may have helped carry it out.

Mr. Harrigan: Your Honor, this witness has told 14 diffreent stories on the same issue.
The Court: Agrument is the time to make any observations, not now.
Mr. Simmonds: Your Honor, I think the answers are no more confusing than the questions that have been asked by counsel. If I may—
The Court: Let's take a five-minute recess.

(Whereupon, a brief recess was taken.)

The Court: Come to order, please.

page 622 } By Mr. Harrigan:

Q. When you went up in that booth, was Skippy already up there working?

A. No, sir; we went up there together.

Q. And Skippy was doing some disconnecting, right?

A. Yes, he started after we got there on the sound equipment.

Q. On the sound equipment?

A. Yes.

Q. Did he disconnect the sound equipment?

A. Yes, he did.

Q. Did he disconnect the projectors?

A. Yes, he disconnected them after I cut the switch off.

Q. Were all those wires taped up after he disconnected them?

A. As well as I remember, yes, they were.

Mr. Simmonds: What was the question.

By Mr. Harrigan:

Q. Did you do any of the taping?

A. Yes, sir; my helper and I both did.

Q. Then, what's the first thing you did when you went up in the booth? Did you do something first or did you do something—

A. We just looked around to see what all had to
page 623 } come out and the best way to do it.

Q. Yes, what all had to come out?

A. Just the projectors.

Q. Yes.

A. And there were three or four light fixtures that I took out and some more of his equipment—I don't know what it is called—all of it.

Q. And all his equipment, the projectors and generators?

A. I don't know what all it was.

Q. You never worked in the booth before, have you?

A. No, sir; I have never hooked any of the equipment up.

Q. As a matter of fact, you don't know anything about it now?

A. That's right, I am not a motion picture man.

Q. Where was the panel?

A. It was just to the left of the door as you go in.

Robert Gibson

Q. Are you familiar with those panels?
A. Yes, sir.
Q. What did you disconnect from the panel, if anything?
A. I didn't disconnect anything.
Q. What did you do at the panel?
A. I just turned the switches off.
Q. That's power coming into that panel? What panel is it, normal power?
page 624 } A. Yes, sir. You had full voltage, 220 volts, up there.
Q. Ordinary lights would be only 110, wouldn't it?
A. That's right, yes.
Q. So you had 220 volts coming into that panel?
A. You had 220 volts coming up there, but you had a distribution panel which also had a neutrial which you need to get your 110 volts for your lighting and some circuits that he needed for his equipment.
Q. What were you using for lights up there?
A. We had temporary lights, same as in the foyer, in the lobby.
Q. Was that after you took the fixtures out of the ceiling, you installed those?
A. Yes.
Q. Those temporary lights, were they run off from the same panel?
A. Yes, the distribution panel with the neutral off of it.
Q. You put pigtails in there and hooked lights on them?
A. Yes, sir.
Q. Was this after you cut off the power that you did this?
A. I didn't cut all the power, just the power going to each equipment. They had several switches coming off
page 625 } this trough. One main disconnect and then you had your trough and your switches came off the trough.
Q. Yes. How was it did you know what switches went to what?
A. That's where you checked around, followed the lines after we could—we found out. But as far as knowing as soon as I walked up, I didn't.
Q. You had to look around and figure it out then?
A. Sure.
Q. You weren't sure which ones went to what?
A. That's right.
Q. How did you make sure which ones went to what?

A. We turned them off and checked the voltage.

Q. Did what?

A. Turned the switch and checked the voltage and if it were there—

Q. How did you check the voltage?

A. Checked the voltage at each piece of equipment, at each camera or whatever it was to come out.

Q. Where did he do that on the camera?

A. You have your junction box where the splices were made up.

Q. Then you have to undo the splices?

page 626 } A. No, with this tester you can go right through the insulation on the wire which the splices were taped.

Q. The only thing that you did up there, then, would be to cut off the switch itself, right?

A. Yes, or turn the switches off when we took it.

Q. What are you talking about "we"?

A. My helper and I.

Q. How many people did it take to turn a switch off?

A. Both of us were up there, so I said "we".

Q. You turned the switch off or does we include Skippy?

A. My helper and I did.

Q. Your helper was up there, too?

A. Yes.

Q. What was he doing up there in this whole operation?

A. I don't recall what he did. Helping.

Q. He didn't do anything about turning the switch off?

A. Yes.

Q. What did he do, watch you?

A. I guess so.

Q. Then Skippy did all the disconnecting at the equipment?

A. At the equipment, yes.

Q. And you did the disconnecting at the panel?

A. I turned the switches off at the panel.

Q. After—how long did it take Skippy to disconnect this equipment?

page 627 } A. I guess we were up there, oh, two or three hours. I don't recall exactly.

Q. So for two or three hours you didn't do anything except watch, right?

A. I wasn't up there—just in that neighborhood all that time. Taking some lights out in the lobby and ones in the projection booth.

Q. Yes, so you didn't stay up there then?

A. Let's see, during that time—seemed like during that time we were also working on the Glebe signs while he was up there.

Q. So, what was your helper doing? He was following you around?

A. Yes, sir; that's what a helper is for.

Q. So, after you turned off these switches, what did you do, leave?

A. I don't recall just what manner we worked at all in. He was in and out, doing several different things.

Q. What, did you have to go in and out for you didn't have anything else to do up there?

A. Somebody might call me up there for something.

Q. You went there periodically to see if they needed you?

A. Sure, that's what I was there for.

Q. Did you go back up after all the equipment

page 628 } had been disconnected?

A. I did, to take my temporary lights down.

Q. All right. And you pulled the temporary lights out?

A. That's right.

Q. Did you tape up the ends of those—

A. I put wire nuts on the splices.

Q. Weren't you afraid somebody might turn the panel back on?

A. Wouldn't make any *different* with the end of the wire taped up or wire netted.

Q. So, then it is your testimony that you didn't touch the trough with the wires in it, right?

A. I tested it, but I didn't disconnect it.

Q. You didn't take it out?

A. No.

Q. You didn't cut any of the wires at the panel?

A. No, sir.

Q. The wires were in perfect shape, the same shape they were in?

A. To be 20 years old, yes, good shape.

Q. O.K. Did you help carry the equipment out?

A. Yes, sir.

Q. That was the projectors?

A. I don't recall carrying the projectors. There

page 629 } was a couple of motors I helped take down the steps. We carried the light fixtures out. I think that's about it. The motors were heavy, so they needed more help on them.

Q. So then it would be safe to say that you didn't do any electrical work at all in the booth?

Mr. Simmonds: If Your Honor please, I object to this.

The Court: It is incorrect, sustained.

Mr. Simmonds: He has testified numerous times to what he was doing. Surely Your Honor has heard him. That characterization is in the record.

By Mr. Harrigan:

Q. After everything was taken out of the booth, was there any work done in there after the equipment was taken out?

A. Nothing other than my taking the temporary lights down, which is five minutes maybe. Also the process of cleaning up.

Q. In other words, they cleaned up after this took place?

A. Yes, sir.

Q. You saw that, too?

A. Yes, sir.

Q. If you put wire nuts on everything else you took off, why didn't you put wire nuts on the wires down in the seats?

A. There was no seats. The wires were disconnected. There wasn't any way of getting current to them.

Q. That's because you disconnected them at the panel?

A. That's right.

page 630 } Q. Cut the wires going to the panel?

A. No, took them off the screw.

Mr. Simmonds: If Your Honor please, Mr. Harrigan has time and time again used—

The Court: Objection sustained.

By Mr. Harrigan:

Q. Did you do any disconnecting at the main distribution panel?

A. Just for the air-conditioning equipment. There was a trough down there that these switches were connected to, which came—the trough was fed from the main switch.

Q. That's just the air-conditioning equipment?

A. Yes, sir.

Q. In what fashion did you disconnect that?

A. We took them off the lugs, off the main switch.

Q. Did you take the wire out?

A. Yes, took a wrench of some kind—I don't recall just

what kind right now and took the bolt loose and took the wire out.

Q. You did this yourself?

A. Yes, sir.

Q. How about wall plugs?

Mr. Simmonds: What about them, Mr. Harrigan? What about wall plugs?

page 631 } The Court: Be more specific, Mr. Harrigan.

By Mr. Harrigan:

Q. Did you take any wall plugs out?

A. No, sir.

Q. None at all?

A. No, sir.

Q. Did your helper?

A. No, sir.

Q. Did you examine any of them to see if they were broken?

A. No.

Q. You didn't examine them?

A. No, sir.

Q. So, then it was your testimony that in order to take that equipment out of the booth, it wasn't necessary to do anything to the panel or the wires or the trough or anything to the panel or the wires or the trough or anything else; is that accurate?

A. That's right, other than turning the switches off.

Mr. Harrigan: That is all I have.

The Court: Since direct and cross I have one or two questions.

Did your helper pull any wires out of conduits anywhere at all?

The Witness: Just through the nipples that controlled the air-conditioning switches in the basement.

page 632 } The Court: So that came out through a conduit from the main distribution panel to the equipment?

The Witness: To the trough and then to the equipment.

The Court: What about a conduit in the projection booth —not a trough, a conduit?

The Witness: No, we didn't.

The Court: Either of you pull any wires up there?

The Witness: No, sir.

The Court: The places where your helper cut wire in the building, were some exit lights along with you, and what else?

The Witness: He would have taken the splices loose at probably two or three of the exit lights and some of the ceiling lights. I don't recall what just each one of us did at the time, but—

The Court: There is testimony in the case before yours that at most boxes and the back of light fixtures the wires were cut—well, different witnesses in different locations—one to three inches from the conduit itself. What do you say about that?

The Witness: I don't know a thing about it.

The Court: Tha's inside the box?

The Witness: That's right. I took all the splices loose. When I took something like a fixture down, I took the splices loose, either that or if they were taped up, I page 633 } would cut right into the splice itself, which if the wire were short, it would have been short to start with. I don't remember.

The Court: Redirect.

RE-DIRECT EXAMINATION

By Mr. Simmonds:

Q. You were asked about a County requirement of leaving six inches of wire. Will you explain what wire you are talking about?

A. In any box that you bring wires into, there has to be at least six inches to make up your splices or put your plugs or switches in.

Q. You're talking about the service line coming into the box?

A. That's right.

Q. —must have six inches or more?

A. On any wire that's in the box.

Q. When you were asked about the wire that you cut coming into the seats, was there still six inches of wire in the junction box?

A. I don't know. I didn't take the plate off.

Q. There should have been, is that correct?

Robert Gibson

A. There should have been. The Code may have been different back when this was put in.

page 634 } Q. Mr. Harrigan asked you if you had the bill for the rewiring of the aisle lights in the Arlington Theatre, and I want to show you a document and ask you if that is the bill for that.

(Showing to Mr. Harrigan.)

Q. (Continuing) I show you a bill on the letterhead of February 16, 1964, on the letterhead of Mar. . . Lighting addressed to Neighborhood Theatre and ask you to read what is on that document?

A. Job, Arlington Theatre, Job Number is 35525, January 1964, replace wires to aisle lights, according to estimate, $597.

Q. Read it.

A. —less $11.94 is $585.06.

Mr. Simmonds: I ask that that be admitted in evidence as Defendant's Exhibit 19.

The Court: Mr. Harrigan?

Received.

(Defendant's Exhibit 19 was received in evidence.)

By Mr. Simmonds:

Q. Mr. Harrigan also was asking you about other theatres in which you had repaired or replaced aisle lights.

page 635 } Did you have occasion to do any work in the Wilson Theatre along that line?

A. I have worked on the Exit lights up there, but as far as aisle lights, I don't recall working on those aisle lights.

Mr. Simmonds: That's all I have.

RE-CROSS EXAMINATION

By Mr. Harrigan:

Q. This work in the Arlington Theatre, is that work that your organization did?

A. Yes, sir, I did it myself.

Q. You are non-union, aren't you?

A. Yes, sir.

Q. So, the union job would be more than that?

A. It's very possible, yes, sir.
Q. Let's not say "very possible." Is it or isn't it?

Mr. Simmonds: Wait just a minute. I object to that. It's entirely relevant to that. This was directed to what other work he had done on our lights.

The Court: When you offer the price also, Mr. Simmonds, you open the door for him to ask for that variation. Objection is overruled.

Mr. Simmonds: Whether it's done by union or
page 636 } non-union is immaterial.

The Court: Objection overruled.

By Mr. Harrigan:
Q. It's a non-union job?
A. That's right.
Q. What is the non-union scale for electricians?

The Court: He said $3.75 per hour average.

By Mr. Harrigan:
Q. Is that below union scale?
A. Yes, sir.
Q. Do you know what the union scale is?
A. No, sir.

* * * * *

page 637 } Thereupon,

LEO L. SNARR was called as a witness on behalf of Defendant, and having been previously duly sworn, was examinted and testified as follows:

DIRECT EXAMINATION

By Mr. Simmonds:
Q. State your name and address.
A. Leo L. Snarr, 7332 Case Place, Annandale.
Q. Mr. Snarr, do you have a nickname of "Skippy"?
A. Yes, sir, I do.
Q. By whom are you employed?
A. Neighborhood Theatres.
Q. How long have you been employed by them?

Leo L. Snarr

A. About 30 years, except for 3 years I was in the service.
Q. When were those years?
A. When I was in the service?
Q. Yes.
A. I went in in January of 1943 and out in April, 1946.
Q. What is your connection with the Neighborhood group at this time? What is your occupation?
A. I am manager of the Sound and Projection Department.

page 638 } Q. At how many theatres are under your supervision?

A. Thirty-three.
Q. Have you also been a projectionist during your time with them?
A. Yes, sir.
Q. During what period when you were a projectionist did you become associated with the Sound & Projection Department?
A. Well, actually I started as a projectionist, I guess it was 1937—up until the time I went into the service, which would have been January of '43. After I came back, which was in April of '46. I went back to work, I believe it was in June of '46 as projectionist; and in 1949—I believe it was in October —I went into the Sound and Projection Department. In 1959, I became manager of the Sound and Projection Department.
Q. Just what would you do in connection with your position as manager of the Sound & Projection Department?
A. I would be responsible for all installations and maintenance of sound and projection.
Q. Do you recall doing any work on the Glebe Theatre on or about, in April of 1965?
A. Yes, sir.

Q. Do you recall when you started in there?

page 639 } A. I believe the theatre closed on April 25th. I started the next day. It would be the 26th.

Q. Do you know when you finished in there?
A. Well, I believe we finished on a Wednesday which was the 28th, as far as dismantling equipment and carrying it away.
Q. Were you back there on the 29th, do you know?
A. Yes, sir, I was.
Q. Do you know what you did, if anything, at that time?
A. Well, I recall we had a couple of trucks, one which was a company truck from Richmond, and rented a truck from a

U-Rent It, here in Arlington, and I believe the drivers that they had for these trucks for removing equipment were both from Richmond, not familiar with the area, and I was asked by Mr. Pearson if I would direct them to a dump. The Arlington County Dump wouldn't take it. And I had to take them to Maryland and pay them to take all this trash.

Q. What was being dumped?

A. Pardon?

Q. What was being dumped?

A. Different trash and whatnot that was left from the theatre once they cleaned up.

Q. Directing your attention to equipment in the
page 640 } theatre, did you have occasion to remove or move
any of the equipment inthe theatre?

A. Yes, sir.

Q. Will you explain to the Court what equipment was removed by you or under your supervision?

A. I removed all sound and projection equipment. This included everything in the projection booth, the horn system on the stage and the screen, the screen itself.

Q. You used the word "horn."

A. "Horn system."

The Court: That's the loudspeaker system.

The Witness: The speakers that are on the stage.

By Mr. Simmonds:

Q. Directing your attention to the equipment that you removed or supervised removing in the booth, would you please explain to the Judge what was there and how it was removed, and whas was left, and if you have any diagrams to assist his Honor in following your testimony, I suggest you use them.

A. Well, first off, of course, the current had to be cut off to the different pieces of equipment. Then, we started dismantling. Incidentally, I had three projectionists helping me. Although they weren't all three there at the same time, I
mean throughout the days that I was removing it,
page 641 } there were at least two with me.

I could show you a picture if the Judge is interested in what a projector looks like, and how it is wired in the pedestal.

(Witness showed diagram to Court.)

Leo L. Snarr

By Mr. Simmonds:

Q. What was your comment about that?

A. That is a complete projector. Incidentally, this happens to be almost identical to what was in the Glebe Theatre. The pedestal, the bottom part of the projector is where the wires are fed in. I have a breakdown there to show you also how the wires are fed up into the pedestal.

Q. How many projectors were there?

A. Two.

Q. Can you show how the wires were fed into the projector?

Mr. Simmonds: Show that to the Court please?

The Court: Do you want to look at that, Mr. *Harrington?*

(Mr. Harrigan examined document.)

The Court: All right.

By Mr. Simmonds:

Q. Will you please explain to the Court exactly what you did or those under your supervision did in dis-
page 642 } connecting the equipment from the building.

A. In the pedestal itself.

Q. The projection instrument.

A. Yes. In the pedestal itself were where these conduits come up through the floor, and there is a box, like shown here, and this particular box, the wire from here is being fed back to the distribution panel. Each projector has 110 volts to run the motor; there is 110 volts also for a change-over system, and also 110 volts for a receptacle, outlets which are on the projector. They are the only 3-110 circuits going to the projector. These switches were turned off at the panel. They were disconnected at the box.

Q. In what manner were they disconnected at the box that you referred to?

A. Well, they were disconnected, if it was spliced with tape—I don't recall if all of them weretaped or whether some of them had wire nuts; but wherever the connection was, that's where it was disconnected.

Q. With respect to the wires leading into the projectors, was any wire removed from the point where you either disconnected at the splice or at the wire nut—were any of the wires between that point and the panel removed?

A. No, sir.

page 643 } Q. Was it still there when you left the building?

A. Yes, sir.

Q. Did that wire going from the point where you disconnected, back to the panel box, was that exposed or was it in the conduit, or the box?

A. It was in the conduit up into the box in this particular case, in the pedestal—was sticking out in the box.

Q. Would the wire be showing at any point except in the projection equipment itself?

A. No, sir, only in the box.

Q. Were such wires showing in that box in the projection equipment?

A. Yes.

Q. What other equipment did you disconnect?

A. Also coming into this pedestal there is a larger conduit which is under the floor and goes back into the equipment room where the generators were located. This takes a heavier wire than what goes to the distribution panel.

The Court: To generate what?

TheWitness: Well, if you recall, a projector has an arc lamp. It's just like any type of arc lamp that requires dc voltage, and to get the dc, we have to have a

page 644 } generator; so there were 5 horsepower generators in the d.c. and secondary of the generator was fed to the arc lamp. This was fed to this in this case with a number 6 wire. This wire is brought up through the pedestal, fed through the pedestal through a big, disconnect switch there, back of the pedestal; and from there, carried to the arc lamp itself.

The wire that was connceted to the switch, that goes to the generator, was left in the conduit. In fact, it was probably at the projector point, I would venture to say the wire was at least 3 feet long, sticking out of the pipe.

By Mr. Simmonds:

Q. The wire you have reference to just now sticking out 3 feet would be the wire coming from the panel box to where?

A. No, sir, it comes from the generator, from the output of the generator.

Q. I see. And the generator, you say, was in an adjoining room?

A. That's right.

Leo L. Snarr

Q. Was that conduit from the generator to the projection equipment in the floor or exposed?

A. In the floor.

Q. Was there a connection from the panel leading to the generator?

page 645 } A. Yes, sir.

Q. What voltage was carried in that wire?

A. This was 220 volts, 3 phase.

Q. The generator was 5—

A. —5 horsepower.

Q. If a 7½ h.p generator were replaced there, would it require different or heavier wires?

Mr. Harrigan: Objection, your Honor. He hasn't laid any foundation that this man is an electrician and knows anything about it. I understand he is a projection man. If he is an electrician, I think a foundation ought to be laid.

The Court: He has testified his duties are projection equipment. This certainly is in that category. Overruled.

Mr. Harrigan: Exception. No foundation shown that he installs wiring for equipment or ever has installed it or is familiar with what wire is carried.

The Court: If you ask him on cross, maybe I'll strike it. Right now it's in.

The Witness: Yes, sir, it would require heavier wire to the generator on the a.c. side as well as heavier wire on the secondary side.

page 646 } By Mr. Simmonds:

Q. What wires were disconnected, if any, with respect to the generator?

A. There again, I have a diagram I can show you.

Mr. Simmonds: All right. If you will show the Court, please.

(Showing Court.)

By Mr. Simmonds:

Q. Will you explain that please?

Mr. Harrigan: I object to the explanation on this also, your Honor, on the same grounds, that there is no foundation laid that he is an electrician or ever wired one of these, and nothing other than—

The Court: As I say, I am going to grant you leave to move to strike in cross-examination if it develops, but I think it is sufficiently shown.

Mr. Harrigan: All right, your Honor.

