

Act, called for tenders, and certain persons having tendered, and the board having received and considered such tenders, the board is bound to accept asphalt of any of the three kinds mentioned in the third clause of the contract, or of any kind which, in the sole opinion of the city engineer, is as good as Trinidad asphalt, and there is no prohibition of the use of any other kind of asphalt than Trinidad, Bermuda, or German Rock, provided the tenderer states in his tender the kind proposed to be used. The time for the demonstration of the fact of whether the asphalt proposed to be supplied conforms to the specifications, is when such asphalt is about to be laid down, and, therefore, the contract in question is good and binding between the parties, and can only be put an end to by the contractor not providing, in the opinion of the city engineer, at such time for laying it, as good a quality of asphalt as the specified kind.

There is in the contract complained of a term departing from the specifications, and an undertaking will be given by defendants' counsel to strike out from the body of such contract the words "and that the asphalt to be used shall be in all respects equal to Alcatraz and other brands of California asphalt that have been used and are being used in the city of Brooklyn and other cities," and to strike out from the recital in the contract the following: "Whereas the engineer of the said city has reported to the board of control of the said city that the Alcatraz brand of California asphalt is equal in quality to Trinidad asphalt, and that asphalt equal in quality to the said Alcatraz brand of California asphalt will be satisfactory to him."

Motion dismissed and interim injunction annulled. No costs of application to either party.

FALCONBRIDGE, C.J.

JULY 18TH, 1902.

CHAMBERS.

IVEY v. MOFFAT.

*Judgment Debtor—Examination—Insufficient Answers—Further Examination.*

Application by plaintiffs to commit defendant for refusal to disclose his property, or his transactions respecting the same, on his examination as a judgment debtor.

E. E. A. DuVernet, for plaintiff.

E. F. B. Johnston, K.C., for defendant.