

Court of King's Bench

(APPEAL SIDE)

On appeal from a judgment of the Superior Court, for the
 UNIVERSITY OF PROVINCE of Quebec, (District of Montreal), rendered
 W.C. by the Honourable Mr. Justice Mercier,
 November 23rd, 1934.

-8 JUL 1953

INSTITUTE OF ADVANCED
 LEGAL STUDIES

The People of the State of New-York,

(Plaintiffs in the Court below)

APPELLANTS

—vs—

Heirs of the late John M. Phillips,

(Defendants in the Court below)

— & —

*The Crown Trust Company et al.,
 es-qual., for the Heirs of the
 late Francis Phillips,*

Defendants severing in their defence
 and en reprise d'instance.

RESPONDENTS

— & —

The Montreal Safe Deposit Company,

TIERS-SAISIS

C A S E

VOLUME 12. — PAGES 5501. TO 5565.

BERTRAND, GUERIN, GOUDRAULT and GARNEAU,

Attorneys for Appellants.

COOK, MAGEE, NICHOLSON and O'DONNELL,

Attorneys for the Heirs of the late
 John M. Phillips, Respondents.

HACKETT, MULVENA, FOSTER, HACKETT and HANNEN,

Attorneys for The Crown Trust Company et al., es-qual.,
 for the Heirs of the late Francis Phillips, Respondents.

J.-D. de LAMIRANDE et Cie, 4557 rue St-Denis, Montréal.

IMPRIMEURS EDITEURS

NO. 956.

Court of King's Bench

(APPEAL SIDE)

On appeal from a judgment of the Superior Court, for the
Province of Quebec, (District of Montreal), rendered
by the Honourable Mr. Justice Mercier,
November 23rd, 1934.

The People of the State of New York,

(Plaintiffs in the Court below)

APPELLANTS

—vs—

Heirs of the late John M. Phillips,

(Defendants in the Court below)

— & —

*The Crown Trust Company et al.,
es-qual., for the Heirs of the
late Francis Phillips,*

Defendants severing in their defence
and en reprise d'instance.

RESPONDENTS

—&—

The Montreal Safe Deposit Company,

TIERS-SAISIS

C A S E

Exhibit D-11 (*Continued*).

The Borough President states that it is proposed to allow 200 days for the completion of the improvement and that expenses amounting to \$364.69 have been incurred for the preliminary work.

10 The work to be done comprises the following: 4,276 linear feet 3-foot concrete sewer; 1,611 linear feet 2-foot 6-inch concrete sewer; 896 linear feet 2-foot 3-inch concrete sewer; 50 manholes; 7 chambers.

The cost of the improvement is now estimated to be \$221.300.

20 The profile submitted by the Borough President in connection with this matter indicates that the legal grade conforms closely with existing improvements and can doubtless be perpetuated.

In reports presented concerning the outlet sections of this sewer, it has been shown that the authorization as a whole will probably result in a deficiency, and the understanding has been had that, if such is the case, the deficit will be assumed by the Borough of Queens.

30 Although the analysis of the cost of the present project did not reveal the likelyhood of a deficit in so far as this particular link is concerned, the Board of Assessors was requested at the time when preliminary authorization was granted to advise the Board of Estimate and Apportionment prior to confirming the assessment in case a deficiency should develop, to the end that, if substantial in amount, provision might be made for its absorption by the Borough of Queens, pursuant to the Gerhardt Law.

40 I would recommend that final authorization of this improvement be granted but with the understanding that similar action will also be accorded the outlet sewer in Cross Island boulevard.

In the construction of the outlet sections of this sewer large volumes of ground water were encountered and, on the basis of the conditions there disclosed, the bids for the continuing upstream sections have been based on the assumption that

Exhibit D-11 (*Continued*).

similar conditions would here obtain with the result that the cost of the projects has been very substantially increased as compared with the original estimates.

10 It is the belief of your Engineer that the volume of ground water to be encountered in the section now under consideration should be very much less than in the sections where improvements have already been carried out and, in order that prospective bidders may be given as much information as practicable upon which to base a reasonable bid, I would also recommend that the Borough President be requested to open test pits along the line of the proposed sewer before advertising the contract, in order that the elevation of the water table may be fully disclosed, and to make this information available to all of the bidders. Respectfully,

20

ARTHUR S. TUTTLE,
Chief Engineer.

A true copy of report of the Chief Engineer to the Board of Estimate and Apportionment relative to Cal. No. 539 of June 17, 1926.

Minutes page 5257

30

JOSEPH F. HIGGINS,
Assistant Secretary.

Signature guaranteed.

PETER J. MCGOWAN,
Secretary.

40

EXHIBIT D-12

(Copy of Report No. 33214 to the Committee of the Whole, Board of Estimate and Apportionment, dated June 10, 1926.)

BOARD OF ESTIMATE AND APPORTIONMENT
CITY OF NEW YORK

10

Report No. 33214.

June 10, 1926.

Committee of the Whole, Board of Estimate and Apportionment:

20
30
Gentlemen — At the meeting of the Board of Estimate and Apportionment held on June 3, 1926 (Cal. No. 374), the Chief Engineer was instructed to submit a report to your Committee concerning a communication dated May 27, 1926, from the President of the Borough of Queens, advising that all of the conditions imposed by the Board prior to final authorization have been complied with in the matter of constructing sanitary sewers in Brinkerhoff (109th) avenue from 193rd (Bvers) street to Hollis avenue; Hollis avenue from Brinkerhoff (109th) avenue to 198th (Irvington) street; 198th (Irvington) street from Hollis avenue to 109th (Jerome) avenue; 109th (Jerome) avenue from 198th (Irvington) street to 200th (Nyack) street; 200th (Nyack) street from 109th (Jerome) avenue to 104th (Beaufort) avenue; 104th (Beaufort) avenue from 200th (Nyack) street to 202d (Peekskill) street; 202d (Peekskill) street from 104th (Beaufort) avenue to 100th (Chichester) avenue; 100th (Chichester) avenue from 202d (Peekskill) street to 205th (Cummings) street; 205th (Cummings) street from 100th (Chichester) avenue to 99th (Atlantic) avenue; 99th (Atlantic) avenue from 205th (Cummings) street to Cross Island boulevard (Squire street), and Cross Island boulevard (Squire street) from 99th (Atlantic) avenue to Jamaica avenue.

40
Preliminary authorization of this improvement was given by the Board of Estimate and Apportionment under a resolution adopted on May 13, 1926, at which time information was presented to show that the cost of the project would amount to about \$178,000.

The improvement was advanced by the Local Board on the ground of public necessity at the request of the Commissioner of Public Works and is unusually important in its cha-

Exhibit D-12 (*Continued*).

10 racter of a trunk sewer serving an area of upwards of 1,600 acres. About 700 houses have been erected in the tributary area, in some portions of which serious flooding occurs during periods of precipitation. The sewer will ultimately constitute the sanitary element of a separate system of sewers, but it will be used for the present for the removal of a limited amount of storm water in addition to the house drainage.

The Borough President states that it is proposed to allow 200 days for the completion of the improvement and that expenses amounting to \$1,549.36 have been incurred for the preliminary work.

20 The work to be done comprises the following: 2,801 linear feet 3-foot 6-inch concrete sewer; 2839 linear feet 3-foot concrete sewer; 35 manholes; 12 chambers.

The cost of the improvement is now estimated to be \$193,200.

The profile submitted by the Borough President in connection with this matter indicates that the legal grade conforms closely with existing improvements and can doubtless be perpetuated.

30 In reports presented concerning the outlet sections of this sewer, it has been shown that the authorization as a whole will probably result in a deficiency, and the understanding has been had that, if such is the case, the deficit will be assumed by the Borough of Queens.

40 Although the analysis of the cost of the present project did not reveal the likelihood of a deficit in so far as this particular link is concerned, the Board of Assessors was requested at the time when preliminary authorization was granted to advise the Board of Estimate and Apportionment prior to confirming the assessment in case a deficiency should develop, to the end that, if substantial in amount, provision might be made for its absorption by the Borough of Queens, pursuant to the Gerhardt Law.

When preliminary authorization of this improvement was given, the understanding was had that final authorization would

Exhibit D-12 (*Continued*).

10 be deferred until the outlet sewer in the adjoining section of 109th avenue and Brinkerhoff avenue had been provided for. A favorable report concerning the Borough President's request for the authorization of the construction of the outlet has been prepared for the consideration of your Committee and, contingent upon final authorization being granted, I would recommend that final authorization of the tributary now under consideration be also accorded.

20 In the construction of the outlet sections of this sewer large volumes of ground water were encountered and, on the basis of the conditions there disclosed, the bids for the continuing upstream sections have been based on the assumption that similar conditions would here obtain with the result that the cost of the project has been very substantially increased as compared with the original estimates.

30 It is the belief of your Engineer that the volume of ground water to be encountered in the sections now under consideration should be very much less than in the sections where improvements have already been carried out and, in order that prospective bidders may be given as much information as practicable upon which to base a reasonable bid, I would also recommend that the Borough President be requested to open test pits along the line of the proposed sewer, before advertising the contract, in order that the elevation of the water table may be fully disclosed, and to make this information available to all of the bidders. Respectfully,

ARTHUR S. TUTTLE,
Chief Engineer.

40 A true copy of report of the Chief Engineer to the Board of Estimate and Apportionment relative to Cal. No. 538 of June 17, 1926.

Minutes page 5255.

JOSEPH F. HIGGINS,
Assistant Secretary.

Signature guaranteed.

PETER J. MCGOWAN,
Secretary.

EXHIBIT D-3

*(Copy of letter from Arthur S. Tuttle to Richard Gipson, dated
December 16, 1927.)*

December 16, 1927

10 Mr. Richard Gipson,
President, Chamber of Commerce of the Rockaway, Inc.,
Chamber of Commerce Building, Mott Avenue,
Far Rockaway, N.Y.

Dear Mr. Gipson:—

20 I have your letter of December 15th, advising that certain
statements have been credited to me in the public press with
respect to the cost of the Jamaica-Hollis sewers and requesting
information on the subject.

30 Long before these sewers were authorized, repeated and
emphatic requests had been presented to the Board of Estimate
and Apportionment by the Borough President on behalf of re-
sidents of the Jamaica-Hollis section for sewers and I think that
it must be admitted by all interested parties that the con-
ditions which existed after any heavy storm were intolerable,
occasioning serious interference with the travelling public and
resulting in a menace to the public health. The adopted drainage
plan made provision for deep construction which, notwithstand-
ing its cost, made it possible to avoid the necessity for a double
pumping. It was also contemplated in the plan that the sewers
should be water-tight.

40 Without entering into a discussion as to the various sta-
tements which have been charged to me in the press, I would
say that the whole story as to cost might be summarized by
emphasizing the fact that the cost of constructing trunk sewers
in one locality is not comparable with that in another unless
the working conditions are the same. In all Boroughs it is the
practice to pay for sewer construction on the basis of the cost
of a single linear foot, this cost including the furnishing
of all of the material as well as the work of excavating, pump-
ing, sheeting, bracing and backfilling. In some of the work the

Exhibit D-3 (Continued).

cost of the material undoubtedly makes up the major portion of the total expense, while in others it may become a minor matter. Any comparative statement limited to the cost per foot of sewer construction in one locality has, therefore, very little value in so far as it relates to another locality unless similar conditions obtain.

10

In the case of the Jamaica-Hollis sewers, the adopted drainage plan placed the foundation of the sewers at an elevation about 20 feet below tide level at the pumping station, thence rising toward the interior of the island. This condition, you will understand, meant that the sewer trench at the outlet had to be carried to a depth of at least 20 feet below the underground water level, the depth below this level decreasing toward the upper end of the system. The difficulties encountered in opening and maintaining the trench by reason of the large volume of ground water were explained to me by the Engineers of the Sewer Bureau as the work advanced, and it was in recognition of the very unusual conditions which here obtained that I concurred in the substantial increase in the final estimates as compared with those originally presented. I understand that the awards of the contracts were made by the Borough President to the lowest bidder in every instance, and that in the later contracts such information as could be made available was furnished to the contractors as to the position of the ground water line with respect to the sewer trench to the end that the bids should be based on an appreciation of the conditions under which the work would be carried out. It would appear, however, that bidders for contracts subsequent to the one first let endeavored to protect themselves against loss by including in their bid what they deemed as ample allowance for difficult working conditions.

20

30

You will, of course, appreciate the advantage of using a precast pipe and the unusual precautions to secure a watertight joint in view of the conditions which obtained in this sewer system, the former minimizing the period of maintaining an open trench and the latter not only minimizing the cost of pumping the sewage but also permitting the sewer to function to its full capacity for the purpose for which it was designed. It has never been my understanding that any patented process was required either for the construction of the pipe or for the joint.

40

Exhibit D-3 (*Continued*).

10 I might add that this office makes a compilation each year as to the cost of work carried out in the entire City in comparison with that disclosed by the final estimates. The records have been published in my Annual Reports up to the close of the year 1925, and an examination of them will show that the total final estimates for sewer improvements in the Borough of Queens are within the total cost of the work done. Of course, there are exceptions from time to time in all of the Boroughs where costs greatly exceed the estimates while, on the other hand this condition appears to have been more than offset by cases where the costs are lower than anticipated.

If this statement will be helpful in clearing up the questions which are in controversy, I shall be very glad to have you use it in any way you see fit.

20

Very truly yours,

ARTHUR S. TUTTLE,

Chief Engineer.

30

40

EXHIBIT D-9

(Original of resignation of Maurice E. Connelly as President of the Borough of Queens, dated April 3, 1928, with certification.)

Document No. 6636.

Amount, \$ 0.25

10

THE CITY OF NEW YORK

I, the City Clerk of the said City, do certify that I have compared the preceding with the original resignation of Maurice E. Connolly as President of the Borough of Queens City of New York and filed in the office of the City Clerk April 3rd, 1928 on file in my office and that the same is a correct transcript therefrom, and the whole of such original.

20

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal this 10th day of October 1932.

M. J. CRUISE,
City Clerk.

OFFICE OF THE PRESIDENT OF THE

30

BOROUGH OF QUEENS

Long Island City.

Maurice E. Connelly,
President.

I hereby resign the office of the President of the Borough of Queens.

MAURICE E. CONNELLY,

40 Dated April 3rd 1928.

PART IV. - JUDGMENT

PROVINCE OF QUEBEC

DISTRICT OF MONTREAL

COUR SUPERIEURE

10

No. 30804

Ce 23ème jour de novembre 1934.

