

In the Privy Council

No. 1 of 1939

ON APPEAL FROM THE COURT OF KING'S BENCH; FOR THE
PROVINCE OF QUEBEC (APPEAL SIDE) CANADA.

BETWEEN

The People of the State of New York,

herein represented by the Attorney General of the State of New York, one of the United States of America,

(Plaintiffs in the Superior Court)

(Appellants in the Court of King's Bench)

APPELLANTS

—vs—

Heirs of the late John M. Phillips,

in his lifetime of New York,

(Defendants in the Superior Court)

(Respondents in the Court of King's Bench)

—and—

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

a body corporate and politic duly incorporated, having its head office and principal place of business in the city and district of Montreal, in its quality of curator to the minor child, Helen Frances Phillips, of the village of Roslyn, in the state of New York and Elizabeth Ellen Carroll Baines, wife separate as to property of Clarence L. Paulsen, merchant of the city of Spokane, in the state of Washington, one of the United States of America, and the said Clarence L. Paulsen, for the purpose of authorizing his said wife,

Defendants severing in their defence in the Superior Court)

(Defendants in the Court of King's Bench),

RESPONDENTS

—and—

The Montreal Safe Deposit Company,

a corporation having its head office in the city and district of Montreal,

(Tierce-saisie in all Courts)

TIERCE-SAISIE.

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Case for the Appellants.

1. This is an appeal from a judgment of the Court of King's Bench for the Province of Quebec, rendered on the 29th day of June, 1938, dismissing an appeal from a judgment of the Superior Court rendered by Mr. Justice Mercier, on the 23rd day of November, 1934, dismissing Plaintiffs' action.

Record.

2. The Appellants claim from the Respondents, the Heirs of the late John M. Phillips, the sum of \$3,203,957.61 as damages for moneys unlawfully obtained and withheld from the City of New York, by the late John M. Phillips who, in his lifetime, supplied pipe for the construction of sewers in the Borough of Queens, City of New-York at exorbitant and excessive prices, sometimes exceeding by 800% the fair price for said pipe.

3. The Appellants claim that the obtaining of this money was made possible through a conspiracy between John M. Phillips, Maurice E. Connolly, President of the Borough of Queens, and Frederick C. Seely, Assistant-Engineer in charge of the Designing Department for sewers and other persons unknown. ¹⁰

Vol. 11 p. 5374,
76 and 78. 4. An enquiry was held at the request of the Governor of the State of New-York, Alfred E. Smith, into the affairs of the Borough of Queens. As a result of the said enquiry, the Governor ordered the Attorney General of the State of New York, Albert Ottinger, to prosecute all guilty parties. 20

Vol. 11, p. 5380. 5. John M. Phillips was indicted with Maurice E. Connolly and Frederick C. Seely. John M. Phillips died after the indictment of the grand jury was returned but before trial, on the 5th of July, 1928.

Vol. 11, p. 5382. 6. The two other accused were convicted and sentenced to gaol.

Vol. 11, p. 5412. 7. They appealed the conviction on October 13, 1932 and the Appellate Division of the Supreme Court of the State of New-York dismissed the appeal from the said conviction by a majority judgment rendered on November 14, 1929. 30

Vol. 11, p. 5412
5413. 8. Two of the judges were in favor of a new trial on the ground that evidence tending to prove enrichment on the part of the Borough President through his bank account, etc., should not have been admitted in proof.

People vs Connelly, 227, Appellate Division New-York, page 167, decided November 14, 1929.

9. The accused appealed their case further to the Court of Appeals, State of New-York, before seven judges who unanimously dismissed the appeal. 40

New-York Reports, 253, page 330, decided May 6, 1930.

10. The writ in this case was issued on the 9th of July, 1928, and the judgment of Mr. Justice Mercier was rendered on the 23rd of November, 1934.

11. On the 15th of December, 1927, a petition was filed with the Governor of the State of New York for an investigation into the affairs of the Borough of Queens. The very next day, Phillips converted into currency his bonds of the City of New York and realized in cash the sum of \$725,124.50. Record.
Vol. 11, p. 5376.
Vol. 3, p. 1061.