The Court: I don't pretend—all of this, but I will locate and orient—

By Mr. Simmonds:

Q. When you are ready.

A. Actually, I disconnected—Well, first-off, the electrician pulled the fuses out of the switch, disconnected

page 647 } the wires here, joined to what we call across-the-line starter switch. This is part of the generator, comes with the generator when you purchase it. I removed this switch, the generator. We have ballast rheostats and field rheostats. These were removed. Where the wire comes up through the floor—I'm not sure if it went through a trough, but wherever it was, the wire that led from this point to the arc lamps of which I testified awhile ago was under the floor, this was disconnected and left sticking out. It was not cut.

Q. Do you know how much wire?

A. There were two of these generators, incidentally.

The Court: That's the same thing the diagram calls "transverter"?

The Witness: Yes.

Mr. Simmonds: Your Honor, I'm sure you know more about this than I do.

The Court: That's the unit that changes alternating current to direct.

By Mr. Simmonds:

Q. You mentioned something about a trough. What is a trough in the sense that you have used that term?

A. In cases where you have—In this particular

page 648 } case, you had a separate feed from each projector, so they had to be tied in some place; so usually they have been brought into a trough, and the wire is all concealed in the trough. The trough can be any number of feet long, has a cover and the cover is removed, and the wire can be removed and run back and forth in the trough, and run off to other switches. That's the way the trough is.

Q. The wires that were disconnected from the generators that led back to the panel, were there any wires exposed?

Leo L. Snarr

A. This wire was still hooked to the switch. It was never removed from the switch.

Q. I meant on the generator end, coming from the panel to the generator.

I think you said it was a 220 volt wire.

A. That's correct. This wire was still on the switch. The switch was not removed.

Mr. Harrigan: When you say "switch," do you mean panel?

The Witness: No, I mean disconnect switch. Here (indicating) I can show you the picture of it, this picture of the switch here. See? You have a switch here—

The Court: It would be, roughly, like a safety switch on a furnace in your house, or is it one used regularly?

page 649 } The Witness: No. Well, if for some reason you wanted to work on the generator, you would pull it. This is the same switch where it is fused if something—you—

By Mr. Simmonds:

Q. Was that left in the premises?

A. Yes, sir, two of them, one for each generator.

Q. While we're on generators, were they removed from the building?

A. Yes, sir.

Q. Where were they taken, if you know?

A. Put back-tage at the Arlington Theatre where they still are.

Q. Do you happen to know where the projectors were taken?

A. Yes, sir, they were taken to my shop in Falls Church.

Q. Still there?

A. That's the projector head. When you say "projector" it involves sound, head magazines and arc lamps and whatnot. Some of it is in my shop, some back-stage at the State Theatre; some of it I have used in Charlottesville at the theatre.

page 650 } Q. What other equipment was disconnected by you and your assistants?

A. We had disconnected all of the sound equipment. The sound equipment was all surface-mounted, and all conduits feeding to this equipment was on the surface of the wall. It was not concealed in the wall. We have on the front wall what we call pre-amps, pre-amplifiers; and the back wall

has a power amplifier. This was connected by going up the wall, across the ceiling and down the back wall. All of that was removed, the cabinets and the amplifiers which were in the cabinets. All these connections are soldered. I did not unsolder them. I cut the wires next to the solder joint, removed the cabinets with the amplifier and left wire hanging out of existing conduit.

Q. Could you estimate how much was hanging out?

A. It would vary. The pre-amp's was not as long as on the other. It was sufficient that if you put in the identical equipment, it could be hooked up.

Q. Was there some other equipment that was removed?

A. You are speaking of the Projection Booth now, or the theatre?

Q. The Projection Booth, the Projection Booth.

A. Yes, the dimmers were removed.

page 651 } Q. Do you know what type of dimmer that was? Was it a motorized dimmer or hand-operated?

A. Manual dimmers.

Q. How many were there?

A. Six.

Q. Do you know where they came from?

A. Yes.

Q. Where did they come from?

Mr. Harrigan: If he has first-hand knowledge.

The Court: The question was, "Do you know?"

Mr. Harrigan: Of your own knowledge, not what somebody told you.

The Witness: Well,—

Mr. Simmonds: If you don't know of your own knowledge, don't answer. If you do, answer.

The Witness: The reason I can say—I wasn't there when they were installed, but the fact that I worked for the company prior to my going into the service and am familiar with the two projection booths (projectors) that they removed from it, I do know where they came from.

By Mr. Simmonds:

Q. Where did they come from?

A. Three of them came from the Buckingham and 3 from the State Theatre, in Falls Church.

page 652 } Q. Where were they disconnected?

A. They were disconnected right where they are

attached to the dimmer; and in this case, there is a large nut that the wire is put under. The nut was backed off and the wire removed—taken loose.

Q. Were those wires cut?

A. No, sir.

Q. Were the wires still in there when you—

Mr. Harrigan: Objection. He is leading.

Mr. Simmonds: If your Honor please, I don't know what his definition of a leading question is.

Mr. Harrigan: Let's let the record decide.

The Court: First, Mr. Harrigan, let me hear the question.

By Mr. Simmonds:

Q. Were the wires that came from the panel to the dimmers, which you said were disconnected at the dimmer from under a nut, were they stil lin the projection room when you left the theatre?

A. Yes, sir.

Q. Are you in a position to tell us, Mr. Snarr, whether the same type of wiring could be used from the panel box to the dimmers if a motorized dimmer were used in place of the—

page 653 } Mr. Harrigan: Objection.

Mr. Simmonds: —in place of the hand-operated dimmers?

Mr. Harrigan: Objection. No foundation.

The Court: The ruling will be the same.

Mr. Harrigan: Continuing objection on everything dealing with electrical work.

The Court: Yes.

The Witness: I would say that part of it could, but that to motorize a dimmer, you have to have a separate circuit to operate the motor; but as far as handling the load of the dimmer for the lights is concerned, I would say the same wiring could be used, yes, providing you did not pull more current.

By Mr. Simmonds:

Q. I take it from your testimony that with a motorized dimmer, you need another piece of equipment.

A. That's correct.

Q. Do you know what voltage a motorized dimmer would take?

A. All that I have any experience with are 110 volts.

Q. Was there any other equipment in the projection booth relating to projection and sound equipment that

page 654 } was removed by you?

A. The fire shutters for the port-holes were removed.

Q. Will you explain what they are?

A. Again, I have a sketch of them if you—

Q. All right, sir, if you will, use the sketch.

Mr. Simmonds: Do you want to see it, Mr. Harrigan?

Mr. Harrigan: I know what they are.

By Mr. Simmonds:

Q. Will you explain to the Court how those frames or shutters operate?

A. In this particular case, they have a fusable link; each shutter has a metal door and is connected to a bar across the front of the projection booth. This, in turn, also has a release at the door; in the event there is a fire it can be release manually as well as by a burnt fuse link.

Q. If the openings were changed by the new tenant, could the existing frames have been used?

A. No, sir.

Q. You did remove those frames?

A. Yes, I removed them.

Q. Was there an exhaust fan in there that was removed, if you recall?

A. Yes, there was.

page 655 } Q. What was the purpose of that exhaust fan?

A. The exhaust fan is to carry off the fumes from the arc lamps.

Q. That is, in the projection room?

A. This was above the ceiling of the Projection Room, where the fan was located.

Q. All right. Was there any other equipment that we have not discussed that was removed by you or your assistant?

A. Well, of course, we had automatic rewiring. This was mounted on a table. It was merely plugged into a wall outlet. Of course, there was another bench that had film bins. I believe that was all.

Q. Were the dimmers mounted on something, some stand?

A. Dimmers were mounted on a rack that merely sits on the floor; it stood about 5 feet high, I guess. And in removing

it—it was quite heavy—it was not anchored to the wall, and we merely removed the whole rack intact until we got to the top of the steps and realized it would give us a little difficulty on the steps, and we did remove a couple of the heavier dimmers to take it down the steps.

Q. Mr. Snarr, do you know whether the same type of projection equipment was installed by the K & B Theatre as was in before?

page 656 } A. No, it was not the same.

Mr. *Harrington*: I would object unless he lays a foundation and shows that he has some first-hand knowledge.

The Court: The question was, "Do you know?"

By Mr. Simmonds:

Q. Do you know?

A. Yes, I know.

Q. Tell us whether it was the same type of equipment.

A. No, it was not.

Q. Will you explain what type of equipment was installed by K & B?

A. K & B put in stereophonic sound, which is actually four sound systems.

Q. In what way is that different from what you had there?

A. We had optical sound—only a single-channel sound.

Q. Did that require any different wiring?

A. Yes, sir.

Q. In what way?

A. Well,—

Mr. Harrigan: Same objection in the wiring.

The Court: Overruled.

Mr. Simmonds: Go ahead, if you know.

The Witness: Well, like I say, we had single-

page 657 } optical sound, which was just a one-horn system on the stage. When you have stereophonic sound you have three horn systems on the stage independent of each other. You have surrounding speakers in the auditorium which are independent; you actually have four amplifiers compared to one. It would require more wiring.

The Court: I think, gentlemen, this is a good time to take a recess for lunch for an hour.

(Whereupon at 12:30, the court was recessed for luncheon recess, to reconvene at 1:30 p.m. the same day.)

page 658 } AFTERNOON SESSION

1:30 p.m.

The Court: Mr. Snarr will resume the stand.

Thereupon,

LEO L. SNARR witness on behalf of Defendant, resumed the stand and testified further as follows:

DIRECT EXAMINATION

By Mr. Simmonds:

Q. Mr. Snarr, during your connection with the Neighborhood Theatres, prior tot he termination of the lease at the Glebe, did you have any connection with the parking lot?

A. Yes, sir.

Q. What was that?

A. The patching of the pot-holes. Since I had a company vehicle, I was asked to pick up, with the porter, the maintenance man, whoever it happened to be, some Sacrete Cold Pack, I think they called it, from your local hardware stores. They would go with me; I would bring this back, and on several occasions, I think I helped even put it in the pot-holes.

Q. When you returned to the Neighborhood Group, after being in the service, were you in a position to tell what type of surface was on the parking lot?

page 659 } A. Yes, sir.

Q. What type of surface was that?

A. It was crushed gravel, packed.

Q. Do you know how long that continued in that fashion?

A. I believe it was sometime in 1955.

Q. What occurred at that time?

A. The lot was paved with black-top.

Q. Mr. Snarr, when you finished your work at the Glebe, when the equipment was removed and so forth, did you have an opportunity to observe the condition in which the theatre was left?

A. Yes, sir.

Q. In what condition was it left?

A. Well, it was swept clean.

Mr. Simmonds: No further questions.

Leo L. Snarr

CROSS EXAMINATION

By Mr. Harrigan:

Q. Mr. Snarr, you have testified that you have been with Neighborhood Theatres some 30 years, is that right?

A. Yes.

Q. You said you were manager of what?

A. Sound and Projection Department.

Q. How long have you been manager of Sound and Projection Department?

page 660 } The Court: He said since 1959.
The Witness: That's correct.

By Mr. Harrigan:

Q. What does that entail?

A. Installation and maintenance of Projection and Sound Equipment.

Q. Do you have staff that works under you?

A. An engineer in Richmond full time and another man part-time.

Q. Are they under you?

A. Yes, sir.

Q. Are you an engineer?

A. I am a so-called sound engineer.

Q. What do you have to know to be a so-called Sound Engineer?

A. I don't have a degree in engineering.

Q. Basically, your field, as far as theatres is concerned, is sound?

A. Our department takes care of projectors also.

Q. Sound and projectors.

A. That's correct.

Q. You haven't any degree in electrical engineering?

A. No, sir.

Q. Have you ever held a license as an electrician?

A. No, sir.

page 661 } Q. Have you ever installed any electrical wiring from the panel through to the projectors?

A. No, sir.

Q. So, everything that you know about the wiring would be something that you have heard from somebody else, isn't it?

Mr. Simmonds: I object to the question, if your Honor please.

The Court: Sustained.

Mr. Harrigan: Exception.

The Court: Anyone who goes to school, of course, learns from hearsay. Books are hearsay. So, one has to look at a piece of wiring to learn what it looks like, but everything else is secondary.

By Mr. Harrigan:

Q. So, you are not in a position to say you are qualified to wire up a theatre, are you?

A. Not from the electrician's standpoint, from the panel, no, sir.

Q. So, your expertise, if any, extends from where the final connection is, up to the projection equipment and sound equipment, right?

A. Yes.

page 662 } Q. You had some diagrams which indicated a typical,—Maybe I ought to ask you this: Where did you get these books?

A. They are supplied by National Theatre Supply.

Q. Were they sent to you?

A. Yes. These are some old ones I have had.

Q. I asked you, were they sent to you?

A. Yes, sir.

Q. O.K. Where is that diagram on the projector?

A. (Indicating)

Q. All right. Now, showing you this diagram, is this supposed to purport to represent the projector, this line, the base of the projector?

A. Yes.

Q. Is this purported to represent the floor?

A. That's right.

Q. What kind of floor was in there?

A. Concrete floor.

Q. So, these lines would have to be put in before the concrete was put in, wouldn't they?

A. Yes, sir.

Q. Were the lines in that booth, these particular lines all around under the concrete?

page 663 } A. Yes, sir, except for this one (indicating). This one here was not there; just these two. This is pertaining to sound. It can be brought in under the pedestal, but in this particular case, it was not. All sound wires in the Glebe were on the surface of the wall.

Q. All sound wires you took out—

The Court: What's your answer?

The Witness: I said, all sound wires hooking up this projector were on the walls of the projection booth, rather than up through the—

The Court: Counsel asked you "and all sound wires were taken out"? I didn't hear your answer.

The Witness: I didn't answer. I didn't take any wires out, though.

By Mr. Harrigan:

Q. I didn't ask you that. I said, *W*ere all wires taken out?

The Court: Out of the building, you mean?

By Mr. Harrigan:

Q. Out of the building, off the wall, and so forth.

A. I still don't follow you.

Q. It's a very simple question: Were these wires that go to the sound, disconnected and the wire taken out?

page 664 } A. If you mean, were the wires removed, no, they were not removed.

Q. None of them are removed?

A. No, sir.

Q. Left in the original position?

A. Yes, sir. After disconnected from the piece of equipment, were left hanging out the conduit.

Q. Where were they removed—Would this wire be removed?

A. I just got through saying this was not in there.

The Court: Mr. Harrigan, what the witness said, *I*t was not wired from the conduit up the base of the projector, but rather it was wired on top.

By Mr. Harrigan:

Q. So, the wiring part of this was a separate part of the wiring, is that correct?

A. The wiring of the sound to the projector was separate, correct.

Q. When you went up there, what kind of lighting fixtures were in the booth?

A. The lighting fixtures that have always been there.

Q. Would you describe them?
A. They were a porcelain fixture that had the green shade on so the light would not shine out the port-holes
page 665 } to the audience.
Q. Is it fair to characterize them as cheap fixtures?

Mr. Simmonds: Your Honor, I don't believe he testified to any of that on direct, so I object.
The Court: I understood him to say he removed three projection, 3 fixtures from the projection booth.
Mr. Simmonds: Are you talking about the projection booth?
Mr. Harrigan: That's right.
The Court: Proceed.

By Mr. Harrigan:
Q. Could these be characterized as cheap porcelain?

The Court: Beg pardon. It was the electrician who said he removed them. He did say this, gentlemen, "The electrician and his helper were there over this 2 to 3-hour period." I better correct my own—

By Mr. Harrigan:
Q. Was this done prior to the time equipment was disconnected?
A. It was done during the time it was being disconnected.
Q. You needed lighting in order to disconnect the equipment, didn't you?
A. Yes, sir.
page 666 } Q. So you took down these cheap fixtures and put back in temporary lights?
A. No, sir, I didn't take them down.
Q. They were taken down?
A. Yes, sir.
Q. And temporary lights put in, right?
A. Yes, sir.
Q. So, you could take out the equipment?
A. Right.
Q. The labor for taking those down and installing the temporary light would be worth more than the whole fixture, wouldn't it?

Leo L. Snarr

Mr. Simmonds: That's argumentative, if your Honor please.

Mr. Harrigan: I think it shows the motive behind this operation, your Honor, that this was how—

The Court: Are you now offering him as an expert on value of fixtures and labor for electricians' work?

Mr. Harrigan: Mr. Simmonds offered him—No, I'm not. I think it would be common knowledge, though, whether a porcelain fixture, by looking at it, to tell whether it would be worth taking down and stringing up temporary lights.

The Court: Let that be reserved for final argument.

page 667 } By Mr. Harrigan:

Q. At any rate, that type of operation was done—this type of fixtures was taken down?

A. Right.

Q. When was the electrician up in the booth with you?

A. On and off the entire time I was there.

Q. Did he go up there initially with you?

A. If I recall correctly, he did.

Q. If you recall correctly?

A. We both went in the building about the same time, I think. We looked the booth over, decided what needed to be done, what needed to be done first, and this sort of thing.

Q. What did you need him for, because you know how to disconnect equipment?

A. Well, the generator had to be disconnected.

Q. You know how to do that, don't you?

A. Yes, but I'm not a licensed electrician to disconnect any of the hot wire.

Q. Isn't there a hot wire that goes to the projector?

A. Once the juice has been turned on, yes, sir.

Q. You're telling me you could not turn off the juice to the generator without an electrician being there?

page 668 } A. The fact that the electrician was there, he removed the fuses and turned the switches off. I didn't do this. Yes, I can turn a switch off and pull fuses out, yes, sir; but I didn't.

Q. You just said that you needed the electrician to disconnect the generator, is that right?

A. That's right.

Q. Did you hear the electrician say he didn't disconnect any generator or equipment up there?

A. I should say, the "feed to the generator."

Q. Now, the feed to the generator.

The Court: Where it leaves the panel?
The Witness: This, as I pointed out, has a disconnect switch.
The Court: At that switch?

By Mr. Harrigan:
Q. You needed an electrician to pull a disconnect switch?

Mr. Simmonds: Your Honor,—
The Court: Well, answer the question.
The Witness: Well,—
Mr. Simmonds: If it isn't clear, you just explain it or ask the question to be repeated.
Mr. Harrigan: I don't want Mr. Simmonds
page 669 } pumping up the witness here.
The Court: Do you understand the question, Mr. Witness?
The Witness: Yes, I understand.
The Court: You may answer.
Mr. Simmonds: Read it back, the question.

(Reporter read the question back.)

The Witness: No, I guess you don't need an electrician to pull a disconnect switch.
Mr. Harrigan: All right.

By Mr. Harrigan:
Q. Did he pull the switch?
A. Yes, sir.
Q. And you disconnected the generator, right?
A. That's correct.
Q. Didn't you say a minute ago that you are not supposed to disconnect generators because you don't have an electrician's license? And that's why you had the electrician there?
A. That is, from a disconnect switch, if the wires have to be removed from the switch, I am not licensed to do so, no.
Q. So, the wires had to be removed from the switch?
A. No, they were not removed from the switch. It's the hot side of the switch.
page 670 } Q. Weren't the wires cut from the panels?
A. No, sir.
Q. You deny that?

A. They were not cut.
Q. You are positive?
A. I'm positive.
Q. Who else was there besides you and this electrician?
A. Three different projectionists.
Q. Three different projectionists?
A. Right.
Q. This was prior to the time the equipment had been disconnected, right?
A. This was during the time it was being disconnected.
Q. What were they doing?
A. Helping me dismantle equipment and carry it out.
Q. So, they were dismantling equipment?
A. Yes.
Q. You were disconnecting it from the electrical circuit?
A. The sound part of it, yes, sir.
Q. The sound part of it?
A. Well, the sound and generator. That was all—
Q. Who disconnected the projectors?
A. I did.
page 671 } Q. You did that?
A. Yes, sir.
Q. So, you disconnected everything?
A. All the electrical wiring pertaining to the projectors and the sound, I disconnected.
Q. And the generator?
A. Yes, sir.
Q. All right. As I understood your testimony, when you disconnect these things properly, you disconnect them up in this area, right?
A. That's correct.
Q. That's where you disconnected it?
A. Yes.
Q. Did you leave the box in there?
A. Yes, sir.
Q. You left all these conduits in-tact?
A. Yes, sir.
Q. Left the wires all in-tact?
A. Yes, sir.
Q. And you pulled out the 25-cent fixtures?
A. No, sir, I didn't.

Mr. Simmonds: I object tot hat.
The Court: Sustained.

page 672 } By Mr. Harrigan:

Q. Who disconnected the dimmer?

The Court: Mr. Harrigan, two or three times today you have asked questions that were utterly unfounded on previous testimony. There has been nothing about 25 cents, except the Court's error. I'm calling you down for an error; I made one myself. But you get too many of them. When you ask these questions, be sure they are based on something.

Mr. Harrigan: Yes.

By Mr. Harrigan:

Q. Who disconnected the dimmer?

A. I did.

Q. That wasn't hooked to the wall at all?

A. No, sir.

Q. Was it hooked to, onto anything?

A. No, the dimmers were mounted on a rack.

Q. Where was the rack located?

A. In the right-hand side of the projection booth.

Q. On a wall?

The Court: He said it was loose, not attached to the wall. Remember, he said he carried it out with the generators on it?