PRESENT:— L'HONORABLE JUGE MERCIER

PEOPLE OF THE STATE OF NEW YORK

Plaintiffs

20

vs

HEIRS OF THE LATE JOHN M. PHILLIPS

Defendants

and

MONTREAL SAFE DEPOSIT COMPANY

30

Tiers-saisie

and

CROWN TRUST COMPANY ET AL

Defendants severing in their defence

and

40

CROWN TRUST COMPANY, ES-QUALITE

Defendants en reprise d'instance

LA COUR, après avoir entendu les parties, par leurs
avocats, sur le mérite de la présente cause, avoir examiné la
procédure, les pièces produites, entendu la preuve et avoir dé-
libéré:

ATTENDU que le demandeur poursuit les défendeurs pour les causes et raisons ci-après mentionnées, alléguant, au soutien de sa présente action, ce qui suit, la dite action accompagnée d'une saisie-arrêt avant jugement, savoir: that the people of the State of New York are and constitute the State of New York, which is one of the States of the United States of America; that the seizure in this case is brought upon by the Attorney General of the State of New York under the authority conferred upon him by Article 76 of the Civil Practice Act of that State; that John M. Phillips died on or about the third day of July, 1928, as appears by Certificate of Death, produced as Exhibit P.1. leaving a last Will and Testament, copy of which is produced herewith as Exhibit P.2, which Will and Testament was probated by the Surrogate Court of the County of Nassau on or about the tenth day of September, 1928, as appears to copy of the judgment of the said Surrogate Court attached to the Will and Testament, filed as Exhibit P-2; that in and by virtue of the said last Will and Testament, John J. Cream and John Bossert were named as Executors thereof, and that said John J. Cream is now the duly appointed acting and qualified Executor of the last Will and Testament of the said John M. Phillips; that the present action was initiated on or about the ninth day of July, 1928, within six months of the death of the said John M. Phillips, against his legal heirs; that the Defendants are indebted in a sum exceeding five dollars towards the Plaintiffs, to wit, in the sum of \$3,405,449.02, for the reasons given in the following paragraphs; that at all times hereinafter mentioned, Maurice E. Connelly was a public officer, to wit, the duly elected, qualified ad acting Borough President of the Borough of Queens in the City of New York, and State of New York and that at all such times the said Borough of Queens was, and now is, a part of the City of New York, which City of New York was at all such times, and now is, a municipal corporation of the State of New York, one of the States of the United States of America; that Frederick C. Seely was at all times hereinafter mentioned, Assistant Engineer in the office of the President of the Borough of Queens, in the Department of Engineering and Construction, Division of Sewers, and was at all such times acting as such Engineer. That at all times hereinafter mentioned the Borough President of the Borough of Queens, under the powers and authority conferred upon him by the Charter of the City of New York, which was at all such times a duly enacted statute of the State of New York, had the power as such officer to make

all contracts for and on behalf of the City of New York, for public improvements in the said Borough of Queens, including the construction of sewers in the said Borough, in virtue of Section 383 of Chapter 466 of the Laws of 1901 of the State of New York and amendments thereof, which said Law is known as "The Greater New York Charter"; that in or about the month of January, 1917, and continuing down to and including the second day of April, 1928, at the Borough of Queens, County of Queens, in the City of New York, the said John M. Phillips, Maurice E. Connelly and Frederick C. Seeley, did unlawfully, wilfully, knowingly and corruptly, conspire, combine, confederate and agree together with each other, and with divers other persons, to Plaintiffs unknown, to cheat and defraud the City of New York out of property, and did cause the City of New York, through its duly constituted officers, to pay large sums of money for work done and material and equipment supplied to construct pipe sewers in the said Borough of Queens, in excess of the fair, reasonable and proper cost thereof, in the manner and by the means hereinafter set forth; the said persons did, pursuant to said conspiracy, and acting and confederating together, in accordance with such corrupt conspiracy and agreement, cause the specifications for the construction of pipe sewers in the Borough of Queens to provide, and said specifications did provide, wherever size would permit, as an alternative to the use of a monolithic type of sewer. in the construction of said sewers, to use a precast pipe, and did cause the specifications for precast pipe to be unlawfully and fraudulently framed and designed so as to tend to preclude the use of any precast pipe but a precast pipe manufactured and sold by the Lock Joint Pipe Company, a corporation organized under and by virtue of the State of New Jersey, and that the said John M. Phillips, at all times hereinafter stated, sold or manufactured and sold, said precast pipe under and by virtue of an agreement with said Lock Joint Pipe Company, in which it was agreed that the said John M. Phillips should be the sole and exclusive agent to sell, or to manufacture and sell. said precast pipe in the said Borough of Queens; and further, in furtherance of such corrupt conspiracy and agreement, the said John M. Phillips became and was at all times hereinafter mentioned, the exclusive agent of the said Lock Joint Pipe Company, for the sale and the manufacture and sale of its pipe in the Borough of Queens, and the said John M. Phillips was at all times, pursuant and in accordance with said corrupt conspiracy and agreement, the sole and exclusive agent for the manufacture and sale of precast pipe,

manufactured by the said Lock Joint Pipe Company, under and by virtue of its patents for said pipe, and at all such times since 1921, the said John M. Phillips had and exercised the exclusive right to the use of forms obtained from said Lock Joint Pipe Company, for the manufacture of all precast pipe made in accordance with said patents, in and for use in the said Borough of Queens; and in pursuance of said corrupt conspiracy and agreement, the said John M. Phillips sold, and offered for sale, 10 precast pipe to persons contracting or desiring or intending to contract for the City of New York, for the construction of pipe sewers in the said Borough of Queens, at exorbitant and extortionate prices, in excess of a fair, reasonable and true market value thereof, in order that the said John M. Phillips, and such persons as above described, might defraud the City of New York of the moneys paid for such pipe, in excess of any fair and reasonable price for such pipe; and that further in furtherance of such corrupt conspiracy and agreement, and to effect the objects thereof, and in or about the month of May, 1919, at Ampere, 20 State of New Jersey, the said John M. Phillips entered into an agreement with the Lock Joint Pipe Company, which is a corporation organized and existing under and by virtue of the Laws of the State of New York, where by he was authorized to quote to persons desiring or intending to contract, or contracting with the City of New York for the construction of pipe sewers in the Borough of Queens, prices for precast reinforced concrete pipe, manufactured, or to be manufactured, and sold by the said Lock Joint Pipe Company to such persons, with the privilege to 30 the said Phillips of quoting to such persons such prices as he might choose to quote, upon the understanding and agreement with the Lock Joint Pipe Company that he was to receive from said company any excess over a price quoted to the said Phillips by the said company, and upon the further understanding and agreement that the said Lock Joint Pipe Company would not make quotations to such persons in the Borough of Queens; that later, and in or about the month of May, 1919, pursuant to such corrupt conspiracy and agreement, and in furtherance of the purpose thereof, the said Phillips entered into the further 40 agreement with the said Lock Joint Pipe Company, whereby the previous agreement between Phillips and said company was terminated, and in lieu thereof, said Phillips became the exclusive agent for the said Lock Joint Pipe Company in the Borough of Queens, with the sole and exclusive right to purchase in the said Borough of Queens, from the said Lock Joint Pipe Company, all precast, reinforced, concrete sewer pipe manufactured

by said company, and with the sole right to said John M. Phillips of reselling said pipe in the Borough of Queens; that in pursuance of such corrupt conspiracy and agreement the said Frederick C. Seeley, fraudulently and wrongfully incorporated in the specifications, plans, profiles and details for the construction of pipe sewers in the Borough of Queens, such unnecessary and unreasonable requirements covering the method of construction of monolithic types of sewers as to prevent contractors submitting bids in proposals for construction of monolithic types of sewers, at a lower figure than bids in proposals for the construction of sewers of precast concrete sewer pipe to the end and purpose that the low bidders on contracts for the construction of sewers in the Borough of Queens should be those whose bids were based upon the use of precast pipe and at figures lower than those submitted for the construction of monolithic type sewers; that in pursuance of such corrupt conspiracy and agreement, and to effect the purpose and objects thereof, in the year 1924, the exact time of which is to Plaintiffs unknown, the said Seeley caused the plans and specifications for the construction of pipe sewers in the Borough of Queens, to show and require in the monolithic type of construction thereof, the insertion of a so-called waterproofing membrane in the invert of said sewer structure, and said Seeley at such time and place further caused to be inscribed in the plans, profiles and details for the construction of pipe sewers in the Borough of Queens, certain notes which showed and required in the monolithic type of construction thereof, that arch forms must be kept in place twenty-one days; that in pursuance of such conspiracy and agreement, and for the purpose of aiding the said John M. Phillips in charging and collecting from the contractors to whom he sold precast pipe, the said Maurice E. Connelly did reject all bids, when the lowest bidder was not favorable to said John M. Phillips, to the end that it might be understood by all bidders upon sewers in the Borough of Queens, that precast pipe only would be approved for use in the construction of such sewers; and that such precast pipe should be purchased by them from said John M. Phillips only; and further, in accordance with such corrupt conspiracy and agreement, and in the furtherance thereof, the said Maurice E. Connelly did award contracts for the construction of pipe sewers in the Borough of Queens, to bidders whose bid exceeded any fair and reasonable cost of construction of other sewers, knowing that their bids were based upon the use of precast pipe, purchased or to be purchased, from the said John M. Phillips, at

prices greatly in excess of any fair and reasonable price for the same; and that further pursuant to said corrupt conspiracy and agreement, and in furtherance thereof, the said Maurice E. Connelly, as such President of the Borough of Queens, did enter into contracts with bidders to whom contracts had been awarded by him, and did from time to time cause to be made, or knowingly permitted to be made, estimates of the value for work done under said contracts, and caused the same to be forwarded to the Comptroller of the City of New York, and did file and cause to be filed with said Comptroller final certificates of completion of the work done under said contracts, and acceptance thereof, then and there knowing that the payment such contractors would receive from the City of New York, for work done and materials furnished under said contracts, would include money representing the difference between the cost to them of precast pipe sold to them by John M. Phillips, and the fair reasonable market value thereof; and that the said contractors would pay said money to said Phillips; and that in accordance with such corrupt conspiracy and agreement, and in furtherance thereof, and to effect the objects thereof, in or about the month of February, 1917, the said Maurice E. Connelly, as such President of the Borough of Queens, did approve for inclusion in the specifications covering the construction of pipe sewers in said Borough of Queens, a specification for precast reinforced, concrete sewer pipe, reading in part as follows:

“All joints to be made of 1 : 2 Portland Cement mortar. The mortar shall be thoroughly trowelled in the recess in the interior of the pipe up to the spring line, making a continuous invert. After this has been done, steel forms especially designed for the purpose shall be placed over and around the entire joint, and the mortar for sealing the arch portion grouted or poured through an opening in the crown of the pipe. Joints must be watertight;”

knowing that this requirement would preclude all bidders except those using Lock Joint Pipe Company's precast pipe sewers; and that in pursuance of such corrupt conspiracy and agreement, and in furtherance thereof, the said Maurice E. Connelly, on or about the eighth day of December 1924, approved and signed the plans, profiles and details for the construction of pipe sewers in the Borough of Queens, containing requirements that the monolithic type of construction should have a

so called waterproof membrane in the invert thereof, and also in the manholes and chambers connected with the monolithic sewer, and that the arched forms used in the construction of said monolithic type of sewer construction should be kept in place twenty-one days, knowing that such provisions had been placed in such plans and specifications for the purpose of preventing bidders bidding on the monolithic type of sewer, against a pre-cast type of sewer; and that in furtherance of said conspiracy and to effect the objects thereof, the Defendant, John M. Phillips, agreed to sell, and did sell, to said Avixa Corporation, reinforced, concrete sewer pipe, as follows:

- 10
- (a) In the year 1923 - 3800 feet of precast, reinforced, concrete sewer pipe, at \$32.50 per linear foot, for use in the construction of a public sewer at 25th Street, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 66597. A fair market price for 90" pipe of this class of sewer pipe was, at that time, \$18.25 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$32.50 per linear foot instead of \$18.25 per linear foot, thereby causing the City to lose, through said conspiracy, the sum of \$54,150.00, which amount benefited directly to said John M. Phillips.
- 20
- (b) In the year 1925 — 695 feet of precast, reinforced, concrete sewer pipe, at \$24.46 per linear foot, for use in the construction of a public sewer at Horstmann Ave., in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 75044 A fair market price for 30" pipe of this class of sewer pipe, was at that time, \$3.62 per linear foot, for 36" pipe of this class of sewer pipe, \$4.75 per linear foot, for 39" pipe of this class of sewer pipe, \$4.72 per linear foot, and for 96" pipe of this class of sewer pipe, \$26.54 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$24.46 per linear foot instead of \$3.62, \$4.75, \$4.72 and \$26.54 per linear foot respectively, thereby causing the City to lose, through said conspiracy, the sum of \$10,006.62, which amount benefited directly to said John. M. Phillips.
- 30
- 40

- 10 (c) In the year 1925 — 6218 feet of precast, reinforced, concrete sewer pipe, at \$30.00 per linear foot, for use in the construction of a public sewer at 158th Street and Vicinity in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York, as Contract No. 77420. A fair market price for 33" pipe of this class of sewer pipe, was at that time, \$3.70 per linear foot, and for 36" pipe of this class of sewer pipe, \$4.75 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$30.00 per linear foot instead of \$3.70 and \$4.75 per linear foot respectively, thereby causing the City to lose, through said conspiracy, the sum of \$159,343.90, which amount benefited directly to said John M. Phillips.
- 20 (d) In the year 1926 — 5478 feet of precast, reinforced, concrete sewer pipe, at \$30.00 per linear foot, for use in the construction of a public sewer at Foch Boulevard in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 79050. A fair market price for 54" pipe of this class of sewer pipe, was at that time, \$8.33 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$30.00 per linear foot instead of \$8.33 per linear foot, there by causing the City to lose, through said conspiracy, the sum of \$118,708.26, which amount benefited directly to said John M. Phillips.
- 30 (e) In the year 1924 — 6783 feet of precast, reinforced, concrete sewer pipe, at \$24.58 per linear foot, for use in the construction of a public sewer at Jamaica Avenue, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 80311. A fair market price for 27" pipe of this class of sewer pipe, was at that time, \$3.04 per linear foot, for 30" pipe of this class of sewer pipe, \$3.62 per linear foot and for 36" pipe of this class of sewer pipe, \$4.75 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$24.58 per linear foot instead of
- 40

\$3.04, \$3.62 and \$4.75 per linear foot respectively, thereby causing the City to lose, through said conspiracy, the sum of \$138,133.34, which amount benefited directly to said John M. Phillips.

and that in furtherance of said conspiracy and to effect the objects thereof, the Defendant, John M. Phillips, agreed to sell and did sell to said Duit Inc., whose principal officer is John J. Cream, reinforced, concrete sewer pipe, as follows:

- 10 (a) In the year 1924 — 3758 feet of precast, reinforced, concrete sewer pipe, at \$35.00 per linear foot, for use in the construction of a public sewer at Fiske Avenue in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 69176. A fair market price for 96" pipe of this class of sewer pipe was, at that time, \$26.54 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$35.00 per linear foot instead of \$26.54 per linear foot, thereby causing the City to lose, through said conspiracy, the sum of \$31,792.68, which amount benefited directly to said John M. Phillips.
- 20
- 30 (b) In the year 1925 — 8470 feet of precast, reinforced, concrete sewer pipe, at \$43.21 per linear foot, for use in the construction of a public sewer at Farmers Boulevard, in the Borough of Queens, under a contract with the City of New York, registered with the comptroller of the City of New York, as Contract No. 76066. A fair market price for 48" pipe of this class of sewer pipe, was at that time, \$7.35 per linear foot, for 54" pipe of this class of sewer pipe, \$8.33 per linear foot and for 60" pipe of this class of sewer pipe, \$10.19 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$43.21 per linear foot instead of \$7.35, \$8.33 and \$10.19 per linear foot respectively, thereby causing the City to lose, through said conspiracy, the sum of \$288, 524.88, which amount benefited directly to said John M. Phillips.
- 40

And that in furtherance of said conspiracy and to effect the objects thereof, the Defendant, John M. Phillips, agreed to sell

and did sell to said Hammon Construction Company, reinforced concrete sewer pipe, as follows:

10 (a) In the year 1925 — 3472 feet of precast, reinforced, concrete sewer pipe, at \$37.00 per linear foot, for use in the construction of a public sewer at 150th Avenue in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 74178. A fair market price for 84" pipe of this class of sewer pipe, was at that time, \$17.23 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$37.00 per linear foot instead of \$17.23 per linear foot, thereby causing the City to lose, through said conspiracy, the sum of \$70,121.44, which amount benefited directly to said John M. Phillips.