12. He deposited \$330,000.00 in thousand dollar bills in a safety deposit box in Montreal with the Montreal Safe Deposit Co. on or about the 23rd of January, 1928. On the 9th of July, 1928, \$312,000.00 in thousand dollar bills were seized in the said safety deposit box by the People of the State of New-York, four days after the death of John M. Phillips. The safety deposit box had been rented in the name of his minor son, Francis Phillips. Vol. 3, p. 1049.
Vol. 3, p. 1188.

13. The Appellants' right of action is based on the Civil Practice Act of the State of New York, art. 76, sections 1222, 1224, 1225, 1226 and 1229.

20 Section 1222 of art. 76 is as follows :

“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, country, 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 damages or other compensation for so obtaining, receiving, 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 thereof in favor of the latter is or is not pending when the Action in favor of the People is commenced.” Vol. 3, p. 1207.

30 Section 1224 of art. 76 is as follows :

“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.” Vol. 3, p. 1208.

Section 1225 of art. 76 is as follows :

“Upon the commencement by the People of the State of any section, 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

Record. property, with respect to which the suit or action is brought, and to the
Vol. 3, p. 1208. 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."

Section 1226 of art. 76 is as follows:

Vol. 3, p. 1209. "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 com- 10
menced."

Section 1229 of art. 76 is as follows:

Vol. 3, p. 1212. "The Attorney-General must commence an Action, suit, or other
judicial proceeding, as prescribed in this Article, whenever he deems it
for the interest of the People of the State so do to; or whenever he is
so directed, in writing by the Governor".

Vol. 1, pp. 29-31 14. The said law of the State of New York was specially pleaded
Vol. 3, pp. 1206 et sq. by the Appellants and was proven by Chs. A. Schneider, a member of the 20
Bar of the State of New York, whose evidence was not challenged.

Vol. 11, p. 5428. 15. The Charter of greater New York is produced as exhibit P.
19. Only the sections of importance to this cause have been reproduced
in the record, the parties reserving their rights to use the charter in its
entirety, if necessary.

16. Section 383 of said Charter, sub-section 9, obliges the Presi-
dent of the Borough to initiate the making of all plans for the drainage 30
of his borough and to take charge of the construction of all sewers in ac-
cordance with said plans. Sub-section 12 obliges him to prepare all con-
tracts relating to his borough, subject to the approval *as to form* by the
corporation counsel.

Section 389 of the New York Charter states in part
that all powers relating to the public sewers and drainage
and to all matters in any way concerning the construction and care of the
sewer system, are vested in The City of New York, "..... and as"
"matter of administration devolved upon the president of the borough" 40
"within which is situated the territory to which or to the official repre-"
"sentatives of which said powers and duties heretofore appertained to"
"be by him executed in accordance with the provisions, directions and li-"
"mitations of this act."

Section 397 of the said Charter is as follows:

"The president of each borough, upon the completion of the plan
of sewerage of any district within the borough of which he is president,

upon the filing of copies thereof, or as soon thereafter as may be deemed convenient and necessary, shall cause printed specifications to be made in accordance with said plan of the work proposed to be done in said district, and shall thereupon invite proposals in the manner now required by law, and shall contract for the whole or any part of the work in said district."

Record.

Section 398 of the said Charter provides:

10 "In order to provide for the more effectual and economical construction of sewers, the president of any borough may contract in pursuance of law for such materials used in the construction of sewers within the borough of which he is president and in such quantities as he may deem proper; and it shall be the duty of the comptroller out of the appropriate fund or from the proceeds of assessment bonds authorized to be issued upon the requisition of said borough president to pay for such materials, and the expenses for engineers, surveyors, inspectors or other persons employed by authority of said borough president in the construction of sewers."

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17. Section 419, paragraph 1, reads as follows:

"All contracts to be made or let for work to be done or supplies to be furnished, except as in this set otherwise provided, and all sales of personal property in the custody of the several borough presidents, departments, or bureaux shall be made by the appropriate borough presidents or heads of departments under such regulations as shall be established by ordinance or resolution of the board of aldermen. Whenever any work is necessary to be done to complete or perfect a particular job, or any supply is needful for any particular purpose, which work and job is to be undertaken or supply furnished for The City of New York, and the several parts of the said work or supplies shall, together, involve the expenditure of more than one thousand dollars, the same shall be by contract, under such regulations concerning it as shall be established by ordinance or resolution of the board of aldermen, excepting such works now now in progress as are authorized by law or ordinance to be done otherwise than by contract, and unless otherwise ordered by a vote of three-fourths of the members elected to the board of aldermen; and all contracts shall be entered into by the appropriate borough president and heads of departments, and shall, except as herein otherwise provided, be founded on sealed bids or proposals made in compliance with public notices, duly advertised in the City Record, and the corporation newspapers, and said notice to be published at least ten days; if a borough president or the head of a department shall not deem it for the interest of the city to reject all bids, he shall, without the consent or approval of any other department or officer of the city government, *award the contract to the lowest bidder*, unless the board of estimate and apportionment by a three-quarter vote of the whole board shall determine that it is for the

Vol. 2, pp. 5447
& 5448.