Mr. Harrigan: I know that's what he said.

page 673 } By Mr. Harrigan:

Q. In other words, it was loose, wasn't it, the rack wasn't hooked onto anything?

A. It wasn't bolted or secured to the walls or the floor, no, sir.

Q. All right. Did you disconnect that?

A. Did I disconnect what?

Q. The dimmer.

A. Yes, sir.

Q. And then that was carried out?

A. Yes.

Q. The wiring that goes from the dimmer, that is the wiring from the dimmer to the panel, did you disconnect that wiring from the panel?

A. No, sir.

Q. You left that wiring in there?

A. Yes, sir.

Leo L. Snarr

Q. Mr. Simmonds asked you several questions about whether the wire for the manual dimmer could be used for the motorized dimmer. You don't have any expertise in that particular area, do you?

Mr. Simmonds: I object to that question, your Honor. It's so vague and indefinite.

page 674 } Mr. Harrigan: All right, then, I'll pin it down a little bit more.

By Mr. Harrigan:

Q. Have you ever connected up a dimmer?

A. No, sir.

Q. Do you know the requirements, the Code requirements for connecting up a dimmer?

A. I know the circuit of a dimmer and the—

Q. I asked you if you know the Code requirements for hooking up a dimmer?

A. No, I guess I don't.

Q. So, you don't know what is required and what is not required, do you?

A. No, sir.

Q. The same for the equipment that goes from the panel to the projectors, you don't know what the Code requirements are for installing that sort of lay-ou, do you?

A. From the projectors to the panel?

Q. To the panel.

A. Only that, depending upon the horsepower of the motor, would say the projector is—I know that it has to have at least a number 12 wire.

Q. Is that the extent of your knowledge?

page 675 } Mr. Simmonds: Of what, Mr. Harrigan?

Mr. Harrigan: The equipment, of installing equipment from the panel through the conduit, ready to hook onto the projector.

Mr. Simmonds: In the first place, he hasn't testified that he installed any equipment, and I don't think it is material. The slightest connection that there could be with the thing is that he indicated that when he cut the wires off, they were left in the condition where they could be rehooked, and I think all this cross-examination about the Code requirements for making connections for installing dimmers and projectors is entirely improper and should not be allowed.

The Court: There was one bit of testimony on direct that—No, that was generator from 5 to 7 would require an extra circuit. There was testimony on direct that a motorized dimmer would require an extra circuit to service the motors, as distinguished from the wattage of the lights, is that the question covered?

The objection is overruled. He hasn't asked any questions which purported to * * * the knowledge in that field. You have asked one thing, and asked if that's all you know. That exceeds proper cross.

page 676 } By Mr. Harrigan:

Q. With regard to generators, have you ever run the wire from the panel to the generator?

A. No, sir.

Q. That requires an electrician, doesn't it?

A. Yes.

Mr. Harrigan: Your Honor, based on this witness's testimony, I move to strike the testimony he entered into on the type of wiring necessary for a 7-volt generator versus a 5-volt, and the testimony as to, could the wiring in there have been used to service a motorized dimmer versus a manual dimmer. I don't think he has shown any knowledge in these areas at all other than a general knowledge that he would have from just being familiar with the terms; and I think that is a type of information that a man should have some expertise in, in electricity that he should be an electrician, be able to explain why it would need heavier wire, if that is the case.

I move to strike his testimony regarding those two items.

The Court: No need to argue, Mr. Simmonds.

While I was in lower court, I had to install some of my own wiring and get my permits, and I can't help but

page 677 } have a simple, elementary knowledge, and I distinguish from this witness's testimony that he knows far more than the average person, but that he does not meet the Virginia definition of an expert. A degree is not required. It is knowledge of the field that goes beyond the *ordenary* person's, and experience—goes beyond my knowledge and experience.

If he is in charge of these very items in thirty-three theatres, as the boss for ten years with an engineer and a part-time man under him, the kind of person whom manage-

ment sends to superintend the taking care of their equipment, he is an expert, so the Motion to Strike is denied.

Mr. Harrigan: Exception.

By Mr. Harrigan:

Q. You've got some testimony about frames that you took out, did you take those out, or one of your men?

A. I helped, and all of us together, I guess.

Q. These frames are bolted right onto the cement, the wall, aren't they?

A. This happened to be a cinder-block wall. They were fastened to the cinder-block wall.

Q. It's like a window frame?

A. Except it's surface-mounted, not mounted in the hole—mounted on the outside.

page 678 } Q. With bolts?

A. Toggle bolts were holding them.

Q. And you took those frames out?

A. They had been in there since the building—

Q. Since you first came to the building, back in '46, to the best of your knowledge?

A. That's right.

Q. You said there was an exhaust fan. Where was that located?

A. Directly above the projection booth.

Q. Is it in the projection booth or up in a hole?

A. No; there is a space that you can stand up in over the top of the projection booth, over the ceiling of the projection booth. When you entered, you had a ladder from the projection booth that went over top of the auditorium. You went over top of the projection booth, and this is where the fan was located.

Q. This was a regular exhaust fan you might find—There was nothing peculiar about this fan?

A. This was a squirrell-cage-type exhaust fan, sometimes referred to as a small blower.

Q. This wouldn't be termed "both equipment, would it, in the sense of cameras and sound equipment and so on, generators?

page 679 } A. Well,—

Mr. Simmonds: If your Honor please, I think he is asking two different questions. First he asked if it would be considered booth equipment. I think the witness should answer that, and if he wants to refine it further—

The Court: Answer the first question, "Would this be considered booth equipment?"

The Witness: Well, I will answer it this way: You cannot operate a projection booth without it.

Mr. Harrigan: All right.

By Mr. Harrigan:

Q. Who removed this fan?

A. I believe the electricians did.

Q. How long did it take to disconnect this equipment and carry it out?

A. About three days.

Q. Three days. Didn't the electrician say 3½ hours? Did you hear him say that?

A. When you said the equipment, I included everything on the sage, the entire time I was on the job.

Q. How about the booth, how long did it take to—

A. The booth?

Q. Yes. Three-and-a-half hours?

page 680 } A. No, it took longer than that to disconnect it. It took several hours by the time we dismantled it and carried it out.

Q. He helped you carry it out?

A. Such as the generators. They weigh about 600 pounds —this sort of thing had to be carried out, so we were in the process of removing equipment the entire time I was there.

Q. Did he help you carry your equipment out, the electrician?

A. In some cases, yes; where we had heavy equipment and needed a little extra manpower, the electrician was only too glad to help us.

Q. Did he have anything to do with taking out the marquee lights?

A. No, sir.

Q. Who did, do you know?

A. No.

* * * * *

page 681 }

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Harry B. Goff

Thereupon,

HARRY B. GOFF was called as a witness on behalf of the Defendant, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Simmonds:

Q. Will you please state your name and address?

A. My name is Harry B. Goff; 2022 P Street, Northwest is my office.

Q. What occupational business are you engaged in?

A. General contracting business.

Q. How long have you been engaged in that?

page 682 } A. More than 40 years in the contracting business.

Q. During that period of time, have you done work for the Neighborhood Theatres?

A. Yes, sir.

Q. What is the nature of the work you have done for them?

A. I have been doing all of their repairing and remodelling since about 1938. I think that was about the time I started.

Q. In general, what type of repairing and remodelling would that embrace?

A. It would embrace general repairs, such as repairing doors and windows or anything that needs repairing, and when we remodel theatres and put in new entrances and that sort of thing.

Q. Painting?

A. Painting.

Q. Have you done work on the Glebe Theatre, in Arlington?

A. Yes, sir.

Q. Over what period of time, would you say?

A. Ever since they have been in there I have been doing work there.

page 682-A } Q. What were the mechanics of your coming to the Glebe Theatre, for instance to do work? How would it come about that you would be called over there?

A. I would be called from the office, the head office.

Q. Would that be true of the other theatres of the Neighborhood group?

A. Of all of them, yes.

Harry B. Goff

Q. Was there any difference in the manner in which the Glebe was maintained from the other theatres in the group?

A. No, sir.

Q. Mr. Goff, how far back do you keep the bills that you render?

A. We cleaned out last year—Over 5 years. We have got everything back for 5 years.

Q. Have you been shown some bills by Mr. Nunnelly, the auditor for Neighborhood, of your bills that go back a further period than that?

A. I saw some the other day. I don't know how far they go back. I didn't notice that.

Q. I hand you this packet of bills, and ask you to look them over and tell me whether or not they represent work done by you for the Glebe Theatre?

A. (Witness examined documents.) Yes, sir.

page 683 } Q. Mr. Goff, they covered a period from 1955 into 1965, do they not?

A. So far as I know, that's all the bills we have.

Q. Did you do work prior to that time in the Glebe Theatre?

A. Yes, sir.

Q. Were these bills paid by Neighborhood Theatres?

A. All of them.

Mr. Simmonds: I would ask that this group of bills consisting of 12 in number, on the bill head of Harry W. Goff, covering a period commencing December 17, 1955 an dending March 3, 1965 be admitted into evidence as a group, as Defendant's Number 20.

Mr. Harrigan: I would object to all of them going in.

The Court: Do you wish to examine them?

Mr. Harrigan: I take it he is entering them to show, just strictly for the purpose to show they did some work on the theatre.

Mr. Simmonds: If your Honor please, the Motion for Judgment alleged that the Defendant had violated its covenant to keep the property in good order and re-

page 684 } pair during the term, And we are admitting these in evidence to show that the defendant did in fact comply with this covenant of good repair. I think it is certainly competent evidence.

The Court: Objection is overruled. They will be received as a group as D-20. Tonight the clerk can staple them.

(Defendant's Exhibit 20 was received into evidence.)

Harry B. Goff

By Mr. Simmonds:

Q. Mr. Goff, I am going to ask you some questions about those bills, and I might ask two or three before you start looking through them; but I want you to point out as you go through them, bills that indicate work on the Exit Doors and work in connection with decorating the theatre, painting it.

If your Honor will look at them, I won't ask the question.

The Court: They are in, so I might as well look at them to save time.

Mr. Simmonds: Suppose you do that, then.

By Mr. Simmonds:

Since your Honor has looked at the individual bills, I think it won't be necessary for me to ask the questions I intended to, as to which ones related to Exit doors and

page 685 } repainting.

Q. Now, Mr. Goff, did there come one or more occasions on which you repained the interior of the theatre?

A. Yes, I recall painting the theatre.

Q. In connection with a repainting job, Mr. Goff, is it necessary to prepare the surface before the repainting is done?

A. It's customary, if necessary, to repair, yes.

Q. Sir?

A. Yes, it is customary and necessary to prepare a wall or/and wood surfaces.

Q. Is that true also of wallpaper?

A. Well, when wallpaper is scraped, you usually have to sand the walls and spackle and treat them, get *then* in good condition before we paper it.

Q. In connection with preparing the surface for wallpaper and painting, what is normally done by the painter in the normal job?

A. A normal painting job?

Q. Yes, sir, where you have a normal situation in redecorating, where the premises are in normal condition, what would one have to do in connecting with preparing the surface for painting and wall-papering?

page 686 } A. You would prepare the surface by plastering and spackling where necessary. The first time, you would have to sand it before painting it, and so on, yes.

Q. Do I understand that that's a customary thing to be done in any repainting job?

A. It is with me.

Mr. *Harrington*: Objection. I think the witness can testify. Mr. Simmonds' understanding is really—

The Court: The question is, is this customary?

The objection is overruled.

Mr. Harrigan: My objection was to the fact that it was leading, not that the evidence was—

Mr. Simmonds: I understand it is overruled, the objection is overruled.

By Mr. Simmonds:

Q. Is it customary to do this?

A. It is, sir.

Mr. Simmonds: I have no further questions of Mr. Goff.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Where is your office located, Mr. Goff?

A. 2022 P Street, Northwest, in Washington.

page 687 } Q. When was the last time that you were in the Glebe Theatre?

A. The last time in the Glebe—it must have been a few days before the finally completed the moving out of everything.

Q. What were you doing there then?

A. I am not sure but that I just went over to see Mr. Pearson on the way to another job.

Q. Are you *an* Mr. Pearson friends?

A. I have known him for 30 years from working for him, yes, sir.

Q. A few days before you weren't there for any particular reason?

A. Not to do any work.

Q. Was any of the equipment removed at that point?

A. I don't think so at the time I visited.

Q. Were the offices still in upstairs?

A. No, the offices were not.

Q. Were you upstairs?

A. Yes, I was upstairs.

Q. Did you see where the offices had been?

A. Yes.

Q. What was the condition of that upstairs?

page 688 } A. Well, there were a few holes where the par-

titions came down, not too many. I can't tell exactly—maybe dozen places where bolts or nails had been into the wall or ceiling.

Q. The holes were still there?

A. That's all I remember seeing up there, yes.

Q. Your company didn't fix that?

A. We didn't fix that.

Q. When was the last job you were in there fixing something?

A. I just couldn't answer that truthfully because I don't remember the last time. The last time I remember we were repairing doors out there, special—

Q. Wasn't that a door that was broken because of a burglary? Isn't that right?

A. The side door.

Q. Isn't that the door you fixed because someone broke in?

A. We fixed so many, I don't remember which one was fixed. We were always keeping the doors in repair because of the rough treatment they get. They needed adjusted, repairing—I don't remember exactly which one.

Q. Let's get back to my question: You don't recall that that door was the one which was broken as a result of burglary, and that's why it was fixed, do you?

page 689

A. I'm sorry, sir, I don't.

Q. It's marked right on your bill.

A. If it is, that's where it is. These tickets come into my office and my men say what they do. I check them to go out, but so many go out, I don't remember how many go out unless I can see them.

Q. That's one of your men did the repair work on it?

A. That's right.

Q. Did you even look at it?

A. Not after—It was the last time, no.

Q. What was the general procedure, do you usually do the work yourself?

A. My men.

Q. Do you even go down to the job?

A. Oftentimes, yes.

Q. When was the last time you painted the interior of the building?

The Court: Of what? *A* building or *the* building?

Harry B. Goff

By Mr. Harrigan:
Q. That building, Glebe building.
A. There again, I would have to look at the bills to see.

page 690 } The Court: You may.
Mr. Harrigan: Go ahead.
The Court: You're speaking of some interior work, or what, Mr. Harrigan?
Mr. Harrigan: Interior. Let's say the auditorium.
The Witness: Well, the lobby, for instance, was papered. We touched up the lobby in 1963, in September.

By Mr. Harrigan:
Q. What did you say, you touched it up?
A. The paint, where it was needed, to bring it up to—
Q. What's the amount?
A. It's only $200, the outer lobby.
Q. The outer lobby.
A. Where it slopes out.
Q. How about the auditorium itself, do you ever recall that?
A. We painted the dado and the trim and the doors. That's fabric wall covering, the walls.
Q. How about the ceiling?
A. We repaired the plaster on the ceiling because of a leak one time a year ago. I remember we repainted that, touched up the ceiling. Whether it was all painted, I don't remember.
page 691 } Q. When was the last time you were in the auditorium itself?
A. About the last time I was there, just a few days, as I said, before they moved out.
Q. You weren't paying, taking such attention to the premises when you were there, were you—just went up to see Mr. Pearson, didn't you?
A. Not particularly, but I generally see things in a building; even though I come in this building I see what's in here very quickly because I'm trained that way. There are certain things I saw, yes, but I did not notice anything unusual in the auditorium.
Q. Did you go in there?
A. I looked in there, I suppose. I'm sure I did.
Q. You don't know?
A. But not for any particular reason.
Q. In this preparatory work, if the paint is in good shape, is it necessary to attempt to chip it off or sand it?

Harry B. Goff

A. No, not if it is in good shape, it wouldn't be necessary to chip it off. The only reason to chip it off would be because there was a defect, to repair a defect in the walls.

The Court: Mr. Harrigan, I haven't heard tes-
page 692 } timony any was chipped off. I heard that it was brushed, the surface was brushed to get dirt from around the nemostats, and the rest of the surface was brushed where paint was flaking, and was sized or prime-treated before painting, so I think—I assume your question is right to that very point, but "chipping" is not a painter's term, generally speaking, I don't think.

By Mr. Harrigan:

Q. What makes paint flake?

A. Oh, that's a hard one to answer, sir. If it's flaking all the way to the plaster, it could go back to when th ebuilding is originally built. This is often the case. It's just possible the plaster was not properly dry when painted, or something of that sort, but years later, when you paint over the top, the paint will scale all the way down to the new plaster.

Q. That condition would be caught within twenty years, wouldn't it be, if that were the case?

A. Should be.

Q. What?

A. I couldn't say.

Q. I say, if that were the cause, it would be caught long before twenty years, wouldn't it?

A. It's hard to tell. I have seen it less time and
page 693 } last longer; some might last a lifetime. It's just a condition sometime of the plaster that does this. I can't tell.

Q. How about if the paint is just old, is that a major condition?

A. If paint is just old, it just loses its life and lustre, I would think.

Q. It doesn't flake?

A. It could. I have seen all kinds, and this is a question I just couldn't answer yes or no. I don't think anyone can answer it and be right.

Q. But if it is in that condition, then it's necessary to do something to brush it, or to do something else, prime it, isn't it?

A. We speak of it as spackling, anything that needs spack-

ling or plastering or preparing, what we call preparing the surface is spackling and sanding and smoothing as near to the original surface as possible.

Mr. Harrigan: That's all.

RE-DIRECT EXAMINATION

By Mr. Simmonds:

Q. Mr. Goff, would a leaking condition of a roof or walls cause paint to flake?

page 694 } A. Yes, sir.

Mr. Simmonds: If your Honor please ,apparently I made a mistake in attaching these bills. I notice the last one of the group in D-20 is for the State Theatre, and that should not be in the group.

The Court: You may tear it off and remove it.

Mr. Simmonds: And another one should be substituted, however, which is dated December 28, 1956. That does relate to it.

The Court: Tear off the State Theatre bill which is not applicable. The next one have the witness identify to see if it may be attached to the group.

By Mr. Simmonds:

Q. Is this a copy of a bill to the organization?

A. It is a copy of my bill, yes.

Q. What theatre is shown?

A. It's for the Glebe.

Q. What work is indicated on there?

A. Part of this work was what I said a while ago we had done in there, painting the dado and the woodwork in the auditorium.

Q. Could you tell us the amount for the painting and re-decorating?

page 695 } A. $702. Repairing of the ceiling in the Men's Room, $16; total was $774. It's my bill.

Mr. Simmonds: I ask that be substituted for the last bill in the group marked Defendant's 20.

The Court: So ordered. Staple it on the bottom, Mr. Clerk.

Mr. Simmonds: I have no further questions.

Morris A. Nunnelly

RE-CROSS EXAMINATION

Q. You're sure all the other bills are for work done at the Glebe?

A. Yes, sir.

Q. You're sure?

A. I'm sure, so far as are on those bills. They are checked as they go out of our office.

Q. The last one was for painting. How long does the normal paint job last before it has to be repainted?

A. It varies. It varies. Sometimes it needs painting in 4 or 5 years; some go for 10 years.

Q. Generally, what does it go for, normally?

A. On this sort of a building, on this type of building, you don't paint it as often as you do your own home, where you live.

Q. I'm sorry. I didn't hear you.

page 696 } The Court: You won't paint this type of building as often as your own home, which you live in.

Mr. Harrigan: That doesn't answer the question.

Mr. Simmonds: He hasn't finished.

The Witness: Normally, 5 to 7 years, but it could go longer.

* * * * *

Thereupon,

MORRIS A. NUNNELLY was called as a witness on behalf of the Defendant, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Simmonds:

Q. Will you state your name and address.

A. Morris A. Nunnelly, 1225 Graystone Avenue, Richmond, Virginia.

Q. By whom are you employed?

page 697 } A. Neighborhood Theatres.

Q. How long have you been employed by Neighborhood Theatres?

A. Since July 1941.

Q. What is your position with the Neighborhood Theatres?

Morris A. Nunnelly

A. I am office manager and in charge of the accounting department.

Q. Mr. Nunnelley, in your capacity as being in charge of the accounting department, have you made a study of your records to indicate the equipment and work which was put in and paid for by Neighborhood Theatres in the Glebe Theatre, in Arlington, when it was first constructed?

A. Yes, sir, I have tied that in with their books and tax returns, and that is a true and exact copy.

Q. Do you have copies of some or all of the invoices?

A. There are a few missing from that original 40 invoices, I would say.

Q. Mr. Nunnelly, I show you a paper entitled, "Glebe Theatre, original cost of decorating and installing equipment in April-Bay 1945," and ask you if that is the list that you just referred to as having prepared.

A. That's correct.

page 698 } Q. What are these documents that are attached to that?

A. These are the original invoices which have been paid from our office in Richmond in every case, with the exception of the 6 invoices which are missing, which over the period fo 20 years have been misplaced.

Q. Where did you get these documents?

A. They are capital expenses—

Q. Where did you get the particular pieces of paper?

A. From our file in Richomnd.

Q. What do these purport to be, these particular—You said something about capital—

A. Well, they are capital expenditures; in accordance with Internal Revenue, you have to maintain a file on your invoices so that they can check the amortization and depreciation on the particular improvements or equipment.