20 And that in furtherance of said conspiracy and to effect the objects thereof, the Defendant, John M. Phillips, agreed to sell and did sell to said Welsh Brothers Construction Company, reinforced, concrete sewer pipe, as follows:

30 (a) In the year 1925 — 886 feet of precast, reinforced, concrete sewer pipe, at \$12.21 per linear foot, for use in the construction of a public sewer at 20th Avenue in the Borough of Queens, registered with the comptroller of the City of New York, as Contract No. 75653. A fair market price for 33" pipe of this class of sewer pipe was, at that time, \$3.70 per linear foot, and for 43" pipe of this class of sewer pipe, \$6.14 per linear foot, and, through the above mentioned conspiracy between the above mentioned parties, the said Phillips sold the amount of pipe required for said contract, at \$12.21 per linear foot instead of \$3.70 and \$6.14 per linear foot respectively, thereby causing the City to lose, through said conspiracy, the sum of \$5,613.20 which amount benefited directly to said John M. Phillips.

40 (b) In the year 1926 — 1262 feet of precast, reinforced, concrete sewer pipe, at \$7.90 per linear foot, for use in the construction of a public sewer at 20th Avenue, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 80450. A fair market price for 24" pipe of this class of sewer pipe was, at that time, \$2.59

per linear foot, and for 30" pipe of this class of sewer pipe, \$3.62 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$7.90 per linear foot instead of \$2.59 and \$3.62 per linear foot respectively, thereby causing the City to lose, through said conspiracy, the sum of \$5,691.12 which amount benefited directly to said John M. Phillips.

10

And that in furtherance of said conspiracy and to effect the objects thereof, the Defendant, John M. Phillips, agreed to sell and did sell to said Oxford Engineering Company, reinforced, concrete sewer pipe, as follows:

- (a) In the year 1925 — 8040 feet of precast, reinforced, concrete sewer pipe, at \$14.55 per linear foot, for use in the construction of a public sewer at 150th Street, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York, as Contract No. 75939. A fair market price for 39" pipe of this class of sewer pipe was, at that time, \$4.72 per linear foot, and for 42" pipe of this class of sewer pipe, \$5.71 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$14.55 per linear foot instead of \$4.72 and \$5.71 per linear foot respectively, thereby causing the City to lose, through said conspiracy, the sum of \$76,002.00, which amount benefited directly to said John M. Phillips.

20

30

And that in furtherance of said conspiracy and to effect the objects thereof, the Defendant, John M. Phillips, agreed to sell and did sell to said Everett Construction Company, reinforced, concrete sewer pipe, as follows:

- (a) In the year 1926 — 5640 feet of precast, reinforced, concrete sewer pipe, at \$35.46 per linear foot, for use in the construction of a public sewer at Brinkerhof Avenue, in the Borough of Queens, under a contract with the City of New York registered with the Comptroller of the City of New York as Contract No. 80343. A fair market price for 36" pipe of this class of sewer pipe, was as that time, \$4.75 per linear foot, and for 42" pipe of this class of sewer pipe, \$5.71 per linear foot, and, through the above mentioned conspiracy between the parties men-

40

tioned above the said Phillips sold the amount of pipe required for said contract, at \$35.46 per linear foot instead of \$4.75 and \$5.71 per linear foot respectively, thereby causing the City to lose, through said conspiracy, the sum of \$160,521.04, which amount benefited directly to said John M. Phillips.

10 And that in furtherance of said conspiracy and to effect the objects thereof, the Defendant, John M. Phillips, agreed to sell and did sell to said Muccini & Decker, reinforced, concrete sewer pipe, as follows:

20 (a) In the year 1924 — 3902 feet of precast, reinforced, concrete sewer pipe, at \$12.00 per linear foot for 54", \$13.10 per linear foot for 66" \$30.00 per linear foot for 84" and \$31.50 per linear foot for 96", for use in the construction of a public sewer at Grand Avenue, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 71829. A fair market price for 54" pipe of this class of sewer pipe was, at that time, \$8.33 per linear foot, and for 66" pipe of this class of sewer pipe, \$11.14 per linear foot, and for 84" pipe of this class of sewer pipe, \$17.23 per linear foot, and for 96" pipe of this class of sewer pipe, \$26.54 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips
30 sold the amount of pipe required for said contract, at \$12.00, \$15.10, \$30.00 and \$11.50 per linear foot, respectively, instead of \$8.33, \$11.14, \$17.23 and \$26.54, per linear foot, respectively, thereby causing the City to lose, through said conspiracy the sum of \$21,251.96 which amount benefited directly to said John M. Phillips.

40 (b) In the year 1925 — 3371 feet of precast reinforced, concrete sewer pipe, at \$7.50 per linear foot for 33" and \$22.00 per linear foot for 72", for use in the construction of a public sewer at Queens Boulevard, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 73671. A fair market price for 33" pipe of this class of sewer pipe was, at that time, \$3.70 per linear foot, and for 72" pipe of this class of sewer pipe, \$14.41 per linear foot, and, through the above mentioned conspiracy between the parties mentioned above, the said Phil-

lips sold the amount of pipe required for said contract, at \$7.50 and \$22.00 per linear foot, respectively, instead of \$3.70 and \$14.41 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum of \$23,464.33.

10 (c) In the year 1925 — 3621 feet of precast, reinforced, concrete sewer pipe, at \$45.00 per linear foot, for use in the construction of a public sewer at Farmers Boulevard, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 76067. A fair market price for 54" pipe of this class of sewer pipe was, at that time \$8.33 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$45.00 per linear foot instead of \$8.33 per linear foot, thereby causing the City to lose, through said conspiracy, the sum of \$132,837.07, which amount benefited directly to said John M. Phillips.

20 (d) In the year 1925 — 870 feet of precast reinforced, concrete sewer pipe, at \$12.50 per linear foot for 36" and \$19.00 per linear foot for 42", for use in the construction of a public sewer at Polk Avenue, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 77392. A fair market price for 36" pipe of this class of sewer pipe was, at that time \$4.75 per linear foot, and for 42" pipe of this class of sewer pipe, \$5.71 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$12.50 and \$19.00 per linear foot, respectively, instead of \$4.75 and \$5.71 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum of \$8,332.48, which amount benefited directly to said John M. Phillips.

30 (e) In the year 1926 — 3650 feet of precast, reinforced, concrete sewer pipe, at \$45.00 per linear foot, for use in the construction of a public sewer at Hempstead Avenue, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 79048. A fair market price

for 42" pipe of this class of sewer pipe was, at that time, \$5.71 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$45.00 per linear foot instead of \$5.71 per linear foot, thereby causing the City to lose, through said conspiracy, the sum of \$143,408.50, which amount benefited directly to said John M. Phillips.

10

(f) In the year 1926 — 6580 feet of precast, reinforced, concrete sewer pipe, at \$45.00 per linear foot, for use in the construction of a public sewer at Springfield Boulevard, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 79049. A fair market price for 42" pipe of this class of sewer pipe was, at that time \$5.71 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$45.00 per linear foot instead of \$5.71 per linear foot, thereby causing the City to lose, through said conspiracy, the sum of \$258,528.20, which amount benefited directly to said John M. Phillips.

20

(g) In the year 1926 — 8455 feet of precast, reinforced, concrete sewer pipe, at \$30.00 per linear foot for 33" and \$45.00 per linear foot for 42", for use in the construction of a public sewer at Jamaica Avenue, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 79051. A fair market price for 33" pipe of this class of sewer pipe was, at that time, \$3.70 per linear foot, and for 42" pipe of this class of sewer pipe, \$5.71 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$30.00 and \$45.00 per linear foot, respectively, instead of \$3.70 and \$5.71 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum of \$323,852.72 which amount benefited directly to said John M. Phillips.

30

40

(h) In the year 1926 — 2961 feet of precast, reinforced, concrete sewer pipe, at \$19.43 per linear foot for 42" and \$19.43 per linear foot for 48", for use in the construction

10 of a public sewer at Brinkerhoff Avenue, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 81333. A fair market price for 42" pipe of this class of sewer pipe was, at that time, \$5.71 per linear foot, and for 48" pipe of this class of sewer pipe, \$7.33 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$19.43 per linear foot, thereby causing the City to lose, through said conspiracy, the sum of \$40,463.21, which amount benefited directly to said John M. Phillips.

20 (i) In the year 1926 488 feet of precast, reinforced, concrete sewer pipe, at \$21.48 per linear foot, for use in the construction of a public sewer at 51st Street, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 81335. A fair market price for 66" pipe of this class of sewer pipe was, at that time, \$11.14 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$21.48 per linear foot instead of \$11.14 per linear foot, thereby causing the City to lose, through said conspiracy, the sum of \$5,243.68, which amount benefited directly to said John M. Phillips.

30 (j) In the year 1926 — 1524 feet of precast, reinforced, concrete sewer pipe, at \$27.56 per linear foot, for use in the construction of a public sewer at Monroe Street, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 81799. A fair market price for 84" pipe of this class of sewer pipe was, at that time, \$17.23 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$17.56 per linear foot instead of \$17.23 per linear foot, thereby causing the City to lose, through said conspiracy, the sum of \$15,741.48, which amount benefited directly to said John M. Phillips.

40 (k) In the year 1927 — 1077 feet of precast reinforced, concrete sewer pipe, at \$6.70 per linear foot for 30" and

10 \$13.00 per linear foot for 36", for use in the construction of a public sewer at Ditmars Ave., in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 84157. A fair market price for 30" pipe of this class of sewer pipe was, at that time, \$3.62 per linear foot, and for 36" pipe of this class of sewer pipe, \$4.75 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$6.70 and \$13.00 per linear foot, respectively, instead of \$3.62 and \$4.75 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum of \$7,489.35, which amount benefited directly to said John M. Phillips.

20 (1) In the year 1927 — 4126 feet of precast reinforced concrete sewer pipe, at \$16.40 per linear foot for 54", and \$26.40 per linear foot for 84", for use in the construction a public sewer at Rockaway Boulevard, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 84159. A fair market price for 54" pipe of this type of sewer pipe was, at that time, \$8.33 per linear foot, and for 84" pipe of this class of sewer pipe, \$17.23 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$16.40 and \$26.40 per linear foot, respectively, instead of \$8.33 and \$17.23 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum of \$34,615.42, which amount benefited directly to said John M. Phillips.

40 (m) In the year 1927 — 1648 feet of precast, reinforced, concrete sewer pipe, at \$3.00 per linear foot for 24", \$9.00 per linear foot for 33" and \$17.00 per linear foot for 48", for use in the construction of a public sewer at 38th Street, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 84156. A fair market price for 24" pipe of this class of sewer pipe was, at that time, \$2.59 per linear foot, for 33" \$3.70 per linear foot and for 48" \$7.33 per linear foot, and, through the above mentioned cons-

piracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$3.00, \$9.00 and \$17.00 per linear foot, respectively, instead of \$2.59, \$3.70 and \$7.33 per linear foot respectively, thereby causing the City to lose, through said conspiracy, the sum of \$7,695.75, which amount benefited directly to said John M. Phillips.

- 10
- (n) In the year 1927 — 1586 feet of precast, reinforced concrete sewer pipe, at \$3.00 per linear foot for 24", \$12.50 per linear foot for 42" and \$15.00 per linear foot for 48", for use in the construction of a public sewer at 121st Street, in the Borough of Queens, under a contract with the City of New York, registered with the comptroller of the City of New York as contract No. 84158. A fair market price for 24" pipe of this class of sewer pipe was, at that time, \$2.59 per linear foot, and for 42" pipe of this class of sewer pipe, \$5.71 per linear foot, and for 48" pipe of this class of sewer pipe, \$7.33 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$3.00, \$12.50 and \$15.00 per linear foot, respectively, instead of \$2.59, \$5.71 and \$7.33 per linear foot, respectively, thereby causing the City to lose, through this conspiracy, the sum of \$9,708.62, which amount benefited directly to said John M. Phillips.
- 20
- 30
- (o) In the year 1927 — 2266 feet of precast, reinforced, concrete sewer pipe, at \$22.50 per linear foot, for use in the construction of a public sewer at Beach 32nd Street, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 84312. A fair market price for 36" pipe of this class of sewer pipe was, at that time, \$4.75 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$22.50 per linear foot, instead of \$4.75 per linear foot, thereby causing the City to lose, through this conspiracy, the sum of \$40,236.50, which amount benefited directly to said John M. Phillips.
- 40
- (p) In the year 1927 — 4159 feet of precast, reinforced, concrete sewer pipe, at \$11.00 per linear foot for 36" and \$36.00 per linear foot for 96", for use in the construction

10 of a public sewer at Decker Street, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 84419, A fair market price for 36" pipe of this class of sewer pipe was, at that time, \$4.75 per linear foot, and for 96" pipe of this class of sewer pipe, \$26.54 per linear foot, and through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$11.00 and \$36.00 per linear foot, respectively, instead of \$4.75 and \$26.54 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum of \$38,464.14, which amount benefited directly to said John M. Phillips.