Record.

public interest that a bid other than the lowest should ~~be~~ accepted; the terms of such contract shall be settled by the corporation counsel as an act of preliminary specification to the bid or proposal."

18. Section 433 authorizes ~~the~~ the local board of aldermen to inter alios, pass a resolution to construct sewers within its district.

Section 434 obliges the local board to submit a copy of its resolutions to the Board of Estimate and Apportionment which considers such resolution and approves or rejects it and returns the resolution if approved to the President of the Borough who *may proceed to the execution of the work.* 10

19. Prior to 1916, the sewers built in the Borough of Queens were all of monolithic type which is called Type A in the specifications. It is a sewer manufactured in the trench itself by pouring the concrete in forms where it dries and hardens (which is called curing), after it is completed. In 1916, another type was introduced called the precast type and it was put in the specifications as an alternative to the monolithic type. The precast was called Type B. This type, as the name indicates, is built by pouring concrete into cylindrical steel moulds outside of the trench. When the pipe is cured, it is then placed in the trench. 20

20. A contractor, Sigretto, who was formerly a sewer builder in Queens, but who had left Queens in 1915, and who was at this time the agent of the Lock Joint Pipe Co., had been unsuccessful in his attempt to sell precast pipe of the said Company in the Borough of Queens. He asked Phillips to have the pipe of the Lock Joint Pipe Co. accepted as an alternative to the monolithic type and gave him the specifications of the Lock Joint Pipe Co., saying that if Connolly agreed to the adoption of these specifications for precast pipe, he, Sigretto, would know that Connolly wanted him back in Queens. Phillips took the specifications, and a few days later returned them to Sigretto, with the change made by the Borough of Queens to permit the use of precast pipe. Sigretto is satisfied, puts in his bids based on precast pipe instead of monolithic and is awarded the contract. Phillips makes an agreement with Sigretto under which the former is to get 50% of the profits on these two contracts. There is also evidence that officials of the Lock Joint Pipe Co. were negotiating with the Borough President to introduce their pipe in Queens. Whether the pipe was introduced through Phillips' work or through the intervention of the officials of the said Company or by both may be doubtful. What is certain is that precast pipe was introduced and that the specifications for precast pipe, adopted by the Borough of Queens, were identical word for word, with the specifications of the Lock Joint Pipe Co., excepting only the overlapping wire mesh reinforcement in the joint of the pipe, which was the only patented feature of the Lock Joint Pipe Company's pipe, and could not be put into the specifications 30 40

Vol. 1, pp. 391
& 392.

Vol. 5, pp. 2049
to 2052.

Vol. 2, p. 799.

Vol. 2, p. 802.

of the Borough of Queens because the charter of the City of New York prohibited the use of a patented article. Phillips succeeded Sigretto as the sole agent of the Lock Joint Pipe Co. in Queens, under three different arrangements.

Record.

Vol. 2, p. 805
to 808.

21. The first arrangement made in 1917 lasted two years. Under this arrangement the Lock Joint Pipe Company manufactured the pipe and Phillips in Queens sold it as the Company's exclusive agent, at prices that he himself determined.

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In 1919, a second arrangement was entered into between the Lock Joint Pipe Co. and Phillips, whereby the latter bought the pipe from the said company, for Queens and resold it to the contractors at his own price.

Under the third and last arrangement made in 1921 and lasting until 1928, the Lock Joint Pipe Company rented to Phillips its manufacturing equipment at a stipulated rental and Phillips himself *manufactured and sold* exclusively the said company's pipe in Queens.

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22. The Plaintiffs' claim is based on forty-seven contracts introduced in evidence as Exhibits which are also tabulated for convenience in Table A appended to the Appellants' factum in the Court of King's Bench. The said table shows the prices charged by Phillips for each size of pipe supplied to the contractors for use in the construction of sewers in the Borough of Queens in comparison to the fair price for each of the said sizes of pipe.