Mr. Simmonds: I will ask that these particular pieces of paper which I have just described, together with the attached documents described by the witness, be admitted into evidence as Defendant's Exhibit 21.

Mr. Harrigan: I woud have an objection, your Honor. I would like to ask the witness some question on it, your Honor, before being admitted into evidence.

The Court: All right. You may question.

page 699 } By Mr. Harrigan:

Q. You have this labeled "original cost for decorating and installing equipment"?

A. That's right, sir.

Q. That's the title you put on it?

A. Yes.

Q. Then, you have $49,000, right?

A. Yes, sir.

Q. Where is the architect's fee which comes with this decorating and installing equipment?

A. J. and D. Eberson—I think you find it in the middle of the page, in the amount of $4,856.60.

Q. You have included that in this list?

A. That's true.

Q. So that has nothing to do with decorating—has nothing to do with equipment, does it, that $4,000?

A. On the contrary, without the architect's plans, I don't think you could very well have done this job.

Q. On these invoices—

Mr. Simmonds: If your Honor please, I have another compilation that I wanted to put in evidence by Mr. Nunnelly, and perhaps Mr. Harrigan would like to work on both of them at the same time.

Mr. Harrigan: All right.

page 700 } The Court: Go off the record a minute.

(Discussion off the record.)

Mr. Simmonds: This is another list of capital improvements subsequent to the original, and on the second page it gives amounts expended for repairs which were chargeable on Income Tax returns.

The Court: Which procedure do you want, do you wish to ask questions before, or talk informally and offer the second?

All right. We'll stop cross-examination on D-21 and offer it and go to the second item so you can offer it before Cross.

By Mr. Simmonds:

Q. Mr. Nunnelly, I hand you a paper writing which has up at the top a "2" and then "Glebe Theatre, continued," Expended for capital Improvements During Lease Period," showing a total of $15,574.65. I also show you a paper which

has at the top "3," and "Expended for Repairs during lease Period," total repairs $24,300. I ask you to tell me what that document is.

A. Well, during the period of the lease, which was the beginning of April of 1945, we made all of these capital expenditures for improvements which would be page 701 } in addition to the repairs and of course the Internal Revenue service requests that these be spread over the length of the lease, rather than be taken as an expense during the particular year it was expended.

Q. Did you get up tht list yourself from the records of the Neighborhood Theatres?

A. These come directly from the corporation's books, which in turn carry right on through to the tax returns which I have examined, and I guaranteed you that they are correct.

Q. All right, sir. Now, with respect to the page marked "Page 3," will you tell us what that is?

A. Well, during the lease period, in addition to the capital improvements, we spent this $24,300 in round figures in normal repairs.

Q. When you say you spent that much in normal repairs, would that include the repairs done by men on the Neighborhood payroll?

A. No, sir, it does not.

Q. Where did those figures come from, of the repairs?

A. These are actual book figures during the years of the lease period.

Q. What are the papers that are attached to those two shets of paper?

page 702 } A. With the exception of five expenditures, these are the original invoices for the capital improvements during the lease period.

Mr. Simmonds: I would ask that those documents just described be clipped together and admitted in evidence as D-22.

The Court: D-22 would be after initial investment papers.

Mr. Simmonds: I offer that in evidence.

I would like to state for the record, so there will not be any confusion, that the front sheet of D-21 is marked, or is page 1 of 3 pages, and D-22 has pages 2 and 3. They are attached to D-21, the first page, the invoices with respect to the initial capital expenditures. They are attached to D-22, or call it D-22 for identification, and this moment and perhaps we should make D-21 for identification purposes.

The Court: All right.

Mr. Simmonds: They are attached to D-22 for identification, the invoices that Mr. Nunnelly referred to for the subsequent capital improvements during the lease period. There are no invoices attached to either one o fthose D-21 or D-22 for identification, with respect to repairs. We will go into that later.

page 703 } The Court: Off the record.

(Discussion off the record.)

The Court: On the record. Cross-examination.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Do you have those invoices in front of you?

A. Yes.

Q. Directing your attention to D-22, what did you say that was? What does that purport to represent?

The Court: I have heard that. You don't need to repeat it. Capital expenditures during the lease period, something over $24,000.

By Mr. Harrigan:

Q. Directing your attention to that letter, start on this 1954 one. You have an item for Cinemascope installation. That's sound equipment, isn't it?

A. Well, in the industry, every once in a while you have a trend.

Q. Is it sound equipment or not?

A. No, sir, it covers quite a bit of things.

Q. Isn't that equipment, though, that they took out?

A. I couldn't answer that.

Q. Maybe you can answer this: You have two simplex Excel Mechanisms.

page 704 } Mr. Simmonds: If your Honor please, I am not objecting to what he says, but there is no contention on our part that these things were left in the theatre when Neighborhood moved out.

Mr. Harrigan: Then, what relevancy is this particular list, your Honor, if it is not in issue?

Mr. Simmonds: We want to show that these these things that were taken out were purchased by Neighborhood Theatre.

Mr. Harrigan: Your Honor, I don't think that's in issue either. The lease gives them the right to take out seats, booth equipment, carpets, furniture regardless of who paid for it. If they shall install it, they shall be able to take it out. We don't contest they put in their projector and they took out their projectors and sound equipment; that they took out sound equipment isn't even part of the case. They have items here for thousands of dollars representing that type of equipment. I don't know what it has to do with this particular case.

Mr. Simmonds: Might be some or might not. We had to prepare this case based upon some allegations in the answer to interrogatories that were very broad and very extensive. It is true they have narrowed down considerably since that time.

But in the preparation of our case, we have got to
page 705 } come forward to prove what capital expenditures
we made which would cover items that were taken

and could have been in dispute, so we are submitting to your Honor all of the capital expenditures that were made by Neighborhood initially, and those made subsequently, and then to indicate that, if some particular item is claimed to have been removed, and the Court is in a position to ascertain whether or not that was one that was installed at the expense of Neighborhood, and I think that's, substantially, the language of the lease.

The Court: Do you have any questions based on D-21 and D-22 for identification?

Mr. Harrigan: There are a couple of others.

The Court: Let me hear those before I rule.

Mr. Harrigan: All right, your Honor.

By Mr. Harrigan:

Q. You have one, "For Mr. Goff—invoice missing," $168.60. What was that for, do you know?

A. More than likely—

Q. I asked you if you knew what that was for, not "more than likely"—if you know.

Mr. Simmonds: What's the date of that, Mr. Harrigan?

Mr. Harrigan: 1965.

By Mr. Harrigan:

Q. You don't know?

page 706 } A. I can't say definitely that it's painting.

Q. You have another one there for $432.63, Nelson.

A. Nelson is an air-conditioning firm.

Q. You have new carpets on here in '58.

Mr. Harrigan: Your Honor, there is no contest about the carpets in this particular case.

The Court: Do you have any other factual questions?

Mr. Harrigan: No, your Honor.

The Court: I'm ready to rule. Just as I admitted on defense theory, K and B bills to show they hadn't charged some other things, and there was some surplusage involved, the same here. D-21 and -22 are admitted, and the Court knows that some items are surplusage to the case, but that's been explained and I am up to 20 pages of notes, so I think I can delineate pretty well what's applicable.

Just mark the exhibits by striking words "for identification."

(Defendant's Exhibits D-21 and D-22 were received in evidence.)

The Court: Of necessity, in the admission of them, I do not propose to consider the totals thereon, but rather the applicable items.

Mr. Simmonds: That's correct. We don't offer it for the totals at all.

page 707 } Mr. Harrigan: On the *voir dire* on these, that's all I have. I may have some questions on them after Mr. Simmonds is through.

Exception on that.

By Mr. Simmonds:

Q. Mr. *Nunelly,* I think the last page of the Exhibit D-22, exculsive of the invoices, was a summary of the repairs year by year totalling $24,000-odd dollars. Do you have invoices for those, or some of those?

A. It was right difficult to match up invoices to the yearly figures I had, but you are holding in your hand the original invoices that we have on file.

Q. Does this purport to be all the repair invoices?

A. No, sir.

Q. How far back do these go, as far as you know?

Morris A. Nunnelly

A. I think we do have something back as far as 1945.

Q. Were all the repair invoices intended to be kept by Neighborhood?

A. No, sir.

Q. Why is that?

A. Well, it's not in accordance with Internal Revenue rules and regulations, and of course, the space problem makes it terrifically hard to keep them for 33 theatres.

page 708 } Q. What would have occurred?

A. It would have been destroyed.

Q. In this page I hand you entitled "Original Invoices, Repairs," what does that packet contain?

A. It's all the normal, necessary repairs which are not of a great nature, monetarily, that have occurred during the lease period.

Q. In so far as you have the invoices?

A. In so far as I have the invoices. I don't have them all.

Q. Can you testify whether all of the work indicated on the invoices that you do have was paid for by Neighborhood Theatres?

A. Yes, sir, all was paid for by Neighborhood Theatres.

Mr. Simmonds: I'm going to ask that that packet of invoices entitled "Original Invoices, Repairs," be marked and admitted in evidence as Defendant's Exhibit 23.

Mr. Harrigan: I would have the same objection to those, your Honor. They include invoices which have absolutely nothing to do with the case, and on equipment which has nothing to do with the case, like repairing armatures, that sort of thing.

The Court: From your looking at the file page 709 } jacket of exhibits offered, are they fairly apparent on the face of each, what they are for?

Mr. Harrigan: I think so. I'm not sure. I didn't look at all of them. But I think those that are not should not be considered, and those that are apparently for some other camera or shaft, or whatever it is, on its face, should not be considered—and those that are, for what they are.

The Court: Let us go through the file and pull out the things, will you, that you object to?

Mr. Harrigan: With the understanding—I mean, I could go through the file and pull out every one.

The Court: If you want to, trust me to do it.

Mr. Harrigan: Trust you to do it, with that understanding?

Mr. Simmonds: Let me say this, for Mr. Harrigan's benefit as well as the Court: We are not offering D-21, -22 or -23 for monetary amounts in there to recover anything on. In other words, we are not trying to recover anything from Mr. Sharlin. We are merely showing that we spent so-much, I mean that these items of original capital investment went in, subsequent capital investment or capital improvements, rather, and that we have bills for certain repairs, some of which might be relevant. Some may not, depend-
page 710 } ing on what the Plaintiff now claims to have been a breach of a covenant not to repair, and we offer them not for recovery of money, or for all of the bills admitted, for some of them have no relevancy. I we try to go through those at this stage, we would be here a lot longer than we have been up to now.

The Court: With that understanding, then D-23 is received. The Court will distinguish. The jacket in which they are kept will simply have a rubber band around it and the jacket they are in will be marked D-23.

(Defendant's D-23 received in evidence.)

Mr. Simmonds: Those are all the questions I have of Mr. Nunnelly.

The Court: I will ask you to wait a moment until I go through the file, because this is a case I am not going to take under advisement.

(Short recess.)

The Court: To the witness: Now that I have x'ed Exhibit D-23, the list on D-22, second sheet of paper which hase typed on it "Page 3," all thes invoices would be within those items?

The Witness: Yes, sir.

The Court: Let me say to counsel in consider-
page 711 } ing D-22, the supporting invoices in D-23 do show a number of things that are unrelated to this case, so I will concern myself with what is in D-23 rather than that particular sheet.

Mr. Harrigan won't need to cross-examine in great detail on that because the totals on that sheet are only totals; but when I look at the supporting invoices, I can see they had "repair to seats" which never was in issue.

That second sheet typed on page 3 of D-22 just should not be considered, rather the invoices behind it.

Mr. Simmonds: That, too, except that there has been an allegation in the Motion for Judgment—as I say that there was a great * * * about derelection of duty in failing to keep the property in repair during the term of the lease.

The Court: Right.

Tr. Simmonds: And this is merely to indicate that at least this much money was spent each year for repairs. Now, of course, we don't have any dollar figures to come up with in the end, and that's the only purpose of those, and I think it does—

The Court: The invoices give me the figure. I can distinguish between what they call "pulling down air-conditioning unit" which is probably annual, as between repairing a drain spout or a panic door.

page 712 } The Court: All right, your witness for Cross.

Mr. Harrigan: I take it, this page 3 is not admitted.

The Court: It's not going to be considered, but rather the invoices—

Mr. Harrigan: If it's not going to be considered, I won't cross-examine on it, because there are some items—

The Court: That's what I'm telling you, because I can't separate gross annual figures in that regard, so I will only consider D-23.

* * * * *

Thereupon,

R. WADE PEARSON was called as a witness on behalf of the Defendant, and having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Simmonds:

Q. Please state your name and address.

A. R. Wade Pearson, 4640—38th Street, North, Arlington, Virginia.

Q. What is your occupation?

page 713 } A. Motion picture exhibitor.

Q. By whom are you employed at the present time?

R. Wade Pearson

A. Neighborhood Theatres, Inc.

Q. How long have you been employed by Neighborhood Theatres?

A. October 1933.

Q. In what capacity are you employed at the present time?

A. Division Manager in charge of Northern Virginia theatres.

Q. How many theatres are embraced in that division?

A. Nine at the present time.

Q. Did you occupy that position in April of 196b?

A. Yes, sir.

Q. How many theatres were in your division at that time?

A. I believe it was 8 at that time. I can count them for you.

Q. Up until 1965, where was your office located?

A. 1949 until 1965, around the first of March, '65, it was at the Glebe Theatre, 2130 North Glebe Road.

A. In April of 1944 and 1945, what was your connection with the Neighborhood Theatres?

A. I was District Manager for Northern Virginia.

page 714 } Q. A that time was the Glebe Theatre constructed and equipped?

A. I don't recall the exact date of the opening. I think it was around April 23rd or 24th that we opened the doors the first time; I think we actually started the complete operation as of April 30th. In other words, we were opening the theatre at that time because on opening night I was painting the rear Exit.

Q. I was merely inquiring as to your capacity or title with Neighborhood at that time, and you were District Manager at that time?

A. Yes.

Q. Mr. Pearson, there has been considerable testimony about the parking lot. Will you tell me what the condition of the parking lot was at the time the Glebe Theatre opened?

A. As I recall it, sir, the day before we were opened there was kind of a red, muddy clay effect, I would say—as I remember it. I'm sure that Mr. Budina ordered bank gravel and crushed stone and all to put on that in hopes we could have it put in and rolled for opening night. This was done. I did not order it. I don't know what was ordered, but I know it was, something was put in and rolled so we could get cars on the lot.

page 715 } Q. Can you tell us whether or not has had asphalt black-top?

A. We did not have asphalt or black top. This was crushed stone, bank gravel, as I see, as I can determine.

Q. At that time was the remaining part of Mr. Sharlin's property facing Glebe Road and adjacent to Glebe Road used as a parking lot?

A. It was not used officially as a parking lot, but everyone that could park on there in dry weather—if it was wet or snow, you could not park there; you would become stuck—other people parked there as long as you could. It was not uonsidered part of the Glebe Theatre parking lot.

Q. Did there come a time when the parking lot was blacktopped?

A. Yes.

Q. When was that?

A. I think I started negotiations on that with Mr. Campbell the summer of '55. I don't know if Mr. Campbell came up with the idea or I did. We had so-many square feet of that parking lot. I spoke to Mr. Sharlin and asked Mr. Sharlin if we could use that much space in the front and use that space in the back. Mr. Sharlin and I agreed doing that, that it would make a better appearance.

page 716 } Q. Will you explain to the Court by reference to the Plat attached to Plaintiff's Exhibit No. 1, the part of the lot that was originally not intended as parking lot?

A. Show it to you or show it to everybody?

Q. Show it to the Judge.

A. Of course, I'm not a qualified architect. Your Honor, it's these, right here (indicating) as I see it, at the side door; right here is another side door, like this Exit Door and this is a side door. It's just what I overheard. I had nothing to do with it, that we were supposed to have all this parking. The landlord was to build here (indicating) but we would have an area-way so they could get into these doors. That was the reason this entrance door was put in here, so people coming off the parking lot could go to the window and buy tickets and pick up people, take them in. But this space was never used for anything but people coming and parking at their own risk. Many a person was pushed off that lot because it wasn't indicated—what other witnesses called Lots 6 and 7. But the whole thing was used, your Honor.

Q. Getting back to your testimony about the summer of 1955, you said negotiations were started in the summer?

A. Yes, sir.

R. Wade Pearson

Q. —summer of 1955. Was a black-top, asphalt
page 717 } surface put down in 1955?

A. I think August or September of 1955 Mr. Campbell—I think he may have been around the County for years and years and worked only in the summer time, knows everyone practically in the County—did the work. He put a number of feet; we actually rented—

Q. Don't go too fast. Where was it put down? Where was the asphalt put down?

A. Right here, sir.

Q. You include Lots 6 and 7?

A. Your Honor, if you took this space right here—

The Court: We call that 6 and 7. You may.

The Witness: We took this space, Mr. Counsellor, and put it right back here, and put this space here. This was asphalted; this was not.

By Mr. Simmonds:

Q. "Back here" you're referring to the back corner?

A. Back corner of Lots 1 and 2.

Q. All right, sir. Can you tell us whether or not that asphalt paving was paid for by Neighborhood Theatres?

A. I O.K.'d the bill and sent it to Mr. *Thalheimer,* Jr. who paid it, and I believe it was $250 held back at Mr. Campbell's
insistence so he could come back a year or two
page 718 } later and would make any repairs that it required
at that time, and if everything was satisfactory, give him the additional $250; that was done at his suggestion.

Q. What was the total paid for by Neighborhood to Mr. Campbell for that. If you don't remember—

A. Between $4,000 and $5,000—$1.00 or something a foot, 4,000 and some feet.

The Court: I can't help but recall Exhibit 22 shows September 30, '55, re-surfaced parking lot, $4,000.

Q. You say $200 was paid the following year, too?

A. Might have been $250. I don't recall, sir.

Q. Was there any maintenance done on the lots other than the re-surfacing, or the surfacing in 1955?

A. I don't recall any great deal of maintenance between '55 and '57 other than painting the lines on the lot.

Q. Thereafter, was any maintenance work done?

A. Yes, sir, we had maintenance and upkeep every time a pot-hole came in, I asked Mr. Snarr to help us and the maintenance man, and we'd send down and get hot mix and take the holes out. One time, Mr. Campbell came down where we made repairs—Mr. Campbell always advises my office around the first part or latter part of March, each page 719 } year, comes to inspect the lot for us. (He was trying to drum up business.) Mr. Campbell said it was something you can take care of yourself; it's not big enough. We worked very close with him. We kept it painted. We did the best we could to get the most number of cars on there—tried to correct it.

Q. Was any work done on the parking lot by the regularly-employed men of Neighborhood Theatres?

A. Maintenance man named Pullen—he is now maintenance man; at that time he was a porter, and then made maintenance man—he was a porter at the Glebe Theatre. Every time something was done on the parking lot, we tried to repair it. If it snowed or rained tonight and a hole came there the next morning, we didn't get to it at 8 o'clock the next morning; we got to it as quickly as we could because we were still trying to maintain your property and get business to the theatre.

Q. Mr. Pearson, there has been considerable testimony in the case to the effect that the attraction panels were removed at he time Neighborhood vacated the property. Do you know what disposition was made of those attraction panels?

A. Yes, sir. The Jack Stone Company removed the attraction panels, and ascertained that they—

Mr. Harrigan: Objection as to what Jack Stone ascertained, your Honor.

page 720 } By Mr. Simmonds:

Q. Let me ask this: What was done with the attraction panels as a result of what Jack Stone Company reported to you?

A. Sir, the best way to answer that is in the letter from the Jack Stone Company.

Q. That's been objected to, so you just tell me what was done with the attraction panels, if you know.

A. Jack Stone Company put them on a truck and hauled them away.

Q. Hauled them away to what?

A. I didn't go see.

Mr. Harrigan: Objection.

The Court: Did you direct they be "junked" at any time because of something somebody told you?

The Witness: Yes, sir, because of—by experts.

The Court: That's a yes or no answer.

Mr. Harrigan: I object to that, your Honor, the last part of—

The Court: All I asked for was a "yes" or "no." That's a "yes."

By Mr. Simmonds:

Q. What was the condition of the attraction panels when they were taken down?

page 721 } A. I didn't inspect them, Mr. Simmonds.

Q. Mr. Pearson, were you there at any time during the period that Neighborhood was moving out its equipment?

A. I was there when we closed the theatre on Sunday night, I think April 25th, the last show, and a little tear was shed, more or less, to have to close up. The next morning we came in and started to move our equipment, and I think compressors had been moved out of the basement; the electrician came in and was to take out the light fixtures and the seat people came in to takeout the seats; the concession people sent over for the concession stand; the carpet man came around to take up the carpet, and we had the frames taken off the wall in the outer lobby. Everything from the upstairs lounge had been cleaned out.

Mr. Snarr came in and one time I passed by the booth—two or three operators were with him. Snarr was doing his job in the booth, I stuck my head in. Mr. Snarr, on Tuesday or Wednesday, was down at the stage, taking the stage—I stuck my head in and said, "How are you getting along?"