20 (q) In the year 1926 — 2023 feet of precast, reinforced, concrete sewer pipe, at \$3.00 per linear foot for 24", \$7.00 per linear foot for 33", \$8.00 per linear foot for 36" and \$11.00 per linear foot for 48", for use in the construction of a public sewer at Sutter Ave., in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 81790. A fair market price for 24" pipe of this class of sewer pipe was, at that time, \$2.59 per linear foot, for 33" per linear foot for 36", \$10.00 per linear foot 36" pipe of this class of sewer pipe, \$4.75 per linear foot and for 48" pipe of this class of sewer pipe, \$7.33 per
30 linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$3.00, \$7.00, \$8.00 and \$11.00 per linear foot, respectively, instead of \$2.59, \$3.70, \$4.75 and \$7.33 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum of \$6,516.37, which amount benefited directly to said John M. Phillips.

40 (r) In the year 1927 — 2057 feet of precast, reinforced, concrete sewer pipe, at \$3.00 per linear foot for 24", \$7.00 per linear foot for 30", \$8.00 per linear foot for 33", \$9.00 per linear foot for 36", \$10.00 per linear foot for 39" and \$12.00 per linear foot for 45", for use in the construction of a public sewer at 45th Avenue, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 84893.

10 A fair market price for 24" pipe of this class of sewer pipe was, at that time, \$2.59 per linear foot, for 30" pipe of this class of sewer pipe, \$3.62 per linear foot, for 33" pipe of this class of sewer pipe, \$3.70 per linear foot, for 36" pipe of this class of sewer pipe, \$4.75 per linear foot, for 39" pipe of this class of sewer pipe, \$4.72 per linear foot and for 45" pipe of this class of sewer pipe, \$6.14 per linear foot, and, through the above mentioned conspiracy, between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$3.00, \$7.00, \$8.00, \$9.00, \$10.00 and \$12.00 per linear foot, respectively, instead of \$2.59, \$3.62, \$3.70, \$4.75, \$4.72 and \$6.14 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum of \$8,589.52 which amount benefited directly to said John M. Phillips.

20 And that in the furtherance of said conspiracy and to effect the objects thereof, the Defendant, John M. Phillips, agreed to sell and did sell to said Angelo Paino, reinforced, concrete sewer pipe, as follows:

30 (a) In the year 1924 — 136 feet of precast, reinforced, concrete sewer pipe, at \$10.00 per linear foot, for use in the construction of a public sewer at Polk Avenue, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 72402. A fair market price for 36" pipe of this class of sewer pipe was, at that time, \$4.75 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$10. per linear foot instead of \$4.75 per linear foot, thereby causing the City to lose, through said conspiracy, the sum of \$714.00 which amount benefited directly to said John M. Phillips.

40 (b) In the year 1924 — 3482 feet of precast, reinforced, concrete sewer pipe, at \$8.50 per linear foot for 33", \$10.00 per linear foot for 36", \$13.00 per linear foot for 45", \$22.00 per linear foot for 34" and \$25.00 per linear foot for 66", for use in the construction of a public sewer at Broaway, in the Borough of Queens, under a contract with the City of New York registered with the comptroller of the City of New York as Contract No. 72459. A fair market price for 33" pipe of this class of sewer pipe was, at that time, \$3.70

per linear foot; for 36" pipe of this class of sewer pipe, \$4.75 per linear foot; for 45" pipe of this class of sewer pipe, \$.14 per linear foot; for 45" pipe of this class of sewer pipe, \$8.33 per linear foot and for 66" pipe of this class of sewer pipe, \$11.14 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract at \$8.50, \$10.00, \$13.00, \$22.00 and \$25.00 per linear foot, respectively, instead of \$3.70, \$4.75, \$6.14, \$8.33 and \$11.14 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum of \$40,166.13, which amount benefited directly to said John M. Phillips.

10

(c) In the year 1925 — 6320 feet of precast, reinforced concrete sewer pipe, at \$38.00 per linear foot, for use in the construction of a public sewer at 150th Avenue in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 74182. A fair market price for 90" pipe of this class of sewer pipe was, at that time, \$21.45 per linear foot, and for 96" pipe of this class of sewer pipe, \$26.54, and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$38.00 per linear foot instead of \$21.45 and \$26.54 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum of \$83,196.24, which amount benefited directly to said John M. Phillips.

20

30

(d) In the year 1925 — 4850 feet of precast, reinforced, concrete sewer pipe, at \$46.39 per linear foot, for use in the construction of a public sewer at Farmers Boulevard, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 76068. A fair market price for 66" pipe of this class of sewer pipe was, at that time, \$11.14 per linear foot, and, through the above mentioned conspiracy between the parties above mentioned the said Phillips sold the amount of pipe required or said contract, at \$46.39 per linear foot instead of \$11.14 per linear foot, thereby causing the City to lose, through said conspiracy, the sum of \$170,971.00, which amount benefited directly to said John M. Phillips.

40

- 10 (e) In the year 1926 — 4937 feet of precast, reinforced, concrete sewer pipe, at \$7.00 per linear foot for 30"; \$14.00 per linear foot for 39"; \$16.00 per linear foot for 45"; \$18.00 per linear foot for 60"; \$26.00 per linear foot for 78"; \$30.00 per linear foot for 90" and \$33.00 per linear foot for 96", for use in the construction of a public sewer at Hayes Avenue, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 81303. A fair market price for 30" pipe of this class of sewer pipe was, at that time, \$3.62 per linear foot; for 39" pipe of this class of sewer pipe, \$4.72 per linear foot; for 45" pipe of this class of sewer pipe, \$6.14 per linear foot; for 60" pipe of this class of sewer pipe, \$10.19 per linear foot; for 78" pipe of this class of sewer pipe, \$14.77 per linear foot; for 78" pipe of this class of sewer pipe, \$14.77 per linear foot; 20 90" pipe of this class of sewer pipe, \$21.45 per linear foot and for 96" pipe of this class of sewer pipe, \$26.54 per linear foot; and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$7.00, \$14.00, \$16.00, \$18.00, \$26.00, \$30.00 and \$33.00 per linear foot, respectively, instead of \$3.62, \$4.72, \$6.14, \$10.19 \$14.77, \$21.45 and \$26.54 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum of \$41,578.65, which amount benefited directly to said John M. Phillips.
- 30 (f) In the year 1927 — 4874 feet of precast, reinforced, concrete sewer pipe, at \$30.77 per linear foot, for use in the construction of a public sewer at 124th Street, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 83769. A fair market price for 36" pipe of this class of sewer pipe was, at that time, \$4.75 per linear foot; for 78" pipe of this class of sewer pipe, \$14.77 per linear foot; for 84" pipe of this class of sewer pipe, \$17.23 per linear foot; and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$30.77 per linear foot, instead of \$4.75, \$14.77 40 \$17.23 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum of \$74,203.24, which amount benefited directly to said John M. Phillips.

- 10 (g) In the year 1927 — 5075 feet of precast, reinforced, concrete sewer pipe, at \$14.77 per linear foot, for use in the construction of a public sewer at Sutphin Boulevard, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 84612. A fair market price for 33" pipe of this class of sewer pipe was at that time, \$3.70 per linear foot, and for 36" pipe of this class of sewer pipe, 4.75 per linear foot; and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$14.77 per linear foot instead of \$3.70 and \$4.75 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum of \$55,153.60, which amount benefited directly to said John M. Phillips.
- 20 (h) In the Year 1927 — 3875 feet of precast, reinforced, concrete sewer pipe, at \$19.35 per linear foot, for use in the construction of a public sewer at Tuckerton Street, in the York, registered with the Comptroller of the City of New York, registered with the Comptroller of the City of New York as Contract No. 84611. A fair market price for 24" pipe of this class of sewer pipe was, at that time, \$2.59 per linear foot; for 54" pipe of this class of sewer pipe, \$8.33 per linear foot and for 84" pipe of this class of sewer pipe, \$17.23 per linear foot, respectively; and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$19.35 per linear foot, instead of \$2.59, \$8.33 and \$17.33 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum of \$31,131.79, which amount benefited directly to said John M. Phillips.
- 30

40 And that in furtherance of said conspiracy and to effect the objects thereof, the Defendant, John M. Phillips, agreed to sell and did sell to said Dominick Bonacci, reinforced, concrete sewer pipe, as follows:

- (a) In the year 1925 — 5049 feet of precast, reinforced, concrete sewer pipe, at \$35.30 per linear foot, for use in the construction of a public sewer at Farmers Boulevard, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City

10 of New York as Contract No. 76065. A fair market price for 60" pipe of this class of sewer pipe was, at that time, \$10.19 per linear foot; and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$35.30 per linear foot instead of \$10.19 per linear foot, thereby causing the City to lose, through said conspiracy, the sum of \$126,800.69, which amount benefited directly to said John M. Phillips.

And that in furtherance of said conspiracy and to effect the objects thereof, the Defendant, John M. Phillips, agreed to sell and did sell to said Necaro Company, reinforced, concrete sewer pipe, as follows:

20 (a) In the year 1925 — 7966 feet of precast, reinforced, concrete sewer pipe, at \$21.09 per linear foot, for use in the construction of a public sewer at Amsdel Avenue, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 77021. A fair market price for 42" pipe of this class of sewer pipe was, at that time, \$5.71 per linear foot; for 48" pipe of this class of sewer pipe, \$7.33 per linear foot and for 54" pipe of this class of sewer, \$8.33 per linear foot; and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for
30 said contract, at \$21.09 per linear foot, instead of \$5.71, \$7.33 and \$8.33 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum of \$113,782.64, which amount benefited directly to said John M. Phillips.

40 (b) In the year 1925 — 4984 feet of precast, reinforced, concrete sewer pipe, at \$18.00 per linear foot, for use in the construction of a public sewer at 150th Street, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 77393. A fair market price for 36" pipe of this class of sewer pipe was, at that time, \$4.75 per linear foot, and for 39" pipe of this class of sewer pipe, \$4.72 per linear foot; and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said

contract, at \$18.00 per linear foot, instead of \$4.75 and \$4.72 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum of \$66,138.59, which amount benefited directly to said John M. Phillips.

10 And that in furtherance of said conspiracy and to effect the objects thereof, the Defendant, John M. Phillips, agreed to sell and did sell to said H. J. Mullen Contracting Co., Inc., reinforced, concrete sewer pipe, as follows:

20 (a) In the year 1922 — 5666 feet of precast, reinforced, concrete sewer pipe, at \$30.00 per linear foot for 96" and 90", and \$20.00 per linear foot for 66", for use in the construction of a public sewer at Norwood Place, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 61239. A fair market price for 96" pipe of this class of sewer pipe was, at that time, \$22.75 per linear foot; for 90" pipe of this class of sewer pipe, \$17.25 per linear foot and for 66" pipe of this class of sewer pipe, \$9.61 per linear foot; and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$30.00 and \$20.00 per linear foot, respectively, instead of \$22.75, \$18.25 and \$9.61 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum of \$46,370.42, which amount benefited directly to said John M. Phillips.

30 (b) In the year 1925 — 7465 feet of precast, reinforced concrete sewer pipe, at \$17.55 per linear foot, for use in the construction of a public sewer at 158th Street, in the Borough of Queens, under a contract with the city of New York registered with the Comptroller of the City of New York as Contract No. 77425. A fair market price for 24" pipe of this class of sewer pipe was, at that time, \$2.59 per linear foot; for 27" pipe of this class of sewer pipe, \$3.04 per linear foot and for 30" pipe of this class of sewer pipe, \$3.62 per linear foot; and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$17.55 per linear foot, instead of \$2.59, \$3.04 and \$3.62 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum of \$106,545.97, which amount benefited directly to said John M. Phillips.

40

And that in furtherance of said conspiracy and to effect the objects thereof, the Defendant, John M. Phillips, agreed to sell and did sell to said Kennedy & Smith, Inc., reinforced, concrete sewer pipe, as follows:

10 (a) In the year 1924 — 4477 feet of precast, reinforced, concrete sewer pipe, at \$27.00 per linear foot for 84"; \$23.00 per linear foot for 78"; \$20.50 per linear foot for 66"; \$18.00 per linear foot for 54"; \$12.25 per linear foot for 48" and \$10.25 per linear foot for 39", for use in the construction of a public sewer at Saul Street, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 72443. A fair market price for 84" pipe of this class of sewer pipe was, at that time, \$17.23, for 78" pipe of this class of sewer pipe, \$14.77, for 20 66" pipe of this class of sewer pipe, \$11.14, for 54" pipe of this class of sewer pipe, \$8.33, for 48" pipe of this class of sewer pipe, \$7.33 and for 39" pipe of this class of sewer pipe, \$4.72 per linear foot, respectively; and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$27.00, \$23.00, \$20.50, \$18.00, \$12.25 and \$10.25 per linear foot, respectively, instead of \$17.23, \$14.77, \$11.14, \$8.33, \$8.33 and \$4.72 per linear foot, respectively, thereby causing the City to lose, through 30 said conspiracy, the sum, of \$38,541.96, which amount benefited directly to said John M. Phillips.

40 (b) In the year 1925 — 6844 feet of precast, reinforced, concrete sewer pipe, at \$4.50 per linear foot for 24"; \$6.50 per linear foot for 27"; \$9.00 per linear foot for 33" and \$11.00 per linear foot for 39", for use in the construction of a public sewer at Laburnum Ave., in the Borough of Queens under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 73676. A fair market price for 24" pipe of this class of sewer pipe was, at that time, \$2.59; for 27" pipe of this class of sewer pipe, \$3.04; for 33" pipe of this class of sewer pipe, \$3.70 and for 39" pipe of this class of sewer pipe, \$4.72 per linear foot, respectively; and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$4.50, \$6.50, \$9.00 and \$11.00 per linear foot, respectively, instead of \$2.59, \$3.04,

\$3.70 and \$4.72 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum of \$28,475.07, which amount benefited directly to said John M. Phillips.

10 (c) In the year 1925 — 824 feet of precast, reinforced, concrete sewer pipe, at \$15.28 per linear foot, for use in the construction of public sewer at Woodside Avenue, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 77385. A fair market price for 33" pipe of this class of sewer pipe was, at that time, \$3.70 per linear foot, and for 24" pipe of this class of sewer pipe, \$2.59 per linear foot; and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$15.28 per linear foot, thereby causing the City to lose, through said conspiracy, the sum of \$9,830.92, which amount benefited directly to said John M. Phillips.

20 (d) In the year 1926 — 2413 feet of precast, reinforced, concrete sewer pipe, at \$14.00 for 45"; \$17.00 for 51" and \$20.00 for 63" per linear foot, respectively, for use in the construction of a public sewer at North Conduit Avenue, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 78018. A fair market price for 45" pipe of this class of sewer pipe was, at that time, \$6.14 per linear foot; for 51" pipe of this class of sewer pipe, \$8.80 per linear foot and for 63" pipe of this class of sewer pipe, \$10.98 per linear foot; and, through the above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$14.00, \$17.00 and \$20.00 per linear foot, respectively, instead of \$6.14, \$8.80 and \$10.98 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum of \$20,802.32 which amount benefited directly to said John M. Phillips.

