

I find in favour of the plaintiff the sum of \$1,440.12, arrived at as follows:—

Balance as per engineer's report 3rd April, 1908..	\$1,845 03
Additional allowance as per letter 17th April	336 96
It was stated during the trial, and not contradicted, that there was an error in Fielding's addition in computing excavation	12 15

The difference between the parties is in the following items:—

(1) Cutting upper river diversion	\$876 15
Coffer dam	116 70
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Charged by plaintiff	\$992 85
Allowed by engineer	375 00
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Difference	\$617 85

The defendants do not dispute plaintiff's measurements, but they rely upon the clause of the contract, which, as they contend, leaves this wholly to the engineer.

Only \$375 is allowed, and the evidence does not satisfy me that the engineer acted upon any measurement as to this item, or that he acted as an arbitrator or judicially between the parties. The evidence is, that he at first, upon the claim being put forward, refused to allow anything, then he offered \$100, then \$200, and finally \$375. The plaintiff refused to accept even the \$375 except on account.

As the work was done, and as plaintiff's measurement was established, this difference should, in my opinion, be allowed

	\$617 85
(2) The items for core wall in eastern bank, \$51 and \$17.07, should be allowed	68 07
(3) I allow picking down face of concrete	13 50
(4) I am unable to find evidence that would justify the allowance of \$48.40 for flooring and wheel pit, extra strength.	
(5) Extra expense of arching wheel pit is charged at \$275. This includes an item of waste of 4,000 ft. of lumber. There is not satisfactory evidence of such waste of lumber, and I allow the sum at	200 00