Q. Mr. Pearson, did you have an opportunity to observe whether or not any of the light fixtures were removed from the canopy, or under-side of the marquee at the time you all "closed shop"?

page 722 } A. I don't recall the fixtures or lights under the marquee being disturbed at all—not being touched by anyone.

Q. Would you have observed this, had there been by the time you left?

A. I think so, sir. I'm quite sure I would. I think your question was, would I have observed it before I left?

Q. Yes.

A. Your Honor, I have to answer that question this way: I say when I left, it was late Thursday afternoon, and I went out the side door; I did not go out the front door.

Q. Did you order that the marquee lights be removed?

A. No, sir.

Q. Did you ever see the canopy of the marquee at any time with the lights removed prior—

A. No, sir—not removed. I have seen them where the reflectors up there were broken, a couple of reflectors were broken.

Q. That was before you moved out?

A. Yes.

Q. Before the period of removal?

A. Yes, sir.

Q. Mr. Pearson, during the term of the lease, could you tell the Court what was the condition of the Exit doors? I guess you call them "Exit" doors.

page 723 } A. Mr. Simmonds, your Honor, sir, Exit doors are the most essential part of the theatre, as far as safety is concerned. These doors have to be tripped ever-so-gently, and the Fire Department inspect these doors periodically. We had a policy that our managers must inspect these doors before opening, during the show, and after closing at night. They cannot have any security device on them at all except a little bolt that comes down and fits on them. This rod can be bent very easily, and I dare say that 95 percent of the Exit bars in any theatre of the world can be broken into very easily with a small crowbar. Exit bolts are constantly in the state of repair, or disrepair, in all situations; and we worked on those things, not week in and week out, but day in and day out. They were always a constant repair—not only Glebe Theatre, but every theatre.

Q. What was the condition of the doors when Neighborhood vacated the Glebe Theatre?

A. Well, set by set, sir, the doors needed replacing. The doors had been repaired and repaired, and the doors could have been repaired some more and lasted, in my opinion, another 3 or 4 years, but the doors still needed replacing, the same as I can take you to other theatres and show you where doors need replacing.

page 724 } Q. Prior to Sunday night, April 25th, 1965, was any of the equipment removed from the theatre, and if so what?

R. Wade Pearson

A. Yes, two compressors and 2 air-conditioning compressors and motors.

Q. Where were they taken from?

A. The 1510 compressor was taken from (to)? the Center Theatre; 4050 compressor was taken to the State Theatre.

Q. About when was that?

A. Sometime between December and the 15th of February.

Q. Where were they taken from?

A. Taken from the compressor room in the Neighborhood Theatre?

A. Is that in the basement?

A. Basement, next to boiler room, sealed off by fire walls.

Q. As of April 25th, Sunday night, was there any other equipment that had been taken from the theatre, as far as you know?

A. No, sir, we had to operate right through, through 11 o'clock Sunday night as if we were operating opening day.

Q. I take it, then, you had the screen and chairs et cetera?

A. Yes sir, and for the safety of the patrons,
page 725 } you have to have all the appertenances in order.

Q. Up to that time, were the doors closing?

A. Yes, sir, closing—secured that night at 11 o'clock. I went around and checked them myself, even after the manager had checked them.

Q. Could you tell the Court the approximate admissions per week at the Glebe Theatre, well, say, during the last five years of operation?

A. You want an over-all average, sir?

Q. Yes, sir; then you can tell us variations.

Q. I would say around 4,000 admissions, and this would vary on a Children's Show, your Honor: Maybe it would play to 10,000 a week and drop to some type picture, that it would be 2,000 or 1,500; but I would say on the average, it was between 4,000 and 5,000 a week.

Q. What was the composition of the audience, with respect to adults-children? Were there any particular—

A. You said, how many people now. You come along with a Children's picture or Disney picture, and you would play to that many children. Your gross would not be up; your gross would be down, but you have played to—The children would be 50 cents, and adults always paid 90 cents to a dollar, special pictures. You'd take twice as many children, or two-to-one, rather, as adults to adults.

page 726 } Q. I wasn't so much interested in gross receipts

as the number of people going through the theatre. The 10,000 you referred to on the Children's picture was the number of people that went through the theatre?

A. I'd say it went as high as 10,000. Those weeks may be 3 out of the 5 years where you have a big Disney picture or something.

Q. Mr. Pearson, I ask you did you have your office in the Glebe Theatre at the time the Glebe Road was widened?

A. Yes, sir.

Q. Could you tell the Court what drains existed on the front of the property prior to the time the State widened the road?

A. I could draw a layman's diagram much easier for it.

Q. That's all right. Have you a piece of paper?

A. No, sir. (On paper) This is Glebe Theatre (drawing); this is the parking lot; this is the building; this is the box office, right here; the marquee came over the box office. Right here was the sidewalk line after the road was complete. This is after—the State put in the sidewalk and curbing and gutter. We had sidewalk back, I would say, right here before the State came through, and it might have been a little bit—That was all worked over with gravel before the Stated started improvemen.

page 727 } Right here (drawing) is where our sidewalk started, and this was the end of the sidewalk. In other words, there was a sidewalk—You came down, and this was all sidewalk (indicating) where the other went back to the building, originally. Right here was a drain. This drain, I would say, was 18 by 18, or 20 by 20, like that with cross bars. That set right there. But right here (indicating) was, I would say—I don't know how wide the sidewalk is, 4 or 5 feet, was a 12-inch steel trapdoor with a drain. The State took both those drains out.

Q. After the State took them out, was any drain put in by the State?

A. No, sir. That caused the water to come down, as the water still does today—water comes to the parking lot and flows over the sidewalk, on a heavy rain. Heretofore, that drain—I guess it was two drains, both of them—I know this was a drain. The State took it out.

Q. Mr. Pearson, prior to the time the state made the improvements in the road, had you observed any sinking of the concrete apron immediately in front of the box office?

A. You mean that butts up against the box office?

Q. Against the terrazzo.

A. No, sir. It started settling after that, and it has dropped each year.

page 728 } Q. Did Mr. Sharlin take any steps to install another drain after the State closed up the one you referred to?

A. I don't think he did that. I don't know, sir.

Q. Mr. Pearson, would you please tell the Court, what was the condition of the building when Neighborhood finished taking its equipment and furniture and so forth out and closed the building?

A. Your Honor, I went into the building on Thursday afternoon—the last day was on Friday—Thursday afternoon, between 4 and 5 o'clock, and I was pleased to see the building had been swept and was actually clean. I even went through the basement. I didn't go into the projection booth; I didn't go out front. The lobby, the foyer, auditorium and the basement were in what I thought to be very good condition, and I also at that time checked the rear Exit doors.

Q. Were they closed at that time?

A. Yes.

Q. Do you know when the key was turned over to Mr. Sharlin?

A. I went back to my office and told Mr. Regney to call Mr. Sharlin and take the key back to him. I said, "Give him an extra day," not wait till the last minute, and he told me Mr. Sharlin had sent up for the key.

Mr. Simmonds: You may examine.

page 729 } CROSS EXAMINATION

By Mr. Harrigan:

Q. You have already testified you were with Neighborhood when this building was built?

A. Yes, sir.

Q. After the structure was put up, when did you put your offices in the building?

A. 1949, sir.

Q. '49?

A. Yes, sir. I'm sure that's correct.

Q. You took them out when?

A. I believe around March 1st, 1965.

Q. March 1st?

A. Yes.

Q. Did you repair the walls where you took them out?

A. I did not repair the walls when I took them out. I didn't take them out.

Q. Why not?

A. Because whenever you are going to take a new theatre over, it is ordinary wear and tear—spackle the walls for repainting; we were doing it. We repaint it.

Q. You and Mr. Sharlin weren't getting along at that time, were you?

A. I wouldn't say — At that time when we moved out?

page 730 } Q. Yes.

A. Mr. Sharlin and I, I wouldn't say were getting along too well. I wasn't too happy at leaving.

Q. Weren't you upset at him for leasing the theatre to K and B?

A. Yes, sir. I was very unhappy.

Q. You were very unhappy about it?

A. Yes.

Q. As a matter of fact, Neighborhood had purchased property, or had a contract on property, subject to zoning, right down the street, didn't they, for a new theatre?

A. May I have the question read back? I can't answer that. I want to answer that correctly.

(Last question read back by the reporter.)

Mr. Simmonds: If your Honor please this is not a matter that was developed on direct examination, and it seems to me that that question was a trifle leading, and I don't think it's relevant to any of the issues in this case at all.

Mr. Harrigan, Your Honor, this is cross-examination, and I think it shows that there was a bias there during that time, and you can always bring out bias of the witness as reflects in the answers that he gives on direct, and what the true circumstances were around this time when all

page 731 } these fixtures were being taken out. He's already testified that they were unhappy with each other.

The Witness: Not just unhappy with each other; unhappy with losing the theatre.

Mr. Simmonds: Just a minute; your Honor, it seems to me this has no place in it at all.

The Court: As a subject matter, it is proper in the case.

R. Wade Pearson

The only immediate question in my mind is relating it to the examination of this witness in chief, when he has testified the theatre was left clean and so on, and then he's testified yes, he had some feeling.

I think cross is broad enough to permit showing of why there might be a feeling.

Mr. Simmonds: Exception please.

The Court: You may answer, Mr. Pearson.

The Witness: Answer the last question? No.

By Mr. Harrigan:

Q. Is your answer that you did not intend to—

The Court: His answer is "no" to what you asked him. If you want to ask a new question, that's all right.

By Mr. Harrigan:

Q. Did you have any plans, or take any steps towards opening a theatre down the street?

page 732 } A. My intentions were to try to purchase property and open a theatre in the future, down the street.

Q. Where down the street? How close to the Glebe?

A. By feet, yards, or—

Q. Feet, yards, blocks.

A. Well, the Glebe Theatre—Here's a lot belonging to Mr. Kendricks; there is a lot, a street going down here (indicating); here is a white house, a white house Mr. Eaton's house. We tried to put 3 pieces of property together, 128,000 square feet.

Q. Where is the Glebe Theatre?

A. Right here (indicating).

Q. Next door.

A. Next door is like chair-to-chair.

The Court: A few properties away.

Mr. Harrigan: All right.

By Mr. Harrigan:

Q. And the zoning did not go through on that, did it?

The Court: I'm not concerned with details. You offered it for motive and you have already shown—

By Mr. Harrigan:

Q. As a matter of fact, you already took most of the fix-

tures out of the Glebe Theatre and took them to one of those houses to store them, didn't you?

page 733 } A. You'll have to define "most" for me if you want me to answer the question.

Q. Did you take any down there?

A. Yes, sir.

Q. Which ones?

A. Took a couple of motors, glass from the attraction panels, furniture, and some ash-stands and odds and ends of carpet, stored it there. It all has since been stolen.

Q. You said something about glass from attraction panels.

A. Yes, sir.

Q. Would that be the attraction panels in the marquee?

A. Glass, just like this up there (indicating).

Q. The attraction panels are made out of glass?

A. No, sir, attraction panels are made of—I imagine, I'm not an authority—I imagine they are made of metal or galvenized iron with a trough, with lights inside the trough. They have little slots where about four pieces of glass sit. Each attraction panel depends on the side racks—go in front of the glass; letters go on front of the racks, and the light shines through.

Q. Would it be safe to say the panels are frames around this glass? Which part of it was thrown away, of this attraction panel?

page 734 } A. The attraction panel itself, the whole attraction panel, the trough.

Q. That was thrown away?

A. I don't know where it was taken. Jack Stone Company put it on its truck and took it away.

Q. Part of the glass part you took down and stored it?

A. I didn't. I think the maintenance man did.

Q. Who took the glass panels out?

A. The maintenance man—maybe Jack Stone took it off and picked it up.

Q. Do you know if it were taken out with a torch?

A. I thought the signs were taken down in a professional-like manner. It would be very difficult to take it out with a torch.

The Court: Which way, with or without? I'm talking about the glass.

Q. Isn't it a fact that you attempted to sell the seats in the

theatre and some of the equipment in the theatre to K and B Theatres?

A. I don't think the seats were in. Mr. Marvin Goldman came over to my offices, and we spoke downstairs, and I offered him a "package deal." Mr. Goldman was most enthusiastic about it, and said he would have to go

page 735 } back to his office and call me. Two days later he talked to me on the phone. He said, "I'm sorry. I have a partner."

Q. Which meant, he didn't want to buy the equipment?

A. I would take that for "no," yes, sir.

Also, as long as you're on that subject, I might add that four or five days before we took the attraction panels, I called Mr. Goldman on the phone, and asked if he wanted to for us to leave them, not take them down, and—

Mr. Harrigan: I didn't ask him that. That's stricken. I move that that be stricken.

The Court: It will be stricken. He's volunteered that. It's stricken.

By Mr. Harrigan:

Q. Who ordered the Exit panels taken out, you?

A. I told Mr. Tommy Dickinson, of Marvin Cowherd, to send an electrician to take down all fixtures.

Q. He even took down the little lights outside the Exit doors, on the outside.

A. Not to my knowledge, sir, they did not.

Q. They did not?

A. Not to my knowledge, sir, they did not.

Q. They did not?

page 736 } A. No, sir, and when we got there, told them to leave the auditorium lights in, that they could probably use them.

Q. You couldn't reach the auditorium lights without expense, could you?

A. I object to your telling me something I can't do in the—

Q. Don't object; just answer my question.

Q. You can reach them all day long. You can go to the attic and play with them, take them out and put them in 40 times a day.

Q. You left them for the new tenant?

A. Yes, sir.

Q. What about the marquee lights you testified to?

A. I never testified to the marquee lights before the theatre.

Q. You don't know anything about them?

A. No, sir.

Q. You've testified you left the eight lights in the auditorium in because the people could use them, right—might be able to use them, right?

A. Yes, sir.

page 737 } Q. Why didn't you leave the Exit lights in? Couldn't they use those, too?

A. I told 'em to take the Exit lights because we had bought and paid for, purchased. As I had received instructions to take all fixtures, I didn't question it.

Q. Who gave you those instructions?

A. I think it was part of the lease that was sent up. Mr. Nunnelly said this speaks for itself: "All fixtures and furniture come out."

Q. So, Mr. Nunnelly gave you the advice?

A. I requested a sheet, the copy of the lease—I think the second paragraph—and it says take all fixtures.

Q. Pursuant to that request, then, wasn't it a little inconsistent to leave in the auditorium lights if you took everything else out?

A. Well, if you're speaking of consistency, sir, all the way through, yes. I would say I should have taken out the auditorium lights. Yes, I should have, yes, sir.

Q. Of what value was the inside of the Exit lights that you took out, to you?

A. Mr. Counsellor, none of the fixtures were of any value to me, and I don't know what part of the Exit light was taken out.

page 738 } Q. None of them were of any value?

A. I didn't get up and examine—I told them to take them out—didn't get up and examine what was taken out.

Q. Were you there when they disconnected the seats?

A. I was in and out among the building, walking. I was down there in the part of the auditorium where the men were taking the seats out.

Q. Did you see how they were taking them out?

A. No, sir, I can't honestly say I saw, Mr. Counsellor, how they were taken out.

Q. Did you instruct them how to cut the wire?

A. I had nothing to do with how to remove the seats at all.

R. Wade Pearson

Q. Who hired the men, the electricians?
A. I hired the electrician.
Q. Who gave them instructions?

Mr. Simmonds: Let's get straight which you are talking about, the removal of the seats or wired lights.
Mr. Harrigan: Wired lights.
The Witness: You said seats, sir.

By Mr. Harrigan:
Q. Who gave the electricians instructions to disconnect the seats from the wire?
A. I can't say. I think I asked the elctrician to please disconnect the lights from the seats so the men could
page 739 } take the standards out.
Q. All right, now. The booth, you said you weren't in the booth?
A. I stuck my head in the booth, passed by, and said, "How you getting along."
Q. So, you don't know what they took out of there?
A. No.
Q. You weren't up there or you couldn't—
A. Because I saw the merchandise around the other theatres when delivered.
Q. There was a whole bunch of trash that you said was dumped also, right?
A. Did I say that?
Q. Did you say that?
A. I don't remember saying that.
Q. That's not true, then—there wasn't a bunch of trash?
A. Yes, there was. I didn't say it. I will say it now if you want me to.
Q. Well, say it.
A. There was trash, records, put on the truck—other trash accumulation in the theatre, stuff I put no value on, back-stage. The trash was taken from the basement,
page 740 } maybe back-stage or the storerooms, those not accumulated where it wouldn't be seen in the auditorium or lobby proper. That was from the patrons—the storerooms.
Q. Did you inform Mr. Sharlin what date you were moving out of that theatre?
A. No, sir. Mr. Sharlin informed us by letter we had to be out by April 30th.

Q. So, you didn't bother to call him and have him come down or anything, did you?

A. No, sir.

Q. When was the first time he learned that you were out of the theatre?

A. I don't know, sir.

Q. You didn't eevn bother to tell him you were out after you got out?

A. In my previous testimony, I told you I told my assistant to turn the key over to him Thursday afternoon, in advance, an dlet him have it; in the meantime, when I told him that, shortly after, he sent up to the office for the key.

Q. This was after you had already been out, right?

A. We weren't already out; we were just, had just examined the theatre and inspected it. We turned
page 741 } the key over to Mr. Sharlin as fast as we could possibly.

Q. That was Thursday afternoon?

A. As far as I know, that was Thursday.

Q. Didn't you say you showed the last picture on Sunday and moved the next day?

A. We had the last picture on Sunday, final inspection Thursday afternoon.

Q. Final inspection after everything was removed, you mean?

A. Yes, sir.

Q. Didn't he get the key Thursday afternoon?

A. I do not know, sir. My assistant, Mr. Rigney, told me Mr. Sharlin sent up and received the key. That's all I know to this day.

The Court: If I count the days right, you were out one full day early, is that right?

The Witness: Yes, sir. Yes, sir.

By Mr. Harrigan:

Q. Did you have a janitor down there that helped you remove some of this equipment?

A. A janitor, sir? Yes. I stated Mr. Pulham was the janitor.

Q. Mr. Pulham.

A. Yes, sir.

page 742 } Q. What equipment did he take out, if any, do you know?

A. Mr. Counsellor, I couldn't tell you.

R. Wade Pearson

Q. You don't know? That's your answer?
A. He was more or less in charge of taking—
Q. The janitor was in charge of taking the equipment out?
A. He was a maintenance man at that time. He was a maintenance man a couple of years before that—he was in charge of taking that out.
Q. In charge of taking the fixtures out?
A. He said what equipment he'd taken out. I try to answer your question to the best of my knowledge.
Q. All right.
A. He was there as if coming in to the theatre to clean it, get al lthe trash out. He was just helping as well as he could on his own. The man is very intelligent, and he does a wonderful job for us today. He left us for a while and come back; he's done a good job as maintenance man.
Q. All right. A lot of the fixtures that you took out, it *coust* you more to take them out than they were worth to you, didn't it?

Mr. Simmonds: I object to that question, if your Honor please. It certainly has *not* relevancy here.

The Court: I think it's part of the issue in the
page 743 } case. Maybe I stirred it up with one of my questions today.

Mr. Harrigan: I'll withdraw the question.

By Mr. Harrigan:
Q. The parking lot: As I understand your testimony, the parking lot was paved at your instructions, is that right?
A. On my recommendation. I received approval from my home office, on my recommendation.
Q. Subject to your recommendation, the home office approved it and paved—
A. Not fixed—paved.
Q. Paved.
A. Yes.
Q. That was paved with the understanding that you would maintain it, right?

Mr. Simmonds: If your Honor please, I don't think that's a proper question to ask this.
The Court: What foundation is there for that?
Mr. Harrigan: The fact that they did maintain it.
The Court: That doesn't make an understanding. Are you

referring to the lease?

Mr. Harrigan: Well, yes, your Honor.

The Court: That would be a matter for argument to the Court rather than to the witness.

Mr. Harrigan: All right, your Honor.

page 744 } By Mr. Harrigan:

Q. When you paved, Area 6 and 7 were paved —if you know what I mean by Area 6 and 7? Those are the two lots up front, is that right?

A. I would rather you say when I had it paved. I didn't pave it. Mr. Campbell paved it.

Q. When it was paved.

A. I will show you exactly what we paved and what we did. Show me the *platt*. I told you I paved this, and took this much out here and didn't pave it.

Q. So, you had substantially the same sized lot?

A. I think we had more lot because back here, you could squeeze cars in there, back there at night if you needed them.

Q. So you had more lot?

A. You had the same amount of space, but you had better parking, put it that way.

Q. Were you aware that there were some 200 *squard* yards with the pot-holes in this lot that Mr. Gly fixed?

A. Mr. Counsellor, I don't know where he got the pot-holes from. I can almost, out of my memory, pick out where pot-holes were in the lot. We had a lot of trouble; I'm going to tell you. Right here was a—There was no entrance-way at all for Glebe Road. We had an awful lot of trouble with two holes right here. We patched these things maybe page 745 } once a week; about every month they had to be dug out and re-patched. There were two pot-holes. The rest of the lot was in better shape than the average lots around town. Back here where you didn't have any—This was still crushed and there might have been some rough holes back there. Over here where you have your French drain might have had a hole here, or a hole here (indicating), but there were no 200 squares of that because I have been at that parking lot many a night when we were busy and parked cars myself and have driven them by, taking a flash light and guiding people along the parking.