30 (e) In the year 1926 — 4513 feet of precast, reinforced, concrete sewer pipe, at \$23.00 per linear foot for 66"; \$18.00 per linear foot for 60"; \$13.00 per linear foot for 54"; \$12.00 per linear foot for 51" and \$7.00 per linear foot for 30", for use in the construction of a public sewer at Haxen Street, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller

10 of the City of New York as Contract No. 79216. A fair market price for 66" pipe of this class of sewer pipe was, at that time, \$11.14; for 60" pipe of this class of sewer pipe, \$10.19; for 54" pipe of this class of sewer pipe, \$8.33; for 51" pipe of this class of sewer pipe, \$8.80 and for 30" pipe of this class of sewer pipe, \$3.62 per linear foot, respectively; and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$23.00, \$18.00, \$13.00, \$12.00 and \$7.00 per linear foot, respectively, instead of \$11.14, \$10.19, \$8.33, \$8.80 and \$3.62 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum of \$32,467.11, which amount benefited directly to said John M. Phillips.

20 (f) In the year 1926 — 2460 feet of precast, reinforced, concrete sewer pipe, at \$6.00 per linear foot for 27"; \$8.00 per linear foot for 39"; \$14.00 per linear foot for 57"; \$20.00 per linear foot for 66" and \$23.00 per linear foot for 72", for use in the construction of a public sewer at Polk Street, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 79218. A fair market price for 27" pipe of this class of sewer pipe was, at that time, \$3.04; for 39" pipe of this class of sewer pipe, \$4.72; for 57" pipe of this class of sewer pipe, \$13.03; for 66" pipe of this class of sewer pipe, \$11.14 and for 72" pipe of this class of sewer pipe, \$14.41 per linear foot respectively; and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$6.00, \$8.00, \$14.00, \$20.00 and \$23.00 per linear foot respectively, instead of \$3.04, \$0.72, \$13.03, \$11.14 and \$14.41 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum of \$12,988.52, which amount benefited directly to said John M. Phillips.

40 (g) In the year 1927 — 5210 feet of precast, reinforced, concrete sewer pipe, at \$16.31 per linear foot, for use in the construction of a public sewer at Grove Street, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 83751. A fair market price for 27" pipe of this class of sewer pipe was, at that time, \$3.04; for 36" pipe of this class of sewer pipe, \$4.75; for 45" pipe

10 of this class of sewer pipe, \$6.14; for 48" pipe of this class of sewer pipe, \$7.33; and for 66" pipe of this class of sewer pipe, \$11.14 per linear foot, respectively; and through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$16.31 per linear foot, instead of \$3.04, \$4.75, \$6.14, \$7.33 and \$11.14 per linear foot respectively, thereby causing the City to lose, through said conspiracy, the sum of \$49,212.42, which amount benefited directly to said John M. Phillips;

And in furtherance of said conspiracy and to effect the objects thereof, the defendant, John M. Phillips, agreed to sell and did sell to said Carmine Petracca, reinforced, concrete sewer pipe, as follows:

20 (a) In the year 1926 — 1074 feet of precast, reinforced, concrete sewer pipe, at \$7.44 per linear foot, for use in the construction of a public sewer at 37th Street, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 79227. A fair market price for 36" pipe of this class of sewer pipe was, at that time, \$4.75 per linear foot; and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$7.44 per linear foot, instead of \$4.75 per linear foot, thereby causing the City to lose, through said conspiracy, the sum of \$2,898.50, which amount benefited directly to said John M. Phillips.

40 (b) In the year 1926 — 3099 feet of precast, reinforced, concrete sewer pipe, at \$12.90 per linear foot, for use in the construction of a public sewer at Farmers Boulevard, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 80342. A fair market price for 24" pipe of this class of sewer pipe was, at that time, \$2.59 per linear foot, and for 27" pipe of this class of sewer pipe, \$3.04 per linear foot; and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe required for said contract, at \$12.90 per linear foot, instead of \$2.59 and \$3.04 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum

of \$30,979.99, which amount benefited directly to said John M. Phillips;

And that in furtherance of said conspiracy and to effect the objects thereof, the Defendant, John M. Phillips, agreed to sell and did sell to said Petracca & Peterson, reinforced, concrete, sewer pipe, as follows:

- 10 (a) In the year 1927 — 1011 feet of precast, reinforced, concrete pipe, at \$8.90 per linear foot, for use in the construction of a public sewer at 130th Street, in the Borough of Queens, under a contract with the City of New York, registered with the Comptroller of the City of New York as Contract No. 83771. A fair market price for 27" pipe of this class of sewer pipe was, at that time, \$3.04 per linear foot; and, through the above mentioned conspiracy between the parties above mentioned, the said Phillips
20 sold the amount of pipe required for said contract, at \$8.90 per linear foot, instead of \$3.04 per linear foot, thereby causing the City to lose, through said conspiracy, the sum of \$5,926.56, which amount benefited directly to said John M. Phillips.

Sec. 1222 of Article 76 of the Civil Practice Act of the State of New York, which reads as follows:

- 30 SEC. 1222 "Where any money, funds, credits, or other property held or owned by the State, or held or owned officially or otherwise for or in behalf of a governmental or other public interest, by a domestic, municipal, or other public corporation or by a board, officer, custodian, agency, or agent of the State, or of a city, county, town, village or other division, subdivision department or portion of the State has heretofore been, or is hereafter, without right obtained, received, converted, or disposed of, an action to recover the same, or to recover damages or other compensation for so obtaining, receiving,
40 paying, converting or disposing of the same, or both, may be maintained by the people of the State in any court of the State having jurisdiction thereof, although a right of action for the same cause exists by law in some other public authority, and whether an action therefore in favor of the latter is or is not pending when the action in favor of the people is commenced;"

gives the right to the Attorney-General to institute the present action to recover the above mentioned amount, in lieu of the City of New York.

Cec. 1224 of the above mentioned Article 76, which reads as follows:

10 SEC. 1224 "The people of the State may commence and maintain in their own name or otherwise, as is allowable, one or more actions, suits or other judicial proceedings, in any court, or before any tribunal of the United States, or of any other state, or of any territory of the United States, or of any foreign country, for any cause specified in the last section but one;"

20 gives the right to the Attorney-General of New York to institute the present action in any foreign country, including Canada.

Sec. 1225 of the above mentioned Article 76, which reads as follows:

30 SEC. 1225 "Upon the commencement by the people of the State of any action, suit or other judicial proceeding, as prescribed in this Article, the entire cause of action, including the title to the money, funds, credits, or other property with respect to which the suit or action is brought, and to the damages or other compensation recoverable for the obtaining, receipt, payment, conversion or disposition thereof, if not previously so vested, is transferred to and becomes absolutely vested in the people of the State;"

vests the cause of action in the people of the State of New York, on commencement of action.

Section 1226 of the above mentioned Article 76, which reads as follows:

40 SEC. 1226 "The people of the State will not sue for a cause of action specified in this Article, unless it accrued within ten years before the action is commenced;"

gives the right to institute the present action for causes of action that have accrued within ten years before the action is commenced.

Section 1229 of the above mentioned Article 76, which reads as follows:

SEC. 1229 "The Attorney-General must commence an action, suit, or other judicial proceeding, as prescribed in this Article, whenever he deems it for the interests of the people of the State so to do; or whenever he is so directed, in writing, by the Governor;"

10

makes it imperative for the Attorney-General to institute the present action.

Article 54 of the New York Civil Practice Act,

Section 902, gives the right to Plaintiff to attach before judgment, the moveable properties attached in this present case, for fraud.

20

Section 904 of the above mentioned Article 54, which reads as follows:

SEC 904 "A warrant of attachment against the property of one or more Defendants in an action may also be granted, upon the application of the Plaintiff, where the complaint demands judgement for a sum of money only; and it appears that the action is brought to recover money, funds, credits, or other property, held or owned by the State, or held or owned, officially or otherwise, for or in behalf of a public governmental interest, by a municipal or other public corporation, board, officer, custodian, agency, or agent, of the State or of a city, county, town, village, or other division, subdivision, department, or portion of the State, which the defendant, without right, has obtained received, converted or disposed of or in the obtaining, reception, payment conversion, or disposition of which, without right, he has aided or abetted; or to recover damages for so obtaining, receiving, paying converting or disposing of the same; or the aiding or abetting thereof; or in an action in favor of a private person or corporation brought to recover damages for an injury to personal property where the liability arose, in whole or in part, on consequence of the false statements of the Defendant as to his responsibility or credit, in writing, under the hand or signature of the Defendant or his authorized agent made with his knowledge or acquiescence. In order to entitle the Plaintiff to a warrant of attachment, in the case specified in this

30

40

section, he mus show that a sufficient cause of action exists against the Defendant, for a stated sum;

10 gives the right to attach the property of the Defendant for money obtained by the said Defendant, from the City of New York, without right, by fraud, as hereinabove stated; that the Defendants are secreting and making away with, have secreted and made away with, or were immediately about to secret or
20 make away with, their property, with intent to defraud their creditors in general, and the City of New York and the Plaintiff imparticular and the Plaintiff will thereby be deprived of his recourse against the Defendant, without the aid of he present Writ of Attachment before judgment; that the Dedendants with intent to defraud the creditors in general and the Plaintiff in particular, came to Canada to hide, secrete and make away with the property and the moneys belonging to the ESTATE OF JOHN M. PHILLIPS:
20 THAT FRANCIS PHILLIPS, one of the heirs of JOHN M. PHILLIPS has rented in his own name a safety box at the MONTREAL SAFE DEPOSIT CO, at Montreal, district of Montreal, to hide, secrete and make away with moneys and properties belonging to the Estate of his father JOHN M. PHILLIPS; that the moneys and properties seized in this case and actually in the hands and possession of the Tiers Saisi are the property and were the property in all times of the ESTATE OF JOHN M. PHILLIPS.

30 ATTENDU que le demandeur asks, therefore, that the seizure before judgment, and the Seizure before judgment in the hands of the tiers saisis, may, in virtue of the present writ, be declared good and effective; that the Defendants be condemned to pay to the Plaintiff, the sum of \$3,405,449.02 with interest and costs; that in default by the tiers saisis to declare, according to law, what amount of money, or what properties, moveables or others, they have or might have in their possession, belonging to the Defendants or that might belong to the Defendants, the said Tiers Saissis be declared personal debtors
40 to the Plaintiff in the above mentioned sum of money, to wit: \$3,405,449.02 with interest and costs, as above stated; that the sum of money, moveables, or other properties, belonging to the Defendants, or that the tiers saisis might have, be sold according to law, and the proceeds thereof be paid to the Plaintiff to the amount of his above mentioned claim, in capital, interests and costs; and that all monies that the tiers saisis owe,

have in their possession, or might owe or might have in their possession belonging to the Defendants, be paid to the Plaintiff, as above mentioned; the whole with costs.

ATTENDU que les défendeurs the "Heirs of John M. Phillips" représentés par leurs procureurs Mes COOK et MAGÉE contestent, en vertu d'un plaidoyer amendé, la présente action comme suit: the said Defendants are ignorant of the allegations contained in Paragraph 1 of the Plaintiffs' Declaration; Paragraph 2 of the Plaintiffs' Declaration is denied; the documents referred to in Paragraph 3 of the Plaintiff's Declaration speak for themselves; Paragraph 4 of the Plaintiff's Declaration as drawn is denied. The Defendants, however, admit that the said John J. Creem was named and for a time acted as an executor of the estate of the late John M. Phillips. The said Creem resigned from his said office and on the 26th day of December 1928, letters of administration with the Will annexed were granted to the Bank of Rockville Centre Trust Company, who are now acting as such administrators, the whole as will more fully appear from a certificate of the Surrogate's Court of the State of New York, dated the 7th of June, 1929, and herewith produced as Defendants's Exhibit No. 1: in answer to Paragraph 5 of Plaintiffs' Declaration, the said Defendants aver that the present action speaks for itself; the said Defendants deny Paragraph 6 of the Plaintiffs' Declaration; the Defendants are ignorant of the allegations contained in paragraphs 7 ad 8 of the Plaintiffs' declaration; the allegations contained in Paragraphs 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31; 32 and 33 are false and are denied. The said John M. Phillips was never at any time directly or indirectly a party to any conspiracy with the said Maurice E. Connelly and/ or Frederick G. Seely and/ or any others to defraud the said City of New York or the Plaintiffs herein, as falsely alleged; in answer to Paragraphs 34, 35, 36, 37, 38 and 39 of the Plaintiffs' Declaration, the said Defendants are ignorant as to the terms of the Civil Practice Act of the State of New York and in any event deny that the same have any application or effect in the Province of Quebec; the said Defendants deny the allegations contained in Paragraphs 40, 41 and 42 of the Plaintiffs' Declaration; Paragraph 43 of the Plaintiffs' Declaration as drawn is denied. The Defendants, however, admit that the sum of \$312,000.00 seized by Plaintiffs in the hands of the Montreal Safe Deposit Company was the property of the late John M. Phillips and is now the property of his estate; that no right of action exists in favour of the Plain-

tiffs, entitling them to advance the present claim or any portion thereof and the Plaintiffs' action is unfounded both in law and in fact and should be dismissed.

ATTENDU que les défendeurs "The Heirs of John M. Phillips" prays therefore, that the Plaintiffs' action may be dismissed with costs.

10 ATTENDU que le demandeur répond à cette contestation
des défendeurs "The Heirs of John M. Phillips" comme suit:
in answer to Paragraph 1 of above described Defendants'
amended plea, Plaintiffs join issue with said Defendants as to
the truth of the allegations of Paragraph 1 of Plaintiff's Decla-
ration; in answer to Paragraph 2 of above described Defen-
dants' amended Plea Plaintiffs join issue with said Defendants
as to the truth of the allegations of Paragraph 2 of
20 Plaintiffs' eclaration; in answer to paragraph 4, Plain-
tiffs join issue with said Defendants as to the truth
of the allegations of Paragraph 4 of Plaintiffs' decla-
rations and add that said Defendants' exhibit No. 1
speaks for itself; in answer to Paragraph 5 of above described
Defendants' amended plea, Plaintiffs pray act of the admission
therein contained; in answer to Paragraphs 6 and 7 of above
described Defendants' amended Plea, Plaintiffs join issue with
said Defendants as regards the truth of the allegations con-
tained in paragraphs 6, 7 and 8 of Plaintiffs' declaration; in
answer to Paragraph 8 of above described Defendants' amended
30 plea, Plaintiffs join issue with said Defendants as regards the
truth of the allegations contained in Paragraphs 9, 10, 11, 12,
13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30,
31, 32 and 33 of Plaintiffs' declaration, and Plaintiffs deny the
remainder of said Paragraph 8 of Defendants' amended plea,
and further add that the late John M. Phillips was directly a
party to conspiracy with Maurice E. Connelly, Frederick G.
Seely and others to defraud the City of New York; and the said
Connelly and Seely were convicted of fraudulent and wrongful
practice, while they were officials of the Borough of Queens and
40 were sentenced to jail, on an indictment which included the said
John M. Phillips, who died before the trial; in answer to Pa-
ragraph 9 of above described Defendants' amended plea, Plain-
tiffs join issue with said Defendants as to paragraphs 34, 35,
36, 37, 38 and 39 of Plaintiffs' declaration and deny the remain-
der of said Paragraph 9 of said Defedants' amended plea; in
answer to Paragraph 10 of above described Defendants' amen-
ded plea, Plaintiffs join issue with said Defendants as to the

truth of the allegations contained in paragraphs 40, 41 and 42 of Plaintiffs' Declaration; in answer to paragraph 11 of above described Defendants' amended plea, Plaintiffs join issue with said Defendants as to the truth of the allegations contained in Paragraph 43 of Plaintiffs' Declaration and pray act of the admission that the sum of \$312,000.00 seized by Plaintiffs, in the hands of the Montreal Safe Deposit Company, was the property at the late John M. Phillips and is now the property of his estate; Plaintiffs deny paragraph 12 of above described Defendants amended plea.