R. of P.
pp. 47 to 55.

The fair price for the various sizes of precast pipe is arrived at by taking the average prices charged by several precast pipe manufacturing companies, and in particular the prices of the Lock Joint Pipe Co., for their product, manufactured outside of the Borough of Queens, the same pipe which was manufactured in Queens by Phillips with the rented equipment of the Lock Joint Pipe Co. This is fully explained in the Appellants' factum in the Court of King's Bench.

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R. of P.
pp. 16 to 18

23. After the year 1924, the specifications in Queens were so changed as to require a richer mixture of concrete and a heavier wire reinforcement. The Appellants have introduced evidence to show the exact cost of such changes and have added the said cost in the computation of the fair price after the year 1924.

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Vol. 1, pp. 86
et sq.

Vol. 2, p. 789
and p. 943.

24. The Appellants have also tabulated the prices charged by the Lock Joint Pipe Co. on the sale of their pipe outside the Borough of Queens as compared with the prices charged by Phillips for the same product, (with the above two changes, the cost of which has been accounted for), in the Borough of Queens. This tabulation is appended as Table "B" to the Appellant's factum in the Court of King's Bench.

Vol. 3, pp. 1264
and seq. and
Vol. 11, p. 5352.

R. of P. p 57.

Record.

The comparison of the prices charged by Phillips with the prices charged by other companies brings out of the fact that Phillips' price exceeded, in some instances by as high as 800% the normal prices or value of the precast pipe supplied by him.

25. As elements of conspiracy, through which Phillips was enabled to charge such fantastical prices for precast pipe, the Appellants have proven amongst other things:

Vol. 2, p. 564. (a) That in 1919, John F. O'Rourke, President of O'Rourke En-10
gineering Construction Co. saw Seely, the Engineer in charge for sewer construction in Queens with the purpose of inducing the latter to specify O'Rourke's tunnel blocks for the construction of the tunnel portion of the sewer, as an alternative to cast-iron pipe tunnel construction, which had hitherto been used in Queens. Seely did not appear to be interested in O'Rourke's proposition and it was then that O'Rourke saw Phillips and the latter promised to see Seely in the matter. Phillips was successful in his mission with the result that O'Rourke's tunnel blocks were put into the Queen's specifications for this sewer.

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Vol. 2, p. 577. The tunnel blocks were not only specified, but the specifications were so drafted that O'Rourke's tunnel blocks were tied to Phillips' precast pipe, so that any contractor, who wanted to use Phillips' precast pipe would have to also use O'Rourke's tunnel blocks and vice versa, although there were no reasons why the precast pipe should not have been specified in connection with the cast-iron pipe, or why monolithic construction should not have been specified in connection with the concrete blocks.

Vol. 2, pp. 582 & 583. There is evidence that in connection with the above contract³⁰ O'Rourke had promised to pay Phillips \$50,000.00 if the tunnel blocks were introduced into the specifications.

Vol. 2, pp. 577 & 578. When bids were opened, it was found that Booth and Flynn, contractors, were the lowest bidders, and their bid was on the monolithic construction, and if they were awarded the contract, neither Phillips' precast pipe nor O'Rourke's tunnel blocks would have been used. The Borough President rejected the bids, and Phillips told O'Rourke that the bids were rejected because they were too high.

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Vol. 2, p. 582. Upon a second advertizing, the O'Rourke Engineering Co. was awarded the contract, their bid being \$18,000.00 lower than the former bid of Booth and Flynn. The evidence shows that O'Rourke paid Phillips the sum of \$8,500. and refused to pay the balance of the \$50,000. promised to Phillips because "the investigations broke loose."

(b) The Appellants have proven that in an effort to eliminate any competition from the one possible source, namely, from indepen-

dent contractors, who would bid on the monolithic construction rather than pay Phillips the prices which he charged for precast pipe, Seely, the engineer in charge of the Sewer Department of the Borough of Queens, made such unnecessary and useless changes in the specifications concerning the building of monolithic pipes, as to render it practically impossible for any contractor to build a sewer of monolithic construction in preference to the precast pipe. Record,
Vol. 1, pp. 155
& 158.