Q. You didn't have any lights on the lot?

A. Yes, we did, yes, sir.

Q. Oh, you did?

R. Wade Pearson

A. Right here we had a pole (indicating). We replaced those things as fast as the kids throw rocks at them—one right here and one right here.

Q. When 6 and 7 in that area were paved, it was only paved up to about 2 feet from the building, right?

A. I'll explain it to you, sir.

Q. I'm familiar with the diagram now, sir, so—

A. Right here (indicating) was an Exit door, you know. The building set back like that, see. The building had come down to another corner right here, for, I would

page 746 } say that's 18 feet. Twenty inches were not paved up to that—it was hard-packed, but was not paved. This did not change the flow of water. Can I tell you the whole story? You don't want me to tell the whole story?

Q. I'm just interested in this. I don't want the whole story. That was not paved?

A. That's right, 18 inches by 18 feet. That was because bumpers would be up against the building.

Q. Did you have a problem of water there, with that washing out?

A. No, sir. No, sir. I tell you—No, you won't let me tell you.

Q. This drop in the sidewalk, or the foyer by the ticket stand.

A. Not the foyer.

Q. Strike the foyer. What do you call it, right by the ticket stand, outer—

A. Sir, I wouldn't know the technical name.

Q. Let's call it by the ticket booth.

A. You had a terrazzo floor.

Q. Right.

A. That came up to the building line.

Q. Right.

page 747 } A. On the left side, going into the theatre, from the ticket box down to the first poster frame, the sidewalk that was adjoined, or abutted the terrazzo was dropping gradually, and I would say, though I never measured it, but I would say from starting here, starting with a 16th of an inch, it might have gone to an inch-an-three-fourths. An inch-and-three-fourths is not bad.

Q. That definitely constituted a hazard, that inch-and-a-half drop?

A. Sir, a millionth of an inch hazard is a hazard. I almost killed myself, falling down in the Glebe—the marquee—a year

before that. Had nothing to do with us, with the theatre—I fell right over, so anything can make you fall.

Q. These three or four thousand people that go in there ever week or so?

A. Fortunately, they came out that way instead of stumbled in—didn't touch 'em going in.

Q. This is the area three or four thousand people have to travel over after they get their ticket?

A. No, sir, I said that they come out that way, the side door. I would say 40 percent of the people came back over the walk, and it wasn't as dangerous as it looks, page 748 } because it was close to the box, and people didn't walk right where the part was.

Q. They did not?

A. No, sir.

Q. Not to prolong this, but I thought you said it went from the box all the way over to the Coming Attractions.

A. Where the box office came to the show cases, it started about a sixteenth of an inch, and came to the back of the box.

Mr. Harrigan: That is all.

RE-DIRECT EXAMINATION

By Mr. Simmonds:

Q. Mr. Pearson, you were asked by Mr. Harrigan about the attraction panels. Prior to the time they were removed had you tried to dispose of them in some other manner?

A. Yes, I offered Mr. Goldman a "package deal." Mr. Goldman apparently wanted them, but apparently his partner did not, according to his statement to me.

Q. Were attraction panels a part of the package?

A. Everything in the theatre, I think, except the seats.

Mr. Simmonds: I have no further questions.

Mr. Harrigan: I have one more question. It has to do with the compressor on the roof.

page 749 } RE-CROSS EXAMINATION

By Mr. Harrigan:

Q. Why wasn't that removed?

A. Number one—

Mr. Simmonds: Before you answer that, if your Honor please, as I argued to the Court yesterday, I think it was, there is no requirement in there that they had to remove it, and we had heard no evidence that he had been asked to hemove it. I don't think it's a proper subject of inquiry.

The Court: Overruled. It's all on this topic of what's removed.

Mr. Simmonds: Exception.

The Court: You may answer.

The Witness: About the same reason we didn't remove the lights out of the ceiling, just didn't do it, but didn't think it was—At the time, left it in case they could use it.

By Mr. Harrigan:

Q. You knew it was worn out, didn't you?

A. No, sir, it wasn't worn out; went through the last cooling system very well, wasn't worn out. I could say several reasons why it was left there: It was left there because if page 750 } they could use the new system, fine; if they wanted us to take it down, take it down. I didn't see—I didn't know actually whether or not we were forced to take it down.

Q. It would have cost a lot to take it down, you knew that, didn't you?

A. I don't know, sir. I never inquired as tot he cost of taking it down at that time.

Mr. Harrigan: That's all.

RE-DIRECT EXAMINATION

By Mr. Simmonds:

Q. Did Mr. Sharlin ever request you to move the air-conditioner from the roof?

A. Never requested me to, sir.

Q. Did he request anybody in your organization, as far as you know?

A. Not as I know of, sir.

RE-CROSS EXAMINATION

By Mr. Harrigan:

Q. He didn't request you to take out anything else you took out either, did he?

A. No, sir.

* * * * *

page 751 } Thereupon,

MORTON G. THALHIMER, called as a witness on behalf of Defendant, having been first duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. Simmonds:

Q. Mr. Thalhimer, will you please state your name and address.

A. Morton G. Thalhimer, 1013 East Main Street, Richmond, Virginia.

Q. What's your connection with Neighborhood Theatres?

A. At the present time, I'm chairman of the Board of Directors.

Q. Prior to that time, what was your office?

A. I was present of the company until, I think, around September of 1964.

Q. In 1944 and '45, what was your office?

A. I was president of the company.

Q. Would you explain tot he Court the number of theatres that are operated by Neighborhood Theatres?

A. Neighborhood Theatres have—the largest number of theatres they operated at any one time was fifty.

Q. Was that during the period you were associated with the organization?

page 752 } A. Yes, it was.

Q. Over the period of time that you have been connected with Neighborhood Theatres, do you know how many different theatres have been operated by them?

A. Do I know what, sir?

Q. Over the period of time you have been connected with Neighborhood Theatres, do you know how many different theatres they have operated or are operating at the present time? Maybe you mean the 50 to apply to that.

A. I think at one time we were interestd in 51 theatres. Since 1957, which I have looked at recently, in a 10-year period, we have closed 17 plus, and I think opened about 8 and at the present time, we are operating 33 theatres.

Q. Over what period of time have you been connected with the motion picture theatre industry?

A. Since 1926.

Q. Do you hold any positions or have you held any positions in industry organizations?

A. I have been in the real estate business since 1913.

Q. Before you get into real estate, have you any office in any moving picture theatre organization?

A. I have been president of the Motion Picture Association, member of the Board of Directors and President,
page 753 } executice committee, of the Theatre Owners of America.

Q. Are you also engaged in real estate business?

A. Yes, I am.

Q. How long have you been engaged in that?

A. Since 1913.

Q. Do you have your own company?

A. Yes, sir, I do.

Q. What's the name of that?

A. Morton G. Thalhimer, Inc.

Q. Are you engaged or have you been engaged in the appraisal work?

A. Yes, sir, I have.

Q. Would you please state what type of appraisals you have done?

Mr. Harrigan: Your Honor, at this point, I want to object. I don't know what relevance this testimony is going to have, and I would like Mr. Simmonds to proffer, at least, what his point is.

Mr. Simmonds: I intend to show the custom and usage in connection with the rental of real estate and the transition from tenant to tenant, and what is the custom with respect to the repairs that are made and the renovating that's done, and so forth.

page 754 } Mr. Harrigan: Your Honor, I think the Lease controls what repairs have been made and the Lease controls here on every other item as to what should be put in the theatre, and more specifically what should be taken out. I don't think custom in trade is the proper standard in determining whether a fixture should belong to the realty or to the person who put it in. I think the three tests are laid out rather clearly.

The Court: I think I indicated the other day, The Court looks first to the Lease. If it's hard to understand, then the Court will hear evidence of custom in the industry during the

period when the Lease was written, in other words, what was going on in the theatre business world at the time this Lease was written, not to contradict the Lease—it can't—but to help understand it, and the surrounding facts and circumstances.

In this connection, apparently appraisals will be of some relevance to the question, so as to relevance the question is all right. You may answer. Overruled.

Mr. Harrigan: May I put one further exception into the record? Unless there is something that both parties are familiar with at that time, that will be the test.

The Court: When you are sitting here as Judge, you don't like to have an attorney argue over a ruling on
page 755 } one ground and then pop three or four exceptions in that were never argued to the Court (until) after the ruling.

Mr. Harrigan: I understand that.

The Court: But the ruling will be the same in this instance. But other times, don't add grounds not argued. See what I mean? Give me a chance to rule on them. All right.

Mr. Harrigan: You denied on that ground, that's in the record and I—

The Court: I do.

Mr. Harrigan: I except.

The Court: Have you done appraisals in the theatre field?

The Witness: Yes, I am a member of the American Institute of Real Estate Appraisers and a member of the American Institute of Real Estate Counselling, and I spend a great deal of my time in appraising and counselling.

I have written an article for the *American Appraisal Journal* and one for Prentice-Hall on the appraisal of theatres, and I have appraised theatres for mortgage loans and for prospective purchases or sellers.

By Mr. Simmonds:

Q. Mr. Thalhimer, are you acquainted with the
page 756 } custom and usages in the motion picture industry with respect to the equipment and improvements, and fixtures that are put in by a tenant of a motion picture theatre building, that is, by the operator?

A. I would say that in an expert way, I am familiar with various types of leases that are made. It happens that in this motion picture industry, I would think that he majority of the *theeaters* are built and owner-occupied rather than leased; but there are a minority of the theatres that I know of that

are leased and not personally-owned.

I, of course, know of the negotiations and worked them up on this Lease that was made with Mr. Sharlin because I negotiated the Lease that is in question here, and I know—and I don't mean this in any sense to interpret what it means legally—but I think I know what it means in so far as Mr. Sharlin and my organization's understanding is concerned.

Q. Before we get into that, I will inquire this: You have indicated that you are familiar with the customs and usage in the industry. As to whese there is not an owner-occupied moving picture theatre, but one that is leased out to an operator on a long-term lease, do you know the custom, usage and practice with respect to the equipping and decorating the theatre building?

page 757 } A. Yes, I think I do.

Q. Would you please state it to the Court?

A. I think it is customary in this industry for a number of years in the leasing of theatres, by an investor to a theatre-operator, that the rent is based, (a) on the value of the land or the rental fixed by th eland; and (b) the amount invested by the investor in the theatre—In most cases the investor deli[redacted] the tenant a basic building that is set forth in Pla[redacted] Specifications, sometimes referred to as the "shell" of the building, and on which the lessor receives a rental, usually based on a pre-determined percentage of the cost of the building, and the tenant supplies all of the fixtures and furniture and attachments thereto, pertinent to the business that are no specified in the owner's contract, and the Lease may be varied by various owners; but it is generally interpreted that what—

Mr. Harrigan: Your Honor,—

The Court: You are not permitted to interpret a particular lease, only to describe what the practice is in leased theatres. If there is a general custom, describe that.

The Witness: I would say the practice, your Honor, is that what the owner receives a rent for belongs to the owner, and what the tenant places in the theatre belongs to

page 758 } the tenant. That would be as near as I can say to you what would be the general practice.

Mr. Harrigan: I would like to move to strike all that testimony on the ground that it violates the *parole* evidence rule on the Lease, and on the other ground that the Lease speaks for itself in this particular case.

The Court: I will receive it, though I point out I have not finally construed the Lease; but I receive the evidence, the construction of the Lease would have the effect of limiting my consideration of the evidence; but I just have not reached that point yet.

Mr. Harrigan: Exception.

By Mr. Simmonds:

Q. Mr. Thalhimer, this custom that you refer to, you just testified about, was the custom in the period of 1944 and '45?

A. In my opinion, it was the custom at that time.

Q. At about that time, did you personally enter into negotiations with Mr. Sharlin for your leasing of a theatre building to be built by him?

A. Yes, I did.

page 759 } Q. Without intending to change the contract at all, but what occurred leading up to your making the contract?

Mr. Harrigan: Objection, your Honor. I think it would be *parole* evidence. The contract speaks for itself as to what the understanding was, and *parole* evidence cannot be used to vary or correct it and negotiations leading up to the contract are merged into the contract. The contract is the final document and any interpretation must be gleaned from that.

Mr. Simmonds: If your Honor please, I think that perhaps that is a basic general rule, bu if there is any ambiguity in the contract, just as if in the case of custom and usage, and the Court has to rely upon the general law of fixtures, then the parties, and particularly the intent of the tenant becomes very material in determining what is a fixture and what is not a fixture.

At this posture of the case, your Honor says he has not made a final determination as to the meaning of the lease, and whether or not the law of fixtures would apply, of course is not covered by the lease. I think that this is a proper question and ought to be before your Honor so you would have the whole picture.

page 760 } The Court: The fixture case cited to me is not a landlord and tenant case. The rule may be the same, but I am sort of waiting till the end of the case to see some more law. I'm going to hear the testimony conditionally. It's the only way I can do it, Mr. Harrigan.

Mr. Harrigan: All right, sir, subject to motion to strike

it at a later date.

The Court: Yes, it has the effect of presently overruling your objection, as pointed out, until I come to the question of the Lease that it would exclude considering that testimony, you see.

By Mr. Simmonds:

Q. Mr. Thalhimer, in order to bring this testimony down to what I think is the one specific area in which the prior negotiations might have some bearing on the question before the Court, was there any discussion with Mr. Sharlin as to what would be required of Neighborhood Theatres as the tenant in connection with equipping of the building?

Mr. Harrigan: Your Honor, now this has nothing to do with custom. This is going to specifics.

Mr. Simmonds: That's right. Right now I'm getting down to specifics.

Mr. Harrigan: And the lease says exactly what's required of the lessor and what's required of the lessee, and obviously, more was done—

page 761 } The Court: At the moment, I am not satisfied the Lease is that clear. So, as I say, I am going to hear evidence on what each made known to the other as their intention,—

Mr. Harrigan: All right. Exception.

The Court: —concerning ownership of principals.

The Witness: The basic principles that were—

Mr. Harrigan: I object. This is not responsive. If they said something to each other about the fixtures, your Honor, then, that's—

Mr. Simmonds: As a matter of courtesy, it would seem to me the witness should be allowed to get more than two words in answer to my questions before an objection is made that it's not responsive.

The Court: I am going to let the witness answer.

Mr. Harrigan: All right.

The Witness: Would you mind repeating the question?

(Last question read by reporter.)

The Witness: To answer the question as directly and concisely as I can, our agreement was, he was to build a shell of a building, as specified in plans to be drawn

page 762 } by Mr. Budina or Mr. Budina and someone else if Mr. Budina did not have time to do it, and Mr.

Sharlin was to furnish the things that were called for in the plans to be furnished by the owner and Neighborhood, the tenant, for whom I was negotiating, was to furnish the fixtures and everything that was needed to operate a motion picture theatre; and that what we furnished, in the way of fixtures, we had a right to take out at the end of our Lease if we so desired, whether they were attached or not attached or made a part of the building or not made a part of the building.

In layman's language, that was my agreement of the building, that Mr. Sharlin and I had.

Mr. Harrigan: I move to strike all that, your Honor, the whole answer.

The Court: Again, subject to the law of fixtures, argument on the Lease, I hold off on your motion to strike. Remind me of the motion later in the case.

By Mr. Simmonds:

Q. Mr. Thalhimer, in connection with your experience in the real estate field, are you in a position to make a comparison as to the ordinary wear and tear that's received by a motion picture theatre and other commercial buildings?

A. Well, we have very often in my business, we have a lot of commercial property, retail stores, manufacturing or office buildings, apartments, and it is very difficult to generalize. To answer that specifically, I would say that motion picture theatres get much more wear and tear than people in an office building, as a tenant in an office building, and perhaps more wear and tear than a high-class department store, because of the number of people that are coming in and out of it.

page 763

The services that are rendered in the part, particularly toilet facilities are subject to mischievous destruction which goes on in the motion picture industry to a terrific degree, with children cutting seats and walls and trying to destroy things in toilet areas, an area not under pretty close supervision.

Q. Mr. Thalhimer, can you state whether or not there is a custom in the motion picture theatre industry with respect to what the new tenant in an old building would do upon leasing it on a long-term basis for a motion picture theatre?

A. I would say that a new tenant in a theatre building would completely renovate the building from one end to the other, and put in new seats, new booth equipment, new cooling equipment, new marquee signs, change the decor to give it the

image of whatever it was, whoever it was they rented to. I think that is very definitely established as a custom in this business.

page 764 } Mr. Harrigan: I move to strike that answer, too, your Honor, on the same grounds.

The Court: Same ruling.

By Mr. Simmonds:

Q. Mr. Thalhimer, in connection with the operation of the theatres in your chain, do you have any means of checking the operation and condition of the various theatres for the information of the home office?

A. Yes, we do.

Q. What is that?

A. We have the services of a private checking agency or agencies—they sometimes change them or have more than one —who blindly check the theatres. This is also a custom in the trade. This is not something specially that we do. These people who are no way identified—I have no idea who they are myself, and no manager or district manager would know them, so far as I am told—they go to the theatre, and the first thing they do is to very often check box offices, stand outside the box office. Reports are made up hourly, and they check to see how many people come in so that when the box office report comes in, if there would be a stealage be-
page 765 } tween the cashier and the doorman, that would be checked. They go inside the theatre, they check, write a report as to whether the cashier said "Thank you," and whether the doorman took their tickets politely. They check the condition of the auditorium and the toilet facilities, and these reports are made periodically which are a help to management in correcting things that these reports show as deficiencies, and they are also very helpful in checking the honesty of employees working at the theatre.

Q. Could you tell us whether or not you received a report from one of such agencies on the Glebe Theatre in September of 1964?

A. I am sure we did. I would be very glad to identify it, but—

* * * * *

page 766 }

* * * * *

Whereupon,

Morton Thalhimer

MORTON *THALHEIMER* resumed the stand and testified further as follows:

Mr. *Simmond*: May I proceed?
The Court: Yes.
Mr. Simmonds: Your Honor, I believe we concluded last night when I was presenting to Mr. *Thalheimer* a document prepared by the agencies that make investigations or inspections of the premises, and I have just showed it to Mr. Harrigan and I want to show it to Mr. *Thalheimer*.
Your Honor, I ask this be marked Defendant's Exhibit 24 for identification.

(The document referred to was marked for identification as Defendant's Exhibit No. 24.)

DIRECT EXAMINATION (resumed)

By Mr. Simmonds:
Q. Mr. *Thalheimer*, I hand you a document in a black cover on the outside of which has the label "Glebe Theater, Arlington, Virginia, September 1963," which has been
page 767 } marked Defendant's 24 for identification. I will ask you to look at that and tell me what it is.

Mr. Harrigan: Your Honor, at this time I will object to any further evidence on that document. It is obviously a hearsay document. It *is* isn't even signed by anybody.
The Court: Let me hear the questions before I hear any objection.
Mr. Harrigan: The question I had is, he asked him what it is and I don't want him to go into what is in the document.
The Court: We don't have a jury listening to it, so—
Mr. Simmonds: What is that document?
The Witness: It is a report from the Western Business Survey that I mentioned yesterday, who were retained to give us a report on the physical condition, the looks of the theater in order to check on the number of people coming in and so on.

By Mr. Simmonds:
Q. Do you know the *identify* of the person who made the inspection on which that report is based?
A. No, I do not.
Q. Do you know when the inspections are going to be made?

A. No, sir, we do not.

Q. Does the manager of the particular theater
page 768 } know when such inspections are going to be made?

A. No.

Q. And to whom are those reports submitted?

A. These reports come to the home office to the attention of the president.

Q. On the date of that, September 1964, did you know that Neighborhood would not be occupying the premises after April 30, '65?

A. No, sir.

Mr. Simmonds: Your Honor, I will now offer it in evidence.

Mr. Harrigan: Your Honor, this document is entirely based on information from somebody else. I don't have an opportunity to cross-examine that particular individual. We don't even know who he is, and—

The Court: Objection sustained.

Mr. Simmonds: Your Honor, may I be heard on it?

The Court: I beg your pardon. I thought you—

Mr. Simmonds: I am the first to admit that it is hearsay, but as we all know, hearsay has a great many exceptions and the reason for the hearsay rule is that normally the truth or validity of what is offered should be subjected to cross examination.

In the many exceptions to the hearsay rule, which embodies the greater part of the hearsay contained in the
page 769 } books, are the exceptions where there are builtin devices whereby the authenticity or the truth of the document is substantiated and it isn't necessary that cross-examination take place, such things as public records or the information contained in public records, surveys by public officials, ancient documents, declarations at death, and there are numerous things.

Now in this particular case there is not a single thing that would indicate other than an independent truthful report. We have a situation where, as a general policy of the organization, these inspections are made to report back to home office so they know what is going on in the particular unit being inspected.

This was done in the ordinary course of business, and we have this done prior to the time it was known that the lease would not be renewed and we have an independent person, not even known to the home office, who made this inspection; and

we submit that the document carries with it all the protections that are needed to assure the validity and truthfulness of the statements contained therein.