ATTENDU que le demandeur, reiterating each and every and all the allegations of their declaration, pray, therefore, that above described Defendants' amended plea be dismissed and Plaintiffs' action be maintained, the whole with costs.

ATTENDU que "The Heirs of John M. Phillips" répliquent à la *réponse* du demandeur, d'abord, par "*Inscription en droit*" partielle against the allegation contained in the last five lines of paragraph 6 of the Plaintiffs' Answer to the Defendants' Amended Plea reading as follows:

"and the said Connelly and Seely were convicted of fraudulent and wrongful practice while they were officials of the Borough of Queens and were sentenced to goal on an indictment which included the said John M. Phillips, who died before the trial."

And for reasons in support of their said Inscription, the said Defendants allege: (1) that even if the allegations above referred to were true, in fact, which is not admitted, but expressly denied, the same would constitute no claim in law justifying the present demand; (2) the alleged conviction of Connelly and Seely in a foreign Court of criminal jurisdiction can have no influence whatever on a claim before the Courts of the Province of Quebec against the estate of the said Phillips in a civil matter; (3) it is not pretended that the said John M. Phillips was himself convicted and the convictions of Connelly and Seely have no bearing on the present Contestation, and, therefore, the Defendants pray that that portion of the allegation contained in paragraph (6) of the Plaintiffs' Answer to the Defendants' Amended Plea, reading as follows:

"and the said Connelly and Seely were convicted of fraudulent and wrongful practice while they were officials of the Borough of Queens and were sentenced to goal on

an indictment which included the said John M. Phillips, who died before the trial”

be declared illegal, irregular and void and be struck from the record, with costs.

10 ATTENDU que les dits défendeurs “The Heirs of John M. Phillips” répliquent, *ensuite, en fait* that without prejudice to the Partial Inscription-In-Law hereinbefore made, the Defendants deny the allegations of the Plaintiffs’ Answer to Amended Plea save insofar as the same accord with the allegations of their said Amended Plea, praying as in and by their Amended Plea they have already prayed.

20 ATTENDU que les défendeurs “The Crown Trust Company” & al et “The Crown Trust Company”, es-qualité, defenderesse en reprise d’instance, severing in *their defense*, contestent, également et séparément, la présente action comme suit: that they are ignorant of the truth of the allegations of paragraphs 1, 2, 5, 7, 8, 34, 35, 36, 37, 38 and 39 of Plaintiff’s Declaration; that the Exhibits P-1 and P-2 speak for themselves and Defendants deny the truth of the allegations of Paragraph 3 of Plaintiff’s Declaration, in so far as they differ from the terms of the said Exhibits, as well as the relevancy and sufficiency of the said Exhibit; that they deny the truth of the allegations of paragraphs 4, 6, 9, 10, 11, 12, 13, 14, 15, 16; 17, 18, 19, 20 (a), (b), (c), (d), (e), 21 (a), (b), 22 (a), 23 (a), 30 (b), 24 (a), 25 (a), 26 (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), 27 (a), (b), (c), (d), (e), (f), (g), (h), 28 (a), 29 (a), (b), 30 (a), (b), 31 (a), (b), (c), (d), (e), (f), (g), 32 (a), (b), 33 (a), 40, 41 and 43 of Plaintiff’s Declaration; that as regards paragraph 42 of Plaintiff’s Declaration, the Defendants admit that Francis Phillips, a son of John M. Phillips, did rent in his own name a safety box at Montreal Safe Deposit Company, at Montreal, and declare that any property placed therein by the said Francis Phillips was his own;

40

AND DEFENDANTS MOREOVER SAY:

That the period referred to in Plaintiff’s action was a period of experiment, during which sewer construction underwent many changes and the said John M. Phillips was instrumental in introducing into the Borough of Queens many new and improved methods and materials in the construction of sewers in that Borough; that the construction of sewers in the

Borough of Queens was exceedingly difficult and hazardous to a supplier of pipe because of the wet and shifting nature of the soil, the great depth beneath the surface of the ground and the level of the sea, at which the pipes were laid and consequent stress and strain to which they were exposed as well as the necessity that they be absolutely watertight; that any plans and specifications for the construction of sewers in the Borough of Queens, or for materials to be used therein, were prepared by competent engineers, with the approval of the governing bodies of the Borough of Queens, as well as of the City of New York, and the work done was likewise carried out under the supervision of the said engineers and governing bodies; that any reinforced, concrete pipe sold or manufactured by the said Phillips was of better quality, higher cost and better adapted to the requirements and peculiarities of sewer construction in the Borough of Queens than any other then available; that there is no *lien de droit* between Plaintiff and defendants now pleading; that Plaintiff's action is unfounded in law and in fact;

ATTENDU que les dits défendeurs pray for the dismissal of Plaintiff's action with costs.

ATTENDU que le demandeur répond à cette *contestation* des défendeurs severing in their defense, comme suit: in answer to paragraph 1 of above described Defendants' Plea, Plaintiffs join issue with said Defendants as to the truth of the allegations of paragraphs 1, 2, 5, 7, 8, 34, 35, 36, 37, 38 and 39 of Plaintiffs' Declaration; in answer to paragraph 2 of above described Defendants' Plea, Plaintiffs join issue with said Defendants as to the truth of the allegations of paragraph 3 of Plaintiffs' Declaration; in answer to paragraph 3 of above described Defendant's Plea, Plaintiffs join issue with said Defendants as to the truth of the allegations of paragraphs 4, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 (a), (b), (c), (d), (e), 21 (a), (b), 22 (a), 23 (a), (b), 24 (a), 25 (a), 26 (a), (b), (c), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), 27 (a), (b), (c), (d), (e), (f), (g), (h), 28 (a), 29 (a), (b), 30 (a), (b), 31 (a), (b), (c), (d), (e), (f), [g], 32 (a), (b), 33 (a), 40, 41 and 43 of plaintiffs' Declaration; in answer to paragraph 4 of above described Defendants' Plea Plaintiffs pray act of the admission therein contained that Francis Phillips, a son of John M. Phillips, did rent in his own name safety box of the Montreal Safety Box Company, at Montreal, and Plaintiffs deny the remainder of said paragraph and add that the property placed in the said safety box was the property of John M. Phillips: Plaintiffs deny the truth of the allegations of paragraph 5 of above

described Defendants' Plea and add that the method and materials referred to by Defendants were well known to all and were matters of general and common knowledge; Plaintiffs deny the truth of the allegations of paragraph 6 of above described Defendants' Plea, and moreover add that all sewers constructed in the Borough of Queens had to be water-tight; Plaintiffs deny the truth of the allegations contained in paragraph 7 of above described Defendants' Plea, and Plaintiffs further add that 10 Frederick C. Seely, in his capacity as Head of the Designing Department, in the Department of Sewers, in the Borough of Queens, and in his capacity as Assistant Engineer, in the same Department, was the responsible officer for any plans and specifications for the construction of sewers in the Borough of Queens, which plans and specifications originated with said Seely and the work done was likewise carried out under his supervision, and the said Seely was convicted of fraudulent and wrongful practice, while he was an official in the Borough of 20 Queens and was sentenced to jail; Plaintiffs deny the truth of the allegations of paragraph 8 of the above described Defendants' Plea, and Plaintiffs further add that even if the allegations contained in said paragraph 8 of said Defendants' Plea were true, which is denied, the said Phillips was a party to corrupt practices and to conspiracy by charging for his precast pipe, prices greatly in excess of any fair and reasonable price, and otherwise; Plaintiffs deny paragraph 9 of above described Defendants' Plea; Plaintiffs deny paragraph 10 of above described Defendants' Plea, and, reiterating each and every and all 30 the allegations of their Declaration, pray that above described Defendants' Plea be dismissed and Plaintiffs' action be maintained, the whole with costs.

ATTENDU que les *défendeurs* severing in their defence and Defendant en reprise d'instance, for reply to Plaintiff's Answer to Plea, say: that they join issue with Plaintiff as regards the truth of the allegations of paragraphs 1, 2 and 3 of Plaintiff's Answer to Plea; that they deny that the property contained in the said safety deposit box belonged to the late 40 John M. Phillips, and join issue with Plaintiff as regards the truth of the other allegations of paragraph 4 of Plaintiff's said Answer to Plea; that they deny the truth of the allegations contained in paragraphs 5, 7, 8, 9 and 10 of Plaintiff's Answer to Plea; that they are ignorant of the truth of the allegations of paragraph 6 of Plaintiffs Answer to Plea, and, reiterating all the allegations of their Plea, pray for the dismissal of Plaintiff's action, with costs.

STATUANT AU MERITE:—

CONSIDERANT qu'il est incontestable que, *prima facie*, la lecture et l'analyse des trente-six pages qui constituent l'exposé verbatim des prétentions respectives des parties au litige, donnent à la présente cause une apparence formidable, non seulement aux procureurs des parties en cause, au point de vue de l'établissement de leur thèse respectve mais, également, au tribunal chargé, en première instance, de la décision à rendre en la matière soumise à sa considération, et dont l'objet dominant est de déterminer finalement les droits respectifs des dites parties, apparence que n'ont pas démentie, par la suite, la longue et consciencieuse instruction de la cause et les nombreuses et louables argumentations prononcées, par leurs procureurs respectifs, au cours de l'instruction et de l'audition au mérite d'icelle, plus spécialement consignées dans des factums qu'ont finalement produits ces procureurs lesquels, le tribunal l'atteste, vu l'effort consciencieux et *ad rem* qu'ils ont fourni constamment, au bénéfice de leurs clients, ne peuvent être accusés de la moindre faute de commission ou d'omission, le tribunal se faisant un devoir de le reconnaître, et ce, sans différencier à l'égard d'aucun d'eux;

CONSIDERANT que les plaidoiries récitées dans les préliminaires ci-dessus, et le développement de l'instruction de la cause, attestent et démontrent que la présente cause est le fruit et la conséquence d'enquêtes judiciaires instituées par le département de la justice de l'Etat de New York, dont les résultats ont eu pour effet de mettre en accusation, devant les tribunaux criminels de cet état, un nommé Maurice E. Connelly, président du Borough de Queens, un des Boroughs de la cité de New York, un nommé Frederick Seeley, un des ingénieurs civils du dit Borough of Queens et un nommé John M. Phillips, contracteur, du même lieu, accusés tous trois d'avoir conspiré contre la dite Cité de New York, représentée, en la présente cause, par The People of the State of New York, et de lui avoir, en ce faisant, volé des sommes considérables en rapport avec la construction d'égoûts d'assainissement (*sanitary sewers*) et d'égoûts ordinaires (*storm sewers*) construits, dans les limites du territoire du dit Borough of Queens, durant une période d'une dizaine d'années, savoir de 1917 à 1927, actes d'accusation (*indictments*) qui, d'après les exhibits P-11, P-12, P-13 et P-14 des demandeurs, produits au dossier sous réserve d'objections, auraient été déclarés fondés contre les dits Maurice E.

10 Connolly et Frederick Seeley, par le tribunal criminel de première instance de l'Etat de New York et, plus tard, confirmé by the "Appelate Division of the Superior Court of the State of New York, held in and for the second judicial department of the Borough of Brooklyn, on the 14th day of November 1929", dont deux juges sur cinq, dissidents, et d'opinion de casser le verdict prononcé, le 17 octobre 1928, en première instance, et d'accorder aux accusés Connolly et Seely un nouveau procès, (New Trial) ainsi que le tout appert aux dits exhibits P-11, P-12, P-13, P-14 des demandeurs, aucun verdict de culpabilité ou de non culpabilité n'ayant été prononcé contre le dit John M. Phillips pour la raison que ce dernier mourut, le 3 juillet 1928, de mort naturelle et avant la mise en accusation des nommés Maurice E. Connolly et Frederick Seeley, la présente action prenant, partant, la forme d'une action en dommages-intérêts au montant de \$3,405,449.02 contre les héritiers et les légataires de la succession du dit John M. Phillips dont le tribunal est actuellement appelé à trancher le noeud gordien;

20

30 CONSIDERANT, d'abondant, qu'il est facile de constater en mettant en regard la déclaration des demandeurs en la présente cause, et les actes d'accusation (Indictments) portés contre les dits Connolly, Seeley et Phillips, que les allégations de la déclaration des demandeurs ont été entièrement puisées à la source des allégations de fait qui ont servi de base aux dits actes d'accusation (Indictments) et qu'il est évident que les demandeurs, pour rédiger leur action en dommages-intérêts, se sont inspirés des allégations de conspiration, consignées aux dits actes d'accusation (Indictments), pour motiver les conclusions de leur action sauf, évidemment à en établir, à leur tour, les diverses allégations que l'on trouve en leur déclaration, et ce, en vertu du principe légal bien connu qu'il ne suffit pas seulement d'alléguer une chose pour obtenir les conclusions que l'on demande, mais qu'il faut, avant tout et de toute nécessité, prouver légalement la chose et le fait allégué;