10 In the year 1924, bids were advertized for the construction of the Hammels Boulevard sewer and a well known contracting firm, Patrick McGovern Inc. had put in a bid on both types of construction. Their bid on the precast pipe, based on prices quoted to them by Phillips, was \$267,000.00 higher than their bid on the monolithic construction. They were awarded the contract on their monolithic bid and constructed the sewer, which complied with all the requirements, and which was satisfactory in every way. Vol. 2, p. 697.

20 Immediately after this contract, Seely introduced the changes in the specifications for monolithic construction, requiring a water-proofing membrane, and extending the time for the curing of the pipe in the trenches to twenty-one days. These changes were unnecessary but had the effect of rendering the construction of type "A" sewer expensive and cumbersome, thus completely eliminating for the future any possible bidders for the type "A" construction. Vol. 1, pp. 172,
173, 178 and
180.

30 Paulsen, one of the contractors, in his evidence states that Seely showed him the plans containing the new changes in monolithic construction and told him that "if you can build a section of that in a shorter time than twenty-one days, you are a good one." Phillips told Paulsen "you want to get better acquainted with Seely, he is a fellow that can doll them up", indicating towards the plans. At the same time, Phillips told Paulsen to give Seely \$1,000.00. Vol. 1, pp. 457,
459, 460.

40 (c) That the Phillips' group of contractors (Muccini & Decker, Paulsen, Awixa Corporation, Angelo Paino, Duit Inc., Petracca & Peterson, etc.) invariably bid higher on the monolithic construction than on precast pipe, and that this was done purposely, on Phillips' instructions, as the evidence of Paulsen indicates. Vol. 1, p. 445
and exhibit
C. 1.

(d) That in 1925, Connolly, President of the Borough of Queens, awarded a big contract to Welsh Brothers for the sum of \$1,650,000.00, although the final estimates of the Borough engineers for the cost of this sewer amounted to \$829,345.00. Exh. C161, Vol.
9, p. 4397.
Exh. C239 &
C240, Vol. 9,
pp. 4369 & 4370

William Welsh, President of the Company, was a life long friend of Phillips and subsequently was appointed guardian of Phillips' children. Vol. 2, p. 983.

Record.
Vol. 3, p. 1017.

Welsh Bros. assigned this contract to the Awixa Corporation, receiving the sum of \$75,000.00 on the assignment, and a further sum of \$25,000.00 is paid to Peter B. Campbell, an employee of Phillips. There was very little pipe used in this contract. This job consisted mainly of the large disposal plant and the machinery in it.

Vol. 3, p. 1028.

Vol. 2, pp. 723
& 725.

(e) In 1926, four contracts are awarded by Connolly to the Highway Improvement & Repair Company, a road building concern which had never done any sewer work. Clifton E. Turner, the President at the time, of this Company was also a friend of Phillips and named in Phillips' will, as guardian for Phillips' children. 10

R. of P. p. 51.

The final estimates of the Borough engineers for these four contracts were \$1,687,000.00. Connolly does not reject the Highway Improvement Company's bid of \$2,569,000.00 which exceeded the engineers' estimates by \$862,000.00. Phillips reaped on these four contracts in excessive profits on the sale of his pipe the sum of \$835,000.00. In addition to that, Phillips' friend Turner, President of the Highway Improvement & Repair Co., received a sum of \$60,000.00 by assigning three contracts to Muc-20 cini & Decker and one to the Awixa Corporation.

Vol. 2, p. 744.
Vol. 2, p. 748.

Exh. C 113, 114
and 115.
Vol. 10, pp.
3896, 4904 &
4911.

(f) In 1926, Connolly awarded three contracts to the Riverdale Construction Company, although the Riverdale Construction Company's low bid exceeded the engineers' estimates by 82%. In these contracts, Phillips' pipe was used, on which he made an excessive profit which, approximates closely the difference between the engineers' estimates and the price at which the said contracts were awarded.

Thus, notwithstanding the fact that in a number of the largest contracts, there was a challenging discrepancy between the amount of his engineers' estimates and the low bids, Connolly awarded contract after contract. 30

(g) That Connolly rejected the low bids on several contracts where the contractors having the lowest bids were not favourable to Phillips and there was a likelihood that Phillips' pipe would not be used.

Vol. 3, p. 1018.
Vol. 2, p. 967.
Vol. 2, p. 723.
Vol. 1, pp. 333,
334, 335 & 336.