We think that this document would present to Your Honor a clear, independent picture of the manner in which the theatre was being conducted and maintained as of the date of the report, and we think it would be material, we think it is relevant and we feel that it should not fall be-
page 770 } cause of the hearsay rule generally where we have the protections needed to assure the truth of the document.

Does Your Honor care to look at the document?

The Court: Well, from a combination of yesterday and today, the testimony—this is a company employed by the Defendant to advise the Defendant independent of other employees really.

Mr. Simmonds: Yes.

The Court: —of accuracy of receipts, therefore on honesty of tellers, for example, ticket-takers, volume of business by spot-checks, which are really accepted nowadays, I think.

In this case I am not concerned with the honesty. I take it part of it will be offered for volume of use of structure as it relates to wear and tear, and, second, for a condition observed by someone who reports to home office.

Mr. Simmonds: Particularly as to the manner in which a building is being maintained.

The Court: A wise thing to have, but still subject to inaccuracies. Maybe that's true of other evidence in exceptions to hearsay rule, but it is not impossible to have that company's representatives here. They make not like it, but litigation brings a lot of things people don't like to have known, who was their agent going to different theaters. They
page 771 } might have only one in the area and not want the *identify* known, but that in itself wouldn't be enough to change the rules of evidence. I am not satisfied even so that I can receive it.

The objection is sustained.

Mr. Simmonds: May I have exceptions please?

The Court: Noted.

By Mr. Simmonds:

Q. Mr. *Thalheimer,* on or about January 20, 1964, did you have a telephone conversation with Mr. Sharlin regarding the proposed renewing of the lease on the theater?

A. Yes, sir; I did.

Mr. Harrigan: September 1964?
Mr. Simmonds: January 20, 1964.

By Mr. Simmonds:
Q. Did you write Mr. Sharlin a letter immediately after that telephone conversation?
A. Yes, I did.
Q. And that letter was dated January 20, 1964?
A. Yes.

Mr. Simmonds: I think that is already in evidence, Your Honor. I will not go into that.

By Mr. Simmonds:
Q. Now at the time you had the telephone conversation, did you dictate a memorandum of that conversation?
page 772 } A. Yes, I did.
Q. All right, sir. I hand you this paper, entitled "Memorandum dated January 20, 1964" and will ask you if you dictated that memorandum immediately after the conversation, and did it substantially contain the substance of the conversation.

Mr. Simmonds: I will show it to you in a moment. (Document was handed to Plaintiff's counsel.)
The Court: The letter was D-6, if counsel didn't recall.
Mr. Simmonds: Thank you.
The Witness: Yes, sir; this is a memorandum that I made promptly after talking with Mr. Sharlin.

By Mr. Simmonds:
Q. Did it record the substance of your conversation with him?
A. Yes, it did.
Q. I ask you to read it to the Court and then I ask it to be admitted in evidence.
A. "January 20, '64, re: Glebe Theater.
"I spoke to Mr. Sharlin on long distance phone today at about 3:20 p.m. and he said that he had decided not to make any decision about the leasing of the property for a theater at this time. He stated that other people had been coming to see him about a long-term ground lease and that
page 773 } they want time enough to investigate a possibility

in change of zoning and he, Sharlin, *fields* that he shouldn't make a hasty decision.

"I told him if he decided to rent it as a theater, that I hoped he would give us the first opportunity of working out a deal with him. He said he certainly would, but he wanted to take his time and see whether it would be more advantageous to use the land for some other purpose.

"Our conversation was friendly and cordial and he intimated that we would have the first choice if he decided at a later date to continue it as a theater."

My name is attached to the bottom of the memorandum.

Mr. Simmonds: I ask that that be admitted in evidence as D-25.

The Court: Received.

(The document previously marked for identification as D-25 was received in evidence.)

By Mr. Simmonds:

Q. Did you have any prior conversations with Mr. Sharlin regarding the possibility of renewing the lease on the theater?

A. Yes.

Q. In any of those conversations was it discussed what you, the *n*eighborhood, proposed to do if it should be renewed?

A. Yes, I think as far back as 1963, when I discussed it with Mr. Sharlin.

page 774 } Q. What was the nature of what you proposed?

A. I explained to Mr. Sharlin that if we renewed the lease, we would do the theater over completely—new seats, new interior decorations, new marquee signs, new outside to update the theater.

Mr. Harrigan: Your Honor, I move that that be stricken. I don't know what relevancy it has what they would have done if they would have renewed the lease.

Mr. Simmonds: I think it bears on the custom, if Your Honor please.

Mr. Harrigan: I don't think it bears on any custom; it was a straight business deal arm's length, negotiations for future lease that they anticipated perhaps they would get and it doesn't indicate they would or would not redecorate. And in this case this is what we probably might do or would do and I don't think it bears any evidentiary value at all.

The Court: If there was such a conversation and it goes undenied, then isn't it a statement that the gross condition of the theater that remodeling after 20 years would be needed, which is a part of the needed—

Mr. Harrigan: All right.

The Court: Objection overruled.

By Mr. Simmonds:

Q. Mr. *Thalheimer,* did you indicate yesterday whether or not the 33 theaters that were operated by Neighborhood were all leased or whether some of them were owned—I don't remember that—and if you didn't, tell us what the situation is as to ownership and how many are leased?

page 775

A. We own some of the theaters and lease the majority of them. We own in Northern Virginia the State Theater, Center Theater and the Annandale Theater.

I think I could tell you the other theaters if—

Q. I don't think that's necessary. Would you state to the Court whether there is any difference in the policy of Neighborhood with respect to redecorating and renewing and renovating, whether the theater is owned by Neighborhood or whether it is rented?

A. There is no difference in the policy. We undertake to keep all of these theaters in what we consider first-class useable condition.

Q. Is there any particular period of time that elapses before a complete renovation is undertaken?

A. It might vary a little bit anywhere in the area of 15, 20-22 years, depending on what the maintenance problems have been during that life. Just did over a theater that we owned; it was about 23 years since we did it over completely, and we spent about $110,000 bringing it up to date. It varies somewhat within that limit.

Q. During that period of time, could you state whether or not there were technological changes or changes in the industry that indicate a change of equipment and decoration and so forth?

page 776

A. Well, over the 20-year period that we occupied the Glebe Theater, for example, there is a different type of sound that was not known of at all, surround sound, where your sound horns are around the theater, to give a much better effect. There is the wide screen on which important pictures are shown that was not even in existence back in '45.

Different and better cooling systems. I think we installed the first theater system in the United States back in about 1927 and, as compared with the model of the 1967, the '27 model would take up about a fourth of this room and the '67 model could be placed in 240 square feet at the most.

In the seating, the type of seats, seats have been greatly improved. It is like any other modern industry; it has been gradually improved during the period of time.

Mr. Harrigan: Your Honor, I move to strike that whole answer on the ground that most of it is concerned with things not in issue in this case at all—about screens and—

The Court: You should object to the question, I would think, but it is relevant. You could certainly argue later how applicable it is when these are not items subject to controversy in this lease. I am going to leave it in.

Mr. Harrigan: Exception.

page 777 } By Mr. Simmonds:

Q. Mr. *Thalheimer,* backing up a little bit, and I apologize to the Court for it, but I was asking you about your conversation of January 20, 1964, with Mr. Sharlin.

Did there come a time when you found out that he had already entered into a lease with K-B at the time of that conversation?

A. I found out that he had entered into a lease, I don't know how much later—at least six, eight months later, but it did not come from Mr. Sharlin.

The first time that I knew that Mr. Sharlin had entered into a lease at about the same time that I had this conversation with him when he said he had no idea of doing it, was after this trial.

Q. You mean this suit?

A. This suit, yes, sir, when you showed me the date of the lease that Mr. Sharlin made with K&B. That was the first time I knew Mr. Sharlin had signed a lease on January 20, '64, at the same time he told me he had no idea of signing any lease.

Q. Would you tell me whether or not Neighborhood had had the name "Glebe" registered?

A. Yes, sir; it had. The name of Glebe is registered.

I say that—our attorney, general counsel, Mr. Barton of Christian, Barton & Parker, advised us to have all these theater names registered and his firm takes care of it.

page 778 } Mr. Harrigan: I don't suppose it is that important at this point.

The Court: No.

Mr. Harrigan: So I won't make any formal objection.

By Mr. Simmonds:

Q. During the term of this lease did Mr. Sharlin ever communicate with you, requesting an opportunity to inspect the building to ascertain if the repair covenants were being met?

A. No, he never did.

Q. Did he ever make any complaint to you, anything about your maintenance of the building?

A. No, never.

Q. Did he make any complaint immediately upon your surrender of the premises that certain things were out of order?

A. No.

Q. What is the first notice you had that he had some complaint?

A. I think the first notice probably in the file here—my recollection is it was June 17, '65.

Q. Was there any difference in the maintenance of the Glebe Theater and any of the other theaters that you owned or—

Mr. Harrigan: I object to this, Your Honor, unless Mr. *Thalheimer* can speak from first-hand knowledge on this, and I am sure he can't.

page 779 } The Court: Any difference in lease is the question.

Mr. Simmonds: No, any difference in the manner of maintenance of the building.

The Court: I thought he had already said that. He said they owned some theaters, they leased most and they maintained them all alike.

Mr. Simmonds: Does that include the Glebe Theater?

Mr. Harrigan: I have the same objection on this whole line of questioning unless he does know by other than somebody telling him.

The Court: He is the president of the company. I have received it before. I will suggest, though, to Defense counsel it is probably repetition.

By Mr. Simmonds:

Q. Mr. *Thalheimer,* in connection with the other theaters in the Neighborhood group, can you tell us whether or not it is customary to occasionally rewire the aisle lights?

Mr. Harrigan: Your Honor, I object to the leading question.

Mr. Simmonds: If Your Honor please, I point out merely directing his attention to a particular subject matter, without suggesting to him whether the answer is yes or no.

The Court: I think it needs to be rephrased.

page 780 } By Mr. Simmonds:

Q. Mr. *Thalheimer,* directing your attention to the aisle lights, can you tell us the life span of those generally?

Mr. Harrigan: I would object to that question, too, Your Honor.

The Court: Overruled.

Mr. Harrigan: Exception, no foundation has been laid, if the witness knows anything about aisle lights other than when he received bills for their repair.

By Mr. Simmonds:

Q. All right, will you answer.

A. The aisle lights, as has been explained here in the Court, run on a conduit to a certain point and then they leave the conduit and go to the box that comes up the side of the chairs is worn out from time to time, because it is possible that people get—these aisle lights are just about every seven or eight seats on either side of the aisle. The wire in the conduit we have examined when we reseat a theater and take the electricians' advice as to whether or not it should have a new wire.

I think in recent years they have used a somewhat slightly heavier wire in the conduit than they formerly used, but we rewire when we reseat on the advice of the electrician and

page 781 } I do know that it has frequently happened that new wires were run in the conduits.

Mr. Harrigan: I would object to the answer on the ground what happened in recent years—on the ground that apparently all the advice he gets, he takes this advice, and rightfully so, from the electricians that he hires and presumably he is speaking as to their advice. That is not first-hand evidence,

I don't think.

Mr. Simmonds: He pays for having this rewiring done and Mr. Harrigan was the first one to bring up the rewiring in the other theaters when he was reexamining Mr. Gibson.

Mr. Harrigan: I pay for my suits, too, Your Honor, but I don't make them.

The Court: I overrule the objection.

Mr. Simmonds: You may examine.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Mr. *Thatheimer,* in this particular building, the Glebe Building, you had an arrangement whereby the lease would be based on the gross amount the building cost; is that correct?

A. Plus a certain amount for the land.

Q. Right.

A. Plus a percentage on overage above the figure.

Q. That's right.

page 782 } Mr. Simmonds: I would like Mr. Harrigan to explain the figure "gross cost." It may be that has a meaning to him that it does not to the witness. You mean the gross cost to Mr. Sharlin?

Mr. Harrigan: That's right.

By Mr. Harrigan:

Q. When you lease these theaters—how many do you have leased out of the 33, do you know?

A. About 24 or 25.

Q. 24 out of the 33, and do all 24 have the same type of lease?

A. Not necessarily.

Q. So this is not what you call a standard lease. They vary within the industry depending on the terminology?

A. No. It is as standard as I know what "standard" means, but when you deal with the counsel for yourself and counsel for the lessor, you have often—the wording of the lease is not standard in the sense that you can print a form of lease.

Q. All right, so who drew up this lease, your attorneys?

A. Christian, Barton & Parker.

Q. Your attorneys?

A. Yes, sir.

Q. Do you recall if Mr. Sharlin had an attorney then?

A. My recollection is that they submitted it to Mr. Sharlin and he took it up with his attorney and there were

page 783 } certain negotiations that I remember that went on. This was the final product that was agreed upon between counsel.

Q. Isn't one reason why you put in a lot of equipment at your own expense strictly for the reason that, if Mr. Sharlin had put it in, you would have to pay 10 percent per year on whatever the gross figure was for equipment?

A. No, sir; that is not correct.

Q. All right. Another reason would be in this particular building, a lot of equipment that you already had in stock was put in, such as cameras and so on and so forth?

A. I wish you wouldn't keep using the word "cameras". There are no cameras in the motion picture—

Q. I stand corrected—projectors. Is that the correct term?

A. That is the correct term for projectors, the things that put the picture on the screen, if that's what you are referring to.

Q. What is the simplex mechanism?

A. Simplex mechanism is part of the projector.

Q. Which part would that be—the sound system, the head is a simplex.

Now, in this particular theater you put in—I don't know on this list here that was submitted—two simplex mechanisms in '54. Was that part of the projector?

page 784 } A. Yes, sir.

Q. And projection lenses, are they part of it also?

A. Yes, sir.

Q. All right now, in return for letting you put in certain equipment, at your expense, you get the theater at a lower rental than you ordinarily would if Mr. Sharlin put it in, isn't that correct?

A. Yes, sir.

Q. Let's go to the negotiations that you had with Mr. Sharlin. As far back as 1961 he wrote you initially about renewing the lease, or releasing the premises; is that correct?

A. I think so.

Q. I think I have letters to that effect in that. I am not trying to trick you or anything.

A. I am sure you would not.

Q. Don't be too sure now. In any event, over some two

years' period you did correspond back and forth from time to time regarding these—releasing the building, right?

A. I think so.

Q. There is a letter here—

The Court: P-16 has money amounts.

By Mr. Harrigan:

Q. There is the initial letter in '61—I think that was the first or around the first one.

A. Uh-huh.

page 785 } The Court: What is the question?

Mr. Harrigan: I am just using it to refresh his memory that '61 was the date.

By Mr. Harrigan:

Q. In October of '63 Mr. Sharlin wrote you this letter and told you substantially what his offer was, and that he had several offers, and that he was interested in one party for $25,000 a year, did he not?

A. Yes.

Q. Now your best offer to him never was as good as that one, right?

A. That is correct.

Q. Is it difficult to rent a theater building?

Mr. Simmonds: That's a very broad, indefinite question, if Your Honor please.

Mr. Harrigan: He is the expert in the theater business.

Mr. Simmonds: You have got to ask him a question that can be capable of being answered. That's too general a question, if Your Honor please.

The Court: It seems to me the witness will know if it can be answered or not. All right, the objection is overruled. You may answer. Is it difficult to rent a theater building, is the question as phrased.

The Witness: No, it is not difficult to rent a
page 786 } theater building.

By Mr. Harrigan:

Q. In this area there are only three or four chains that would rent theaters, aren't there, or do you know?

A. I think there are individual operators that rent theaters in this area.

Q. So when you say it wasn't difficult to rent theaters, are you including these individual operators?

A. Yes.

Q. In order to rent it to a substantial chain, such as Neighborhood or K&B or a concern of that character, how many of those are there?

A. Well, I can think of Loews who are in this area, Warner Bros, the Alexandria Theater Corporation, K&B, Neighborhood.

Q. Does Loews—

The Court: I don't think he is finished.

The Witness: Those are to be the ones that would come to my mind about which there would be no question as to their financial responsibility, but I believe that there are other people, quite a few other people who are operating independent theaters in Washington that could be interested in renting a theater anywhere where they thought they could make a profit by so doing.

page 787 } By Mr. Harrigan:

Q. *Lowe's,* do they have any theaters in Virginia?

A. Yes.

Q. Warner?

A. Yes.

Q. Where are their theaters?

A. Here in Arlington County.

Q. Neighborhood has theaters over here?

A. Yes.

Q. Back in '64, that was the only chains over here, or were there others in Arlington?

A. Well, Warner Bros. had a theater in East Falls Church in those days.

Q. K&B didn't have any theaters in Virginia at all, did they?

A. Not that I know of.

Q. Now, what was your last offer to Mr. Sharlin for this lease, if you recall?

A. We have had conversations with Mr. Sharlin, the last offer that we discussed was $18,000 net to Mr. Sharlin. As I recall, we had to pay the taxes and insurance plus a percentage on the gross and we agreed to completely do the theater over.

Q. When was the last time that you were in the Glebe Theater, Mr. *Thalheimer?*

page 788 } A. I was in the Glebe Theater—I make inspections of this territory, come up here and go around and look at the theaters with Mr. Pearson or Mr. *Thalheimer,* Jr. My recollection is that I was in the theater somewhere between February 20 and March 10 of '65.

Q. You made a statement, let me see if I understand it correctly—after Mr. Sharlin had signed the lease with K&B Theaters, you found out about it six or eight months later; is that accurate?

Mr. Simmonds: That isn't what he said.

Mr. Harrigan: I don't know, that's what I heard.

The Court: Read the question.

(The reporter read the question.)

Mr. Simmonds: I thought he said—

Mr. Harrigan: I object to what Mr. Simmonds thought he said.

Mr. Simmonds: My objection is that is not the statement he made and I don't think he has the right to state what Mr. *Thalheimer* said, unless it is correct.

The Court: I didn't think that was correct. My thoughts are six to eight months after 1-20-64 he found out about K&B's lease.

That's my own source, so you don't need to ask the current question. There was other testimony that counsel had shown him certain papers which bore it out, after this—

page 789 } he called it a trial and he meant suit was filed.

Next question.

By Mr. Harrigan:

Q. Now, I believe you said that you are Chairman of the Board of Neighborhood now, is that correct?

A. Yes.

Q. Who is President?

A. Mr. Bendheim, Sam Bendheim, Jr.

Q. Did you talk to Mr. Pearson as to what was to be done when they vacated the Glebe Theater?

A. Mr. Pearson was instructed—

Q. Not by you now is what I mean.

A. No, not my be. I think by Mr. Bendheim or by Mr.

Thalhimer, Jr., who are actively in charge of the management of this company except as to the final policies. We had a meeting and Mr. Pearson was sent, I know that, a copy of the portion of the lease pertaining to what we thought out obligations—still think our obligations are.

Q. All right.

A. And was told what to do.

Q. In the lease, I take it then, you also read—these motors and compressors and condensors for the air-conditioning were yours; was that your impression?

A. Yes.

page 790 } Q. Did you instruct Mr. Pearson to take them out?

A. Yes, unless—

Q. Unless they weren't worth anything?

Mr. Simmonds: Wait a minute, let him finish.

The Court: Objection sustained.

The Witness: What Mr. Pearson's instructions were to endeavor to sell everything that we had to K-B if they wanted it, and if K-B did not want everything we had, then his instructions were to remove it, remove the things that we thought belonged to us that we had paid for and put in there.

By Mr. Harrigan:

Q. All right.

Did that include the marquee lights?

A. Yes, I would think so; the marquee fixtures.

Q. He was instructed to remove those also?

A. It was not pinpointed.

Q. He was instructed to move everything?

The Court: The witness didn't say that, sir.

The Witness: He was only instructed to remove the things that Neighborhood believed under the terms of the lease was their property. We didn't undertake, for example—

By Mr. Harrigan:

Q. Getting back to—

A. —to finish the inference of your question—we didn't tell him to take out the boiler or the urinals or the

page 791 } things that Mr. Sharlin put in there. We instructed him to take out the things that we put in there and we believed were our property. I don't know how

I could answer it any clearer than that.

Q. All right. What about the exit lights; did you consider those your property? These inserted in the wall.

A. I know what exit lights are, sir.

Q. Did you—

A. I told you we did not instruct him as to any fixtures. We instructed him to take out the things and if he took out the exit lights, and we did not put the exit lights in there. I am perfectly willing to say that we are sorry and we are willing to pay for them. I think Mr. Pearson took out what he interpreted that he put in there.

Q. That's what I was going to ask you. In other words, Mr. Pearson was in charge of what was to be taken out?

A. Mr. Pearson is a member of the Board of Neighborhood Theatres and he is in complete charge of this district and we have confidence in Mr. Pearson, and we trust he didn't make any mistake with reference to this matter.

Q. All right.

Did you—you didn't see the theater after everything was removed, did you?

A. No, sir.

Q. When did Mr. Sharlin first inform you that
page 792 } he wasn't going to release the premises to you
or to your organization?