40 CONSIDERANT qu'il convient, avant d'aller plus loin, de rappeler, ainsi que l'établissent les préliminaires ci-dessus, que les défendeurs "The Heirs of the late John M. Phillips", ont, d'abord, comparu, comme entité, en la présente cause, par le ministère des Mes Cook et Magee et, également, plaidé, comme entité, les moyens de défense que l'on trouve en leur plaidoyer entièrement récité dans les dits préliminaires, et que ce n'est que plus tard que la succession d'un des héritiers assignés par l'action, savoir la succession de Francis Phillips, re-

présentée par "The Crown Trust Company & al", et Mes Hackett, Mulvena, Foster, Hackett & Hannen, leurs procureurs, s'est séparée des autres héritiers de feu John M. Phillips, et ce, aux fins de produire une défense exclusivement séparée de celle des autres héritiers du dit John M. Phillips, dont les moyens de défense sont également récités au cours des préliminaires ci-dessus, défense particulière qui, indépendamment des moyens de défense soulevées, comme entité, par les héritiers de feu John M. Phillips, soulève un nouveau moyen de défense qui leur est exclusivement propre, savoir que la somme de \$312,000 saisie dans le coffret et situé dans les voûtes de la Montreal Safe Deposit Company n'appartient pas à la succession de feu John M. Phillips, mais appartient plutôt à la succession du dit Francis Phillips, plaidoyer séparé qui a eu la conséquence de provoquer, de la part des héritiers de feu John M. Phillips, représentés par la Bank of Rockvile Centre Trust Co., es-qualité, vs Chase National Bank of the City of New York, es-qualité et al., une action, indépendante de la présente action, portant le No. C-110169 des dossiers de la Cour Supérieure de cete Province, siégeant dans et pour le district de Montréal, action qui a été jointe à la présente action portant le No. 30804 des mêmes dossiers, et que le Président du tribunal est appelé à juger conjointement avec la présente action, ces deux actions Nos. 30804 et C-110169 ayant été réunies pour les fins d'avoir simultanément une décision finale dans l'une et l'autre cause;

30 CONSIDERANT qu'il importe avant d'entrer dans le mérite de la présente action et dans l'exposé des raisons qui militent, soit en faveur de son maintien ou de son renvoi, d'admettre et de reconnaître que la preuve logée, de part et d'autre, au dossier, est extraordinairement volumineuse ayant été suivie d'une audition orale devant cette Cour et suivie, également, de factums soignés et volumineux, de la part des procureurs des parties, ces derniers n'ayant rien négligé aux fins de faire triompher, devant cette Cour, leur thèse respective;

40 CONSIDERANT qu'en justice pour le Président de cette Cour, il convient de déclarer qu'il a donné à cette cause, dans la mesure du possible, toute l'attention et la considération qu'elle mérite, le Président du tribunal s'imposant, comme c'était son devoir de le faire, la tâche ardue et pénible d'étudier, d'analyser et de parcourir verbatim, non seulement la preuve que les parties ont produite devant le Commissaire Me Courcy de Fales, chargé de la Commission Rogatoire dont il est question ci-dessus, le dit Président n'ayant pas eu l'avantage d'entendre lui-même les témoins qui ont comparu devant le Commissaire, mais, éga-

10 lement, de lire, mot à mot, la preuve fournie par les témoins qu'il avait déjà entendus lors de l'instruction de la cause devant lui, et ce, nonobstant qu'il avait eu l'avantage de les entendre; qu'il convient aussi d'ajouter qu'il a, également, lu avec un soin tout particulier, avant de lire cette preuve extraordinairement volumineuse, les factums des procureurs des parties pour se rendre compte, d'abord, de leurs prétentions respectives, factums qu'il s'est cru obligé de relire de nouveau pour en bien saisir toute la portée, et ce, après avoir parcouru toute l'étendue de cette preuve extraordinairement volumineuse;

PROCEDANT, maintenant, ces considérations étant posées, à décider du mérite de la présente action:

20 CONSIDERANT que l'action en dommages-intérêts, accompagnée d'une saisie-arrêt avant jugement, qu'intentent: présentent The People of the State of New York vs "Heirs of the late John M. Phillips", est exclusivement basée sur une prétendue conspiration criminelle que le dit feu John M. Phillips, contracteur, du Borough of Queens, aurait tramée et ourdie contre la Cité de New York, de concert avec ses prétendus amis et co-conspirateurs Maurice E. Connolly et Frederick Seeley, à l'occasion de la construction d'égoûts d'assainissement et d'égoûts ordinaires qui auraient été construits dans les limites du territoire du Borough of Queens durant la période courue de 1917 à 1927;

30 CONSIDERANT que la première question que, au début de cette cause, s'est posée le tribunal et qui s'offrait naturellement à sa considération, était de savoir, vu que toutes les causes d'action qui l'ont produite étaient nées dans un pays étranger, dans l'Etat de New York, un des États-Unis d'Amérique, limi-
trophe du Canada, était la question de juridiction, question qui n'avait pas été, cependant, soulevée par les défendeurs au seuil du litige, mais qui pouvait et devait se présenter, dès le principe, à l'esprit du tribunal pour le cas où il y aurait eu absence de
40 juridiction "ratione materiae", auquel cas le tribunal aurait été obligé de se récuser ex officio en la matière, nonobstant l'abstention des défendeurs ou de leurs procureurs de se prévaloir de cette absence de juridiction, le tribunal se hâtant, toutefois, d'ajouter qu'après examen des allégations, tant de fait que de droit, de la déclaration des demandeurs, et des dispositions de l'article 94 de notre Code de Procédure civile, paragraphe 4 d'icelui, ainsi que de la jurisprudence de notre Province en rapport avec ce paragraphe 4 du dit article 94, savoir, entre autres, celle que l'on trouve au 3ème volume des Rapports de la Cour

10 de Pratique, p. 155; au 4ème volume des Rapports de la même Cour, p. 261, et au 21ème volume du Lower Canada Jurist, p. 48, le tribunal n'a aucune hésitation à conclure qu'il s'agit, en l'espèce d'une juridiction exclusivement *ratione personnae* et que, partant, aucune "exception déclinatoire" n'ayant été opposée, par les défendeurs, à l'action, cette Cour est régulièrement saisie du présent litige, le tout dispensant le tribunal d'étudier et d'approfondir, au point de vue du droit international, l'intéressante question de savoir si un état étranger peut, *ex cathedra*, conférer de plano une action, dans un autre pays, contre un autre de ses sujets, sans qu'il existe, dans cet autre pays, une loi spéciale de procédure autorisant telle action, question de droit international qui ne peut être soulevée, en la présente instance, vu l'existence des dispositions du paragraphe 4 de l'article 94 de notre Code de Procédure civile;

20
30
40
CONSIDERANT qu'il n'est aucunement discutabile, comme la chose se présente dans toutes causes ordinaires, que la preuve des allégations de la déclaration des demandeurs, et, spécialement, celle qui concerne la conspiration criminelle que ces derniers allèguent, incombe exclusivement aux demandeurs; qu'il est également, incontestable que le tribunal ne peut accepter comme preuve d'une telle conspiration les exhibits P-11, P-12, P-13 et P-14 produits par les demandeurs sous réserve des objections des défendeurs, la preuve qui a été faite dans l'Etat de New York contre les accusés Maurice E. Connolly et Frederick Seeley et qui a motivé le verdict du jury, ayant été entendu devant un tribunal différent du présent tribunal lequel n'en connaît pas le premier mot et qui, s'il la connaissait entièrement, en arriverait peut-être à des conclusions différentes de celles auxquelles en est arrivé le jury qui a prononcé sur le cas des accusés, dont le verdict même a été mis en question par la minorité des juges siégeant en appel de son verdict, ainsi que le révèlent les exhibits P-13 et P-14 des demandeurs;

40
CONSIDERANT qu'il en résulte que le présent tribunal doit absolument juger la présente cause d'après la preuve qu'il a devant lui, bien volumineuse il est vrai, mais qu'il doit apprécier dans toute son étendue et suivant la force probante qui doit en résulter et en résulte dans son esprit;

CONSIDERANT qu'il importe, à cet étage du présent jugement, de bien définir ce qui constitue la conspiration, laquelle, d'après certains auteurs, est "un concert entre deux personnes ou plus, pour commettre un acte illégal, que cet acte soit l'objet final de cette entente ou seulement un moyen d'arriver

au but que se proposent les délinquants, acte constituant un délit ou une injure civile dont les faits soient préjudiciables au public, à une personne ou à un groupe d'individus" ou, encore, comme la définit certain autre auteur, "an unlawful combination or agreement between two or more persons to carry into effect a purpose hurtful to some individual, or to particular classes of the Community, or to the public at large;

10 CONSIDERANT qu'il résulte de ces définitions qu'un tel fait doit remplir les deux conditions suivantes pour constituer une conspiration criminelle: 1o. une résolution d'agir concertée et arrêtée entre deux personnes ou plus, et 2o. un acte illégal comme moyen ou comme fin de cette résolution;

20 CONSIDERANT que l'examen sérieux, l'étude approfondie et l'analyse minutieuse de la preuve volumineuse à laquelle il est fait allusion ci-dessus, démontrent que durant la période courue de 1917 à 1927 il se fit, dans les limites du territoire du Borough de Queens, dont le dit Maurice E. Connolly était le président et le dit Frederick Seeley un des nombreux ingénieurs du département des égouts, une construction considérable d'égouts d'assainissement et d'égouts ordinaires, nécessitant la fourniture de matériaux de construction consistant de sable, de pierres concassées et de ciment, en énorme quantité, et, spécialement, ce qui fait l'objet cardinal du présent litige, de "tuyaux en béton" dénommés "monolithic" ou "precast", de diamètre variant de 24 pouces à 108 pouces inclusivement, dont
30 certaines compagnies, fabriquant ces tuyaux et le nommé John M. Phillips, auraient été les fournisseurs, ce dernier, soit comme représentant et agent de la "Lock Joint Pipe Co.", l'une des compagnies déjà mentionnées, soit comme fabriquant lui-même de ce tuyau, connu sous le nom de "Precast Pipe", tuyau dont les contracteurs avaient besoin pour l'exécution des contrats intervenus entre eux et la Cité de New York;

40 CONSIDERANT que l'examen de cette preuve démontre, également, que les demandeurs ont produit au dossier, au cours de l'instruction faite, tant devant le Commissaire enquêteur Me Courcy de Fales que devant le Président de cette Cour, une preuve considérable, documentaire et orale, en rapport avec la construction des égouts ci-dessus mentionnés, cette preuve consistant, surtout, en production de demandes (de soumissions, d'acceptation et de rejet de soumissions, et de contrats intervenus, entre la Cité de New York et divers contracteurs, les dites soumissions ayant été, au préalable, acceptées par le dit Maurice E. Connolly, le dit président du dit Borough of Queens;

10 que la preuve démontre que ces divers contrats se rapportent directement aux immenses travaux de construction d'égoûts auxquels ont été mêlés, comme président du dit Borough of Queens, le nommé Maurice E. Connolly et le dit Frederick Seeley, un des ingénieurs du département d'égoûts de ce Borough, cette preuve démontrant aussi que la Cité de New York a rempli ses obligations envers les divers contracteurs qui ont exécuté les travaux que leur avait confiés cette dernière; qu'il est évident que toutes ces pièces documentaires ont été produites, par les demandeurs comme base fondamentale de l'édifice de conspiration qu'ils entendaient élever au cours de leur enquête, et ce, au soutien de leur action en dommages-intérêts;

20 CONSIDERANT que, au cours de l'examen, de l'étude et de l'analyse de cette preuve, appuyée de factums et de tableaux spéciaux y annexés, le tribunal s'est évertué à découvrir si, dans toute cette preuve documentaire et orale, les éléments constitutifs de la conspiration criminelle alléguée par les demandeurs, éléments répondant aux exigences de la définition que les auteurs de droit criminel donne de l'offense de "Conspiration" étaient bien et dûment établis; que le tribunal est bien prêt à admettre que les demandeurs se trouvent et se sont trouvés dans une position difficile pour établir l'offense de conspiration qu'ils reprochent au nommé John M. Phillips et dont ils veulent tenir responsables les héritiers de feu John M. Phillips; qu'il est vrai que la mort du dit John M. Phillips les prive et les a privés de l'avantage d'assigner, devant cette Cour, le nommé John M. Philips dont le témoignage aurait pu, peut-être, leur être d'une grande utilité et peut-être aussi une pierre d'achoppement, mais qu'il faut reconnaître que s'ils n'ont pu produire, devant cette cour, le nommé John M. Phillips ils avaient, cependant, l'avantage et le droit d'assigner, devant Me Courcy de Fales, le Commissaire enquêteur ci-dessus mentionné, les nommés Maurice E. Connolly et Frederick Seeley et de les interroger sur tous les faits pertinents à la cause; que, sous les circonstances, la Cour peut se demander la raison de leur non'assignation, les demandeurs craignaient-ils de le faire pour la raison que les témoignages de 30 l'un et l'autre pouvaient leur être dommageables ou préféraient-ils ne pas encourir ce risque et laisser le soin de le faire à leurs adversaires?

40 CONSIDERANT que cette Cour n'a pas, cependant, à s'occuper de cette dernière alternative dont pouvaient parfaitement user, également, les défendeurs en cette cause, mais qui (les dits défendeurs) n'étaient pas obligés de le faire vu que la preuve de conspiration incombait absolument et, d'abord, aux

demandeurs; qu'il est clair que les demandeurs doivent supporter le poids et la responsabilité de leur abstention, et ce, sans pouvoir jeter la pierre aux défendeurs;

CONSIDERANT qu'il est incontestable qu'en matière de crime et d'offense criminelle productifs d'actions en dommages-intérêts, le crime et l'offense doivent être clairement établis pour donner lieu à l'ouverture de l'action en indemnité;

10

CONSIDERANT que les demandeurs ont, d'abondant, par la production de leurs exhibits P-11, P-12, P-13 et P-14, affaibli, dans une certaine mesure, leur cause, et jeté, dans l'esprit du tribunal, un doute sur le bien fondé du verdict rendu par le jury de la Cour de première instance, vu la dissidence de deux juges de la Cour d'Appel américaine, dont l'opinion était de casser le verdict en question et d'accorder, aux nommés Connolly et Seeley, un nouveau procès;

20

CONSIDERANT que, à tout événement, cette Cour mettant de côté, pour les fins de la présente cause, toute considération des exhibits P-11 à P-14 inclusivement, n'a qu'à se demander et à s'informer si la preuve produite en cette cause justifie, après une considération sérieuse d'icelle, une décision l'autorisant à dire que les demandeurs ont bien et dûment prouvé leurs allégations de conspiration;

30

CONSIDERANT que cette Cour, après s'être évertuée, ainsi qu'il est dit ci-dessus, à découvrir, dans la preuve des demandeurs, l'établissement de la conspiration que les demandeurs reprochent au dit John M. Phillips et dont ils veulent tenir responsables ses héritiers, doit déclarer et déclare qu'elle n'a pu, malgré toute l'attention qu'elle a donnée à l'analyse de la preuve, trouver, dans cette preuve, les éléments voulus qui la justifieraient de décréter que la conspiration en question a été bien et dûment établie par les demandeurs, mais que le tribunal est, au contraire, obligé de déclarer et de décréter que les demandeurs ont entièrement failli d'établir cette conspiration frauduleuse et dolosive, laquelle, si elle avait été prouvée, aurait ouvert la porte à l'action en dommages-intérêts qu'ils intentent présentement contre les héritiers de la succession de feu John M. Phillips, sauf à déterminer, ensuite, la quantum des dommages soufferts par les demandeurs.