(h) That in 1927, a subscription was started amongst Phillips' 40 friends and contractors out of which the sum of \$40,000.00 was realized with which amount a solid gold dinner set was bought. Before the set could be given to Phillips, the Governor of the State of New York ordered an investigation into the affairs of the Borough of Queens, and this dinner set was immediately secreted in a safety deposit vault under the name of Francis Phillips, the son of John M. Phillips.

(i) That one day after the petition was filed with the Governor of the State of New York for an investigation into the affairs of the Borough of Queens, Phillips immediately started converting into currency, the City of New York bearer bonds, realizing the sum of \$725,142.50. Record.
Vol. 3, p. 1061.

(j) That in January of the year 1928, Phillips secreted in a safety box in Montreal, in the name of his son, Francis Phillips, the sum of \$330,000.00 in thousand dollar American bills. Vol. 3, p. 1049.

10 (k) That Phillips had no fixed prices for his pipe, and quoted to contractors, that he wanted to eliminate, such high prices, that made their successful bidding impossible. E. G. Hammels Blvd. Phillips quoted Paulsen for 60" and 65" \$25.00, a foot, and Patrick McGovern \$32.00 for the 60", \$29.00 for 54", although the Lock Joint Pipe Co. was selling 66" at \$9.25 the same year. Vol. 1, p. 444.
Vol. 8, p. 3534.
Vol. 11, p. 5354.

20 (l) That since the introduction of precast pipe in 1917 and until the investigation ordered by the Governor of the State of New York in 1928, almost all the contracts for sewers, awarded in the Borough of Queens, were given for precast pipe instead of monolithic, and that during the whole of the said period it was the Lock Joint Pipe Company's product, supplied by Phillips, which was used almost exclusively.

26. The trial took place before Mr. Justice Mercier in the Superior Court, who heard some seven witnesses, the remaining forty-five witnesses gave their evidence on Rogatory Commission in the City of New York, issued out of the Superior Court of Montreal.

30 The proof of the Appellants in this case followed closely the proof made in the criminal case in New York, where Connolly and Seely were convicted, and the facts proven were almost the same in both cases, with the exception of the evidence proving enrichment of the Borough President from undisclosed sources by the production of his bank accounts, which was made in the criminal case but was omitted in the appellants' present action.

The trial judge dismissed the Plaintiffs' action on the ground that the Plaintiffs failed to establish a criminal conspiracy against Phillips. 40 In his judgment he states that he could not accept as proof of conspiracy the conviction of Connolly, President of the Borough of Queens, and Seely, the Engineer in charge of sewers in the Borough of Queens, especially so, since the verdict was questioned by the minority judgment of the Appellate Division of the State of New York. Vol. 12, p. 5352.

He further states that to constitute a criminal conspiracy, two conditions must be fulfilled: 1— a resolution to act together made be-

Record.
Vol. 12, p. 5553. between two or more persons. 2— an illegal act as the end or the means of such resolution.

Vol. 12, pp.
5554 & 5555. He then states that the Plaintiffs have not established conspiracy within the above requirements.

Vol. 12, p. 5556. He refers to the evidence of four of the plaintiffs' witnesses, who were heard on Rogatory Commission, and casts a doubt on their credibility.

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He also mentions the fact that the Plaintiffs did not call Phillips' alleged 'co-conspirators, viz: Connolly and Seely as witnesses.

R. of P. p. 254. 27. The judgment in appeal was rendered by Bernier Letourneau, Walsh, Hall and St. Jacques JJ.

R. of P. p. 278. Four of the appeal judges rendered separate judgments, Mr. Justice Walsh simply concurred with Mr. Justice Hall.

28. In his notes of Judgment, Mr. Justice Bernier almost repeats²⁰ the findings of the trial judge. He states that the contracts forming the basis of the Appellants' claim have not yet been annulled as fraudulent and illegal.

He further states that it would seem to him to be very difficult to obtain by fraud, contracts, the execution of which, at an exorbitant cost, would have necessarily drawn the attention of the authorities charged with the granting of the said contracts.

He also criticizes the evidence of the same four witnesses to whose³⁰ credibility the trial judge did not attach much importance.

R. of P. p. 257. Bernier J. further states that, although the Court of Appeals should examine the evidence which is before it and decide the case according to the civil law of this Province, nevertheless, he criticizes the judgment of the Appellate Division of the State of New York, which confirmed the judgment of conviction against Connolly and Seely, stating that the division of the bench in the said Court 'cast a serious doubt as to the said conviction. His findings as to the high prices, at which Phillips sold his pipe, is simply that he sold at such price as the buyers wished to pay, and that, if the cost of the work was very high and even exorbitant, this was the business of the municipal authorities who, when the bids were received, had the necessary authority under the charter either to accept or to reject them.⁴⁰

29. Mr. Justice Letourneau admits that Phillips prices were very high, but states that this fact can be justified otherwise than by conspiracy or fraud.

He states that Phillips was able by his boldness and his genius to make every one come to him and no one dared to compete with him, but that this was not the result of a conspiracy but rather of prestige either political or purely personal, which this dexterous man was able to acquire. He states further, that, if the total of the alleged overt acts were not simple coincidences, then they were due to the prestige and genius in business of Phillips, who was able, at the right moment, to become the exclusive agent of the Lock Joint Pipe Co., to defy in some manner all competition, in giving a better product, to be in position to deliver always in time, to give credit to the contractors, and finally to get those, who were bidding, to favour his product in such manner that the precast pipe would appear cheaper, and that while this manner of operating, perhaps was not irreproachable, it nevertheless, was far removed from the conspiracy alleged by the Appellants, and that the majority of the circumstances invoked by the Appellants, can be explained otherwise than by conspiracy.

Record.

R. of P. p. 257.

R. of P. p. 259.

R. of P. p. 260.

30. Mr. Justice Hall goes more fully into the facts of the case than any of the other judges. He finds that the changes in the sewer specifications in the Borough of Queens, providing for the use of precast pipe, were not the result of any conspiracy between Connolly, Seely and Phillips, or either of them.

R. of P. p. 260.

He states that there was nothing improper in Connolly's rejection of the low bids on several occasions and that the rejection of these bids were based on proper reasons and resulted in a saving to the City. He further states that there is no proof that Phillips had anything to do with the rejection of the bids.

R. of P. p. 270.

Regarding the discrepancy between the contractors' low bids which were accepted and the engineers' estimates, Mr. Justice Hall cites several instances, in connection with the smaller contracts, where the engineers' estimates exceeded the contractors' low bids. Regarding the several large contracts, where the contractors' low bids, which were accepted were almost twice as high as the engineers' final estimates, Mr. Justice Hall states that the engineers should have been aware of the prices paid by contractors for pipe, and that, if the excess bids were due solely to the exorbitant prices charged by Phillips for his pipe it would be difficult to exonerate the engineers of the Board of Estimate and Apportionment of the City of New York from justifiable criticism.

R. of P. p. 272.

R. of P. pp. 275 & 276.

In his opinion, it is not necessary to enter into a detailed examination of the different contracts, in which the bids were higher than the estimates, and that the record does not disclose any satisfactory proof of the alleged conspiracy or of the unfair prices.

R. of P. p. 277.

He criticizes the Appellants' exhibit C. 1 which is a tabulation of sewer contracts in the Borough of Queens from 1907 to 1927, and gives

Record.

greater credence to Respondents' exhibit D. 1, which is a statistical report, emanating from the Board of Estimate & Apportionment of the City of New York. According to the latter exhibit, the totals of the costs of sewers in the Borough of Queens do not vary greatly from the totals of the various engineers' estimates.

R. of P. pp. 269
& 270.

Referring to several specific alleged overt acts of conspiracy, Mr. Justice Hall states that there was nothing improper in the contract awarded to the O'Rourke Engineering Co. That there was nothing improper in having O'Rourke pay Phillips \$8,500.00 of the promised \$50,000.00, for introducing O'Rourke's tunnel blocks into the specifications of the Linden Ave. sewer, nor in Seely's connection in this matter, nor in Connolly's rejection of the lowest bid of the contractor competing with O'Rourke Engineering Co. ¹⁰

He agrees with the trial judge's estimate of the credibility of the witness Paulsen, branding the latter as the most vindictive witness against Phillips.

R. of P. pp. 273
& 274.

Dealing with the water-proofing membrane, which the Appellants ²⁰ alleged was introduced into the Queens sewers' specifications, in connection with type A sewer, he finds that, while it is true that Seely prepared a sketch of the water-proofing membrane, and instructed his draftsman to introduce it into the plans for later contracts, there is an entire absence of proof that Seely devised the alteration on his