A. I have no recollection of Mr. Sharlin informing us, certainly not me—that he was not going to lease us this property until I received a letter from him, dated approximately March of '65—I think probably around March 26th. That's the first official notice that I remember receiving.

Q. That was in March of '65. But you had already, as I understood your prior testimony, you already heard through the grapevine or some source that he had leased the property to—

A. Oh, yes.

Q. So this didn't come as a surprise to you, this letter in March?

A. It didn't come as a surprise as to the fact that the theater had been leased.

Q. All right.

A. It came as a surprise in reference to Mr. Sharlin's statement to me and my letter to him of January 20, 1964.

Q. Was there any animosity between Mr. Pearson or you—any ill feelings against Mr. Sharlin?

A. There was absolutely no ill feeling or animosity insofar

as I am concerned between Mr. Sharlin and Neighborhood Theatres or myself. There was necessarily a lowering of my opinion of Mr. Sharlin, but no animosity. It was a purely—if that is what he wanted to do.

Q. You are speaking in your own behalf now?

page 793 } A. I am speaking in behalf of myself personally and insofar as I know of my company.

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page 794 }

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Whereupon,

HARRY M. SHARLIN was called as a rebuttal witness in his own behalf, and having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

By Mr. Harrigan:

Q. State your name please.

page 795 } A. H. Myer Sharlin, S-h-a-r-l-i-n.

Q. You have already been sworn and testified?

A. Yes, I have.

Q. Just a few questions. There was some testimony about a pipe on the outside the building. When did you first see that broken pipe?

A. The pipe was broken many months before the lease was up. It is a cast iron pipe, but I paid very little attention to it really when I saw it broken. The fact that it was changed when the asphalt was put down was the proper time to do it. It was put into the asphalt.

Q. Did you know that Mr. Pearson and Co. were moving out of the theater when they moved out, the day they moved out?

A. The first I know was when Mr. Sellars came to my office, as I mentioned before, he couldn't get in. Mr. Pearson quoted Mr. Sellars as "chased him out of the building," asked him to leave.

Q. When was the first time you were down there that they were completely moved out?

A. It was a day or two before the end of the month.

Q. And at that time did you observe the marquee?

A. Yes, I did.

Q. What did you observe about the 16 lights in the marquee?

page 796 } A. They were not in the marquee. There were holes.

Q. Did you have occasion to go up in the booth?

A. Yes, I did.

Q. What equipment was left in the booth?

A. There was nothing in the booth, it was empty.

Q. These wires, were they there like Mr.—

Mr. Simmonds: Just a minute. He is still your witness and I object to leading the witness and I likewise object to anything other than rebuttal testimony.

The mere rehashing of what he previously testified to is not proper.

Mr. Harrigan: I am just trying to show—there has been a lot of testimony and conflict about their leaving everything perfectly intact in that booth and I am trying to show that prior to the last couple of days of the month of April when he went in there and observed it, that all that equipment was, in fact, gone.

The Court: Well, if you will make your questions clear as to whether you are talking about equipment or dirt and debris or—

Mr. Harrigan: Wiring.

The Court: —wiring, this would be in the area of rebuttal of Defense testimony.

Mr. Simmonds: Still, if Your Honor please,—

page 797 } The Court: —but not to lead.

By Mr. Harrigan:

Q. Directing your attention specifically to the wiring in the booth, the wiring that comes from the panel to the equipment, how much of that wiring was there?

A. I didn't really—I didn't see any wire and I didn't pay attention. I saw conduits, stubs come up out of the floor. I did not see any wiring and I wasn't particularly looking for it. If it were there, I would have seen it. They would have been hanging over the stubs.

Mr. Simmonds: I still object to his leading.

By Mr. Harrigan:

Q. Did you have occasion to observe the loose wires from the fixtures, the various fixtures throughout the theater?

A. Yes, in the lobby everything was exposed. You could

see the lobby. The wires and foyer—of course, the auditorium I couldn't see. It was too dark and—

Q. Did they have—what did it have on the end of the wire, if anything?

Mr. Simmonds: If Your Honor please.

The Court: At what location?

By Mr. Harrigan:

Q. All the fixture wires on the top.

page 798 } A. They were just supposed—just exposed, just handing. There was nothing on them. There wasn't a temporary pigtail, nothing, just the wires were cut.

The lobby and foyer lights had a little longer extension of wire that I could see.

Q. Did you see bare wire?

A. There was no bare wire. They were clipped. When you splice wire, the contractor does to make a connection—when you cut it, your insulation is right on the end. There was no exposure of copper. It was just cut.

Q. Was there anything on the end of that wire?

A. No, there were no wire nuts, tape, et cetera.

Mr. Harrigan: That is all.

CROSS EXAMINATION

By Mr. Simmonds:

Q. Mr. Sharlin, I understand the first time you went into the theater after Neighborhood vacated was when you went in with Mr. Sellars?

A. No, I did not—Mr. Sellars—I went with Mr. Sellars when they were removing the equipment, the Neighborhood people. That is the time I went in with Mr. Sellars, to get permission for him to be in the building, which I, of course, arranged.

Q. The next time you went in was after you had gotten the key, was it not?

A. No, I did not get the key.

page 799 } Q. Did you see—

A. The next time I was in was a few days after they had vacated. I went to the phone and called my attorney.

Q. Before you—go ahead. Answer the question that I asked

you.

About when I asked when you went in with the key when you first went in after they vacated.

A. I did not get the key until after the end of that week.

Q. A few days after?

A. No, the K&B people wanted to go in and do their work, or the people they had hired. We had no key. I called Mr. Pearson's office and I was told by Rigney that Mr. Pearson said if you want a key, go up and get it. And I sent a boy up; that's how I got the key.

Q. You did get it?

A. —which was turned over to K&B people.

Q. Well, had you gone into the theater after they vacated and before you got the key?

A. Without a key—the doors were open. There was someone in there working. Whether he was sweeping or working, I did not know who he belonged to.

Q. How many days before you got the key was it that you went in there?

A. It was a couple days toward the end of the
page 800 } month. Whichever days they were, I could not remember the exact day.

Mr. Harrigan: Month of what?

The Witness: Month of April.

By Mr. Simmonds:

Q. Did you ask Neighborhood to fix this downdrain before?

A. No. The reason I was there was I attempted to go to the theater one evening and it was difficult getting on the lot the way the cars were parked.

The next day I went over. Before I went into the office, I went around back. The trash box, or whatever you call it, was overflowing with trash.

Q. How is that answering my question?

A. Because the drain is next to the trashcan and it was very dirty and I went up and mentioned to Mr. Pearson he ought to keep the lot a little clearer. That's the only time and I did not mention the drain because it was put in asphalt.

The drain sets in this iron—runs through this iron pipe which comes out of the asphalt maybe four feet.

Q. After you went in the building, after they vacated it and you observed—

A. Yes.

Harry M. Sharlin

Q. And you observed certain things, you did not make any complaint to Neighborhood until your letter of June 17, is that correct?

page 801 } A. No, I was so shocked at what I saw I called my attorney the same day to ask them—

Mr. Simmonds: Let me ask him—

Mr. Harrigan: He hasn't answered.

The Court: I am sure the answer has been finished. If you have more answer to the question asked, go ahead.

The Witness: I immediately went to the phone and I called Mr. Grossberg and I asked if he was free to come over to Virginia and I would pick him up. I went over and got him and brought him back that same day, and we went through it, and, of course, eventually the letter,—

By Mr. Simmonds:

Q. Yes, but the first time you advised Neighborhood of your complaints about the way they left the building was your letter of June 17th, wasn't it?

A. Yes, because—

Q. And by that time a great deal of work had been done by K-B, had it not?

A. Not necessarily. We had to see what work had to be done, which would be mine, which there is. You couldn't determine anything overnight.

Q. Do you deny that by June 17th that K-B hadn't done a great deal of work?

page 802 } A. A great deal of work was done immediately following right through June, but you couldn't determine the cost until it was finished, what had to be done.

The Court: When did K-B open the theater doors to patrons?

The Witness: Because of the condition of the theater, Your Honor, it was delayed past the opening about two weeks.

The Court: Just the date.

The Witness: Honestly, I at this time can't remember the exact date. It was June, July—it was in June. It was in June they opened. It was supposed to have been 30 days and it extended right into the latter part of June, I believe.

The Court: All right.

Mr. Simmonds: No further questions.
The Court: All right, you may step down.
All the facts are in?
Mr. Simmonds: Let me ask Mr. Sharlin one more question.
The Witness: Right here.

By Mr. Simmonds:
Q. The canopy lights under the marquee are now within the enclosed part of the building, are they?
A. Oh, yes, the marquee had eight lights and then the booth, and then behind the booth were an additional eight lights. It was all one unit, with the A-beams extended from the building.
page 803 } The marquee only took eight of the sixteen. They were all one ceiling right into the front lobby of the building.
Q. But you say that only eight of the canopy lights—

Mr. Harrigan: I object. If we are talking about what is in the building, I think that a legal—
The Court: I recall the testimony and the points covered.
Mr. Harrigan: So I would object, it is not part—
The Court: I think it has gone past also what Mr. Sharlin testified to when called as a rebuttal witness.

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page 886 }

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The Court: The first question we come to, in my own mind, is, of the right to remove or not, I will determine principally under Paragraph Number 2 of the Lease. I decide that the is, of the right to remove or not. I will determine principally and that last sentence is broader than the installation—rights or responsibility sentences.
Since the Lease controls a good deal of the evidence that I have heretofore conditionally admitted on custom, I do not consider, though, the actions of the parties at the time bear out this interpretation of the Lease, because
page 887 } right when the Dominion was new, they brought things from the Buckingham and State, the dimmers, to put them in the new theatre, according to the papers

in evidence. I find it borne out in another way. I am not an architect or an engineer to read plans or blueprints, but I have had ample time to have anybody call it to my attention that the detailed plans of the building, and the legal-*size* paper, half-inch thick mimeographed, in the many, many, many pages of specifications say anything about the landlord supplying, for example, light fixtures.

Conversely, as I have gone through the evidence I find—I am reminded, and Mr. Budina covered this, too—on the marquee, "since wartime, I don't think we can get attraction signs." Mr. Budina testified the plans called for wooden facia; then he testified, "Well, we found we could get a sign, so it was put in." Well, now D-12 for identification, P-5 in evidence, is March 28th, 1945 bill of Regal to Neighborhood for three attraction signs of certain dimensions—Wagner, glass and frames, which I assume is the glass that goes into them. Then, a mound of letters of a certain description totalling $2101, and then to Glebe Neon Signs, $600-some-odd dollars. Not only that but D-18 is the Ford Electrical bill of June 18, 1945. Among many items listed on page 888 } two pages, they pulled in wires for the signs and marquee, "also running pipe and connecting up" which would indicate that Mr. Sharlin was never charged for it, that Neighborhood, which already had a Lease now—and it was all under construction—just went and put the wiring in the marquee so they acted on the assumption they were getting a shell and that's really what they did.

In this same D-18, there were a number of other items related to wires and conduits in and around the Projection Booth, and then it includes a bill for hanging fixtures. Other bills bear out, of course, that Neighborhood paid for them.

This being so, the basic finding is that Neighborhood paid for the fixtures—I am thinking of electrical fixtures primarily—put them in, did not try to charge it back to Mr. Sharlin, neither did he collect a rent for it because Neighborhood had paid for them.

Granted that the word in Paragraph 2 of the Lease is "fixtures" and gives the right of removal, whether or not the same maybe affixed to the freehold.

What is "fixtures" is my next problem? And for some help on this, I look to the *Danville Holding Corpora-* page 889 } *tion* case cited yesterday. It's on the bench now, 16 Southeast 2d, 345—cited in Virginia yesterday, the same three tests that have been referred to here. The parties' initial thought was, we are not concerned with whether it is affixed to the building or not because it says in the Lease,

"whether affixed or not," and that's the least important test.

Next, "adaptation of the chattels in the use of the property to which it is annexed," the Court says is entitled to great weight. Parenthetically, notice a few paragraphs later, in the dictum they talk about when the proprietor of the land himself affixed something, then you take it to be, he intends to make it part of the building.

But, then, the third test was "the intention of the party making the annexation is the paramount and controlling consideration." Well, who made it, Ford Electrical, for Neighborhood. Neighborhood paid for it. What was done back then as well as what they did at the end of the Lease shows a continuing intention to control these fixtures, with, I think, excess in these exceptions. I really do. I can't see how Neighborhood ever intended to take out recessed Exit lights. I just can't get it. I don't know whether it was somebody being too literal, whether at the advice of Mr. Pearson or Mr. Cowherd

page 890 } or Mr. Cowherd's employee or some employee's helper or whether there was a little feeling involved. That's not my concern. I have heard a fair amount of evidence that fixtures change over the years, and at the time of removal weren't even reusable because of size.

To make it more ironic, Mr. Pearson says they were stolen after they were stored. But I can't see that Neighborhood intended to keep recessed fixtures, and they are gone.

In general, so much for that, because ultimately, I will give you gentlemen a dollar figure covering all items. I am not required to break it down, and I don't think it is wise to, but I will give you a general indication because of the nature of the case.

Most of the sound booth wiring bills in evidence indicate it was done by, and for Neighborhood; and I doubt principally the view that these service boxes close to aisle seats, close to projection room are the root-connecting point for equipment. It's not to be taken as the equipment itself.

So, when I move on to the aisle seats, I say, well, the loss of greenfield on the seats does not really mean anything. I do have a conflict of testimony on whether, as Mr. Gibson of Cowherd Company said, he slid the greenfield up, cut

page 891 } through the wire outside the junction box, or as Mr. Dougherty said, the plates had to be removed and the wires were clipped too short to use over, and they had to pull wires back to the service panel. They just had a conflict on it. I will resolve that in the decision, but that's a factual conflict, not a legal one.

The paint contractor, Sellars, I think his testimony is correctly summarized by Mr. Simmonds. He said it was flaking, but then he could not break down his bill to rule out, and he thought it was leak damage, but you could not be sure because there were many, many causes; but another witness referred to it as leak damage, and as I heard him, he was talking about the ceiling as well as walls. Then, if there was damage from that, that comes from the landlord's territory —it comes from the roof. But if the repairman can't pull it out of the bill, with how much left to apply to flaking, but not reflected by Neighborhood in the course of their work, that's a problem of proof.

The evaporative condenser on the roof—well, if a defendant leaves his property at lease end on the formerly-leased premises, then it seems to me in order for the landlord to charge him with the expense of removal, the landlord must first haxe made a demand for removal. Mr. Simmonds
page 892 } argues further that it was waived because landlord and had made a contract tied in with K and B to do something else anyhow, and there was evidence that K and B put in year-round air-conditioning; and another file shows annual changeover-type charges for the old one, just as K and B went to stereophonic sound, and the building was originally equipped with monoral—I forget their term—not around the theatre.

The other area, the parking lot—I found as a fact that it was not paved as the Lease commenced. I am not wholly satisfied it was paved as late as the defendant says, because the bill for what they said is new pavement talks about "patching old" and it uses the term "pavement," and while there was some testimony about what "pavement" meant, I still find that a little fuzzy. But it was done after shows began in the Glebe, and paving was done with Mr. Sharlin's approval.

Now, I guess everybody knows that if you pave over ground, it won't absorb water as fast or run off; though banked gravel and other parking lots have a heavy run-off too, they are not exactly as porous as sod. If there is an increase of water—I will call it "under the marquee"—on the building lot, coming from the lot which, unfortunately from
page 893 } his point of view, Mr. Sharlin approved of being paved, and it affects the structure which is his territory under the Lease, I can understand his concern with all these problems, but I cannot award him the damages he would seek.

With all of this, I think there was a little roughness in the

removal of fixtures, which were entitled to be removed, and I am going to have to compute in my mind, sitting as jury, what some of this should be. So, I will stop and do a few minutes' figuring.

Mr. Harrigan: Did your Honor rule that the recessed lights in the marquee stayed with him?

The Court: That's what I think—I am looking in part primarily to the Lease; yes, I know it says "fixtures may be removed." I don't recall any specific bill—It doesn't matter really whether there was a specific bill because Neighborhood paid for the Exit lights when they went in; but I can't conceive of the contemplation of any of the parties that things recessed into the building, as distinguished from attached on top, were intended to ever leave it.

You say, the Judge is confusing the law of fixtures and the law of the Lease. Well, that's the way it is, so
page 894 } the net result is that Neighborhood does pay on the recessed Exit lights and on the recessed canopy fixtures, that's right.

The $158.40 that was the marquee fixture.

Mr. Harrigan: Marquee?

The Court: The under side.

Mr. Simmonds: Yes.

The Court: I find for the plaintiff in the amount of $1517.24, and interest on this to date, and costs.

One paper I will not keep in the file is a diagram that won't do anybody any good later on. It was offered as such. The various bills and specs, after 60 days if you all want them, take them back. Wait and see.

As regards the Plans and Specs, do you agree whose they are?

Mr. Simmonds: I think it was agreed initially they came from our files, even though they bear the Plaintiff's Exhibit Number.

The Court: If you want them left here for a while—

Mr. Harrigan: Leave them there.

The Court: All right, but you agree originally they came from—

Mr. Harrigan: They can have them when the case is over, but—

The Court: The Clerk can struggle with them for a while.

page 895 } Mr. Harrigan: Your Honor, I would like to file a motion to set aside verdict.

The Court: Motion to set aside?

Mr. Harrigan: That the verdict is contrary to the law and

the evidence, and for a new trial.

I would like to have leave to file—

As I understand your Honor on his ruling, did your Honor rule which way the seat lights—whether we were or were not entitled to seat light wiring.

The Court: I awarded an item for short wires throughout the building, and I believe that some of those were short, short in the box on the floor.

I may go too far, but I couldn't quite accept the electrical testimony that the quantities of cost of workmen doing the job for somebody else. Let's see. This is the kind of case where the passage of any appreciable time makes things difficult to recall.

Mr. Harrigan: Maybe I ought to ask, as far as the liability goes, did your Honor rule on the doors, whether there was any liability or no liability?

The Court: I'm not real sure whether I'm right to give you some indications of ruling, in fairness to all
page 896 } for the time you have put in here and the law argued—when it comes to the jury's side of it, my inclination of it is to do just like a jury, give you a gross figure.

Mr. Harrigan: What I'm talking about, were there any rulings of law in the decision which a jury would not ordinarily pass on, which you ruled on silently, so to speak?

The Court: I have indicated this one problem that I have had has been proof of installation of things which were newer models, different models; better models is not the standard of recovery of either repair of old or replacement of former, because that's the standard on the law of damages.

Yes, I allowed an item on the doors, but one you would say was quite low. I had evidence of bent panic bars, you will recall—but new doors of a different and better make—On Cross, they said they were a better make, stronger doors and stronger panic bars.

I want a time for filing of anything in writing and then time for hearing—

Well, let's see. I want to use March 16th as the date for hearing anything. Let's establish any deadlines in between.

page 897 } Mr. Simmonds: I would like you to keep in mind my client is in Richmond and there is a little time lag, a day or two you wouldn't otherwise lose, so I would like to have it as promptly as possible.

The Court: Yes.

The Court: File them, Mr. Harrigan, with copy to Mr.

Simmonds by close of the 8th.

Mr. Harrigan: Which is next Wednesday.

The Court: Five full work days, not counting today.

Mr. Harrigan: Argue it on the 16th.

The Court: What I will do is put it on the docket.

Mr. Harrigan: How about, could we give it to them on the tenth?

Mr. Simmonds: If your Honor please, the tenth is a Friday. Around here, they don't usually work over the weekend. That brings it up to the 13th that I would get the grounds to be heard on the 16th. I think your Honor's suggestion of the 8th is proper. Certainly, Mr. Harrigan has got it better in mind now than he will have it at any other time.

The Court: So is the Court. The other problem I have, this is the least bad of many bad days to put it down. (Discussion off the record.)

The Court: I will put it down March 16th, and
page 898 } we will have to hold to close—one week for motion and grounds.

Mr. Harrigan: To be filed what date?

The Court: By close of March 8th, and 16th should any be so filed—April 16th for hearing.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

INDEX TO RECORD

	Page
Writ of Error Awarded	1
Record	2
Motion for Judgment	2
Answer and Grounds of Defense	4
Motion to Set Aside the Verdict as Contrary to the Law and Evidence and Motion for a New Trial	5
Order—March 22, 1967	6
Opinion, Memorandum	7
Judgment—April 28, 1967	9
Notice of Appeal and Assignments of Error	10
Witnesses:	
Harry M. Sharlin	14, 447
Patrick Dougherty	87, 226
Nathan Platt	111
Edward De Lisio	123
A. O. Budina	141
Wendell Jordan	194
Charles Shamigian	211
Joseph Bunker	263
Lee Rigney	275
William E. Sellars	300
Robert Gibson	319
Leo L. Snarr	359
Harry B. Goff	384
Morris A. Nunnelly	392
R. Wade Pearson	401
Morton G. Thalhimer	423
Proceedings	71, 103, 119, 125, 126, 131, 140, 148, 192, 205, 206, 217, 259, 269, 273, 293, 380, 452