40

CONSIDERANT, d'abondant, que la lecture et l'analyse des Factums des demandeurs, n'a pu, non plus, convaincre le tribunal que les demandeurs ont établi la prétendue conspira-

tion qu'ils reprochent au nommé John M. Phillips et que, partant, les héritiers ne peuvent être tenus responsables des conséquences d'une conspiration que ces demandeurs n'ont pu prouver;

10 CONSIDERANT que le tribunal ne peut, davantage, rester silencieux à l'égard de certains témoins des demandeurs, savoir les témoins Paulsen, Purcell, Weaver et Sigretto dont les témoignages, étant considérée la transquestion sévère qu'ils ont subie, chacun, doivent être acceptés avec beaucoup de circonspection et sous bénéfice d'inventaire, leur véracité ayant été mise considérablement à l'épreuve;

20 CONSIDERANT qu'en admettant que la preuve démontrerait que le nommé John M. Phillips aurait vendu, aux divers contracteurs chargés d'exécuter les contrats en question, son tuyau (Precast pipe) à des prix exagérés, ce fait seul et isolé, sans la preuve positive d'un complot frauduleux entre lui et ses prétendus co-conspirateurs, ne suffirait pas, à lui seul, à établir l'offense de conspiration dont on accuse le dit John M. Phillips;

30 CONSIDERANT que c'est en vain que les demandeurs voudraient invoquer, comme présomption de culpabilité du dit John M. Phillips les verdicts prononcés, par les Cours américaines, contre les dits Maurice E. Connelly et Frederick Seeley, verdicts qui ont été le résultat de deux procès séparés qu'ont subis ces derniers et qui, partant, ne peuvent être invoqués, contre le dit John M. Phillips, au soutien de la présente cause civile des demandeurs contre les héritiers de ce dernier, cause qui ne peut être décidée, par cette Cour, que sur la preuve exclusivement fait devant elle et sur nulle autre preuve;

40 CONSIDERANT qu'il s'en suit que si le tribunal est d'opinion que les demandeurs ont failli d'établir la base fondamentale de leur action, comme il le déclare ci-dessus, il n'y a pas lieu, partant, de s'occuper davantage du quantum des dommages réclamés par leur présente action;

 CONSIDERANT qu'il résulte de tous les motifs et de toutes les raisons ci-dessus apportés à l'appui du présent jugement, que, d'une part, l'action des demandeurs est mal fondée, tant en fait qu'en droit; que d'autre part, les deux contestations, tant celle des héritiers de feu John M. Phillips que celles du Crown Trust Co. & al., défendeurs severing in their defence, et du Crown Trust Co. es-

10 qualité et al, défendeurs en reprise d'instance, représentant la succession de feu Francis Phillips, sont bien fondés en fait et en droit, sauf, quand à la dernière contestation, la prétention émise, en icelle, relative au droit de propriété du contenu qui reposait, lors de la saisie-arrêt avant jugement dans le coffret de sûreté alors sis et situé dans les voûtes de la Montreal Safe Deposit Co., prétention que le tribunal ne juge pas à propos de décider, hic et nunc, en la présente instance, vu que cette prétention est soulevée directement dans une action, jointe à la présente, celle portant le No. C-110169, The Bank of Rockville Centre Trust Co. es-qualité vs Chase National Bank of the City of New York, es-qualité et al. et Royal Trust Co., action qui fait l'objet d'un jugement exclusivement distinct et séparé, en la dite cause, dont la reddition doit et va suivre immédiatement le prononcé du jugement en la présente cause;

20 **CONSIDERANT** que, en définitive, la présente action doit être renvoyée et que les dites contestations doivent être maintenues à toutes fins que de droit.

EN CONSEQUENCE, MAINTIENT les deux contestations en question avec dépens et **DEBOUTE** les demandeurs de leur action et conclusions, et ce, ainsi que dit ci-dessus, avec dépens de l'une et l'autre contestation.

30 **WILFRID MERCIER,**

J.C.S.

ADMISSION BY THE APPELLANTS.

The Appellants, through their undersigned Attorneys, admit:—

10 (a) That each of the following contracts, produced as exhibits in this case, to wit:—

Exhibits C-2, 8, 9, 13, 14, 17, 19, 20, 30, 31, 33, 55, 56, 47,
58, 74, 75, 77, 78, 79, 80, 81, 82, 95, 96, 97, 98, 99, 100, 101, 105,
107, 109, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139
140, 141, 142, 143, 159, 160, 161, 201, 204, 205, 206, 207, 209, 210,
20 212, 216, 217, 218, 219, 221, 222, 230, 231, 232,

bears stamps, markings, legends and certificates similar to those appearing on Exhibit C-36 and that each and all of the said contracts went through the various administrative and executive departments of the Government of the City of New York and of the Borough of Queens, one of the Boroughs of the said City of New York for inspection and audit and approval as provided in the Charter of the City of New York (Exhibit P-19);

30 (b) That each of the contracts referred to as exhibits in sub-paragraph (a) hereinabove, was entered into by and on behalf of the City of New York and of the said Borough of Queens after due compliance with the provisions of the Charter of the City of New York (Exhibit P-19) relating to contracts, as more fully set forth in Chapter 10 of the said Charter, and without limiting the generality of the foregoing the said contracts and each of them were and was founded on proper and adequate resolutions of all the said municipal authorities legally passed on sealed bids or proposals made in compliance with public
40 notices duly advertised in the City Record and corporation newspapers for the period of time required by law; that the contractors' bids and the contracts were properly signed and executed by all parties in strict compliance with all the laws and regulations applicable to the City of New York; that security for the faithful performance of each of the said contracts in the manner prescribed and required by ordinance was given and maintained in each instance and the adequacy and sufficiency of the said security, in addition to the justification and acknowledgment

thereof, was approved by the comptroller; that all such bids or proposals were publicly opened by the officer or officers advertising for the same in the presence of the comptroller and the bidders and otherwise in due compliance with all formalities provided by the Charter of the City of New York relating thereto.

10 (c) That in each of the aforementioned instances bids or proposals were called for upon alternative specifications (i. e., for the monolithic type of sewer called "Type 'A'", or the precast pipe type called "Type 'B'") and for the construction of any sewer or sewers covered by the aforementioned exhibits bidders were permitted to bid or tender upon either the monolithic or Type "A" construction or for the precast pipe or Type "B" construction.

20 (d) That Exhibits C-90, 91, 92, 93, 116, 117 and 118, being assignments of the contracts therein referred to, are in all respects proper and legal, duly made in conformity with all statutes, regulations, laws and by-laws of the City of New York and the said Borough of Queens after due compliance with the provisions of the Charter of the City of New York (Exhibit P-19) and without limiting the generality of the foregoing that the said assignments and each of them are in every way legal as to form and execution, that security and sureties in the manner prescribed and required by ordinance was given and obtained in each instance and the adequacy and sufficiency of the said security, in addition to the justification and acknowledgment
30 thereof, was approved by the Comptroller and all other administrative and executive officers of the Government of the City of New York and the Borough of Queens, one of the Boroughs of the said City of New York.

(e) That the originals of Exhibits C-102, 103, 104, 106, 108 and 119 are duly accompanied by the blue-prints, plans and specifications referred to therein.

40 (f) That some of the territory in which a number of the contracts giving rise to the present litigation were performed or carried out was low and wet and that the work was carried out below the level of tide and ground water and was in consequence a hazardous and difficult performance, the whole as revealed by the evidence.

(g) That all notices to bidders required to be given by or on behalf of the City of New York and of the said Borough of

Queens, relating to the contracts referred to as Exhibits in subparagraph (a) hereinabove, were made and given after due compliance with the provisions of the Charter of the City of New York (Exhibit P-19) and without limiting the generality of the foregoing the said notices and each of them was made in strict compliance with all laws, by-laws and resolutions of any kind whatsoever required thereby to be complied with.

- 10 The present Admission, which the Respondents have accepted as a concession on their part to the Appellants, is hereby made for the purpose of saving considerable expense and disbursements and of avoiding trouble in the preparation and printing of the Joint Record to be filed herein; and it is expressly admitted that the said concession by the Respondents is made without waiver of any of the objections by them made as to the legality or sufficiency of any evidence, exhibits or testimony of record in the present case, all of which objections are specifically reserved by the Respondents despite their consent to the omission
20 of the printing of certain parts of the original record.

MONTREAL, August 1st, 1936.

BERTRAND, GUERIN,

GOUDRAULT & GARNEAU,
Attorneys for Appellant.

- 30 We accept the foregoing Admission on behalf of the respective Respondents herein.

MAGEE, NICHOLSON & O'DONNELL,
Attorneys for Respondents — The
Heirs of the late John M. Phillips.

HACKETT, MULVENA, FOSTER,

- 40 HACKETT & HANNEN,
Attorneys for Respondents — The
Crown Trust Company, es qual. et al.
-

CONSENT AS TO CONTENTS OF JOINT CASE

IN APPEAL.

The parties hereto, by the undersigned, their respective Attorneys of Record, hereby consent that the Joint Case in Appeal to the Court of King's Bench (Appeal Side) shall consist of the following:—

10

1. All Pleadings (case heading and description of parties to be omitted)

2. All Exhibits save that

20

(a) Exhibit C-36 is to be reproduced in extenso, together with all annexes, schedules, documents, reports and correspondence which are annexed or affixed thereto and they are to be printed and/or photographed and/or photostatted and reproduced in such manner that exact facsimilies of all stamps, markings, legends and certificates of the various executive and administrative departments and departmental officers of the City of New York and of the Borough of Queens in the said City shall appear thereon;

30

(b) All annexes, schedules, documents, etc., reports and correspondence with the exception of any documents and correspondence referring to surety bonds, proposals or bids and summaries thereof, which are annexed or affixed to Exhibits C-20, 30, 55, 56, 57, 74, 75, 78, 79, 100, 133, 137, 140, 143, 160, 161, 206, are to be printed and reproduced, together with the following details and extracts from each of the said exhibits:—

40

10. Award and date of award;

20. Signatures of contracting parties and attestation by witnesses thereto;

30. Description of work;

40. The resolution of the Local Board of Improvement and the approval of the Board of Estimate and Apportionment;

50. Certificate by the President of the Borough as to the estimated cost of the contract;

60. The bids;

70. The types of construction;

10

80. The size of pipes;

90. The number of feet of concrete sewer that has to be built;

100. Record of payments by the City to the Contractor;

110. Assignment and modifications of contract, if any;

20

120. That part of the Specifications which refers to Type "B" construction; (except that with respect to C-98, C-99, C-138 and C-142, the specifications which refer to Vitrified Pipe are to be also included);

130. The number of days allowed for the execution of the contract and extension of time, if any granted;

30

(c) The actual contracts contained in Exhibits 58, 80, 81, 82, 95, 96, 97, 98, 99, 101, 105, 107, 109, 128, 129, 130, 134, 135, 136, 138, 139, 141, 142, 205, 207, 208, 209, 210 and 232 are to be summarized and only the said summaries thereof are to be printed. The summary in each instance shall contain the following details and information:—

40

10. Description of the contract;

20. Contract number;

30. Name of contractor;

40. Name of sureties;

50. Amount of bond;

- 6o. Date of contract;
- 7o. Payment by the City to the contractors;
- 8o. Details of resolutions covering contract;
- 9o. Description of the work;
- 10 10o. Details re summary or proposals;
- 11o. Type of construction;
- 12o. Specifications.

20 All annexes, schedules, documents, et cetera, reports and correspondence, with the exception of any documents and correspondence referring to surety bonds, proposals or bids and summaries thereof, which are annexed or affixed to the foregoing exhibits are to be printed and reproduced.

The right of any of the parties to refer to and use the actual exhibits at the time of the hearing is expressly reserved.

30 (d) Exhibits C-121, 122, 123, 155, 156 (models of various types of precast pipe, a description of each of which is to be prepared and printed) are to be omitted.

The right of any of the parties to refer to and use the actual exhibits at the time of the hearing is reserved.

(e) Only the following pages of exhibits D-1 and D-4 are to be printed:—

- 40 D-1. Cover and/or fly leaf
- contents
- Staff — office of Chief Engineer
- p. 7, 8, 9, 10,
- Drainage Plans
- P. 46, 50, 51

p. 92 and Table 1 p. 207

p. 106, 107, 137, 138, 141, 142, 145, 146, 147, 189,
190, 191, 325, 328.

D-4. Front page and p. 5249-5258 inclusive.

10 (f) Exhibits C-167 (a) to C-167 (o) inclusively
are to be omitted from the Joint Case with the right re-
served to any of the parties however to refer to and use
any of the said exhibits at the time of the hearing.

(g) Exhibit C-200 is to be omitted.

20 (h) As to Exhibit C-124 — only the cover and
index page, the page entitled "Introductory" and pages
45 and 47 are to be printed.

(i) As to Exhibit P-19 (Charter of the City of
New York — City Home Rule Law) only the cover, page
one of the exhibit and the following numbered sections
of the exhibit are to be printed:—

Chapter I — Section 1, 2, 3, 4 (part only)

Chapter II.— Section 17, 18 (part only)

30 Chapter II — Section 19 (part only)

Chapter IV — Sections 94 (part only), 96, 97 and 98

Chapter V — Section 115

Chapter VI — Sections 149, 150 and 151

Chapter VII — Section 255

40 Chapter IX — Sections 382, 383, 384, 386 and 397

Chapter X — Sections 417, 418, 419, 420, 421, 422,
426, 427, 428 (in part), 432, 433, 434.

(j) Exhibits C-26, 27, 44, 70, 71, 72, 87, 88, 94, 147,
148, 149, 151, 152, 164, 165, 166, 168, 228 and 229, which

are bank cheques or alleged photographs thereof are to be reproduced in toto, with all endorsements or notations thereon, by means of printing or photostatic reproductions in such manner that the Joint Case to be produced herein will indicate clearly which are original cheques and which are merely alleged photostatic copies, with the right reserved to any of the parties to refer to and use any of the said exhibits at the time of the hearing;

10

(k) The blue prints annexed to Exhibits C-102, 103, 104, 106, 108 and 119 are to be omitted.

(l) As to Exhibit C-89, consisting of fifty-two bank cheques, a specimen cheque is to be reproduced and filed. Complete details and particulars of the remaining fifty-two cheques are to be compiled and printed.

20

(m) Exhibits P-7 is to be omitted.

(n) Exhibits D-5, 6, 7 and 8 are to be omitted.

3. The written Admissions of the parties including the Admission by the Appellant executed August 1st 1936.

4. All depositions of witnesses.

30

5. The judgment appealed from, save that portion containing a recital of the formal pleadings.

6. The present Consent.

MONTREAL August 1st 1936.

BERTRAND, GUERIN,

GOUDRAULT & GARNEAU,
Attorneys for the Appellants.

40

MAGEE, NICHOLSON & O'CONNELL,
Attorneys for the Respondents
The Heirs of the late John M. Phillips

HACKETT, MULVENA, FOSTER,

HACKETT & HANNEN,
Attorneys for the Respondents
The Crown Trust Company es qual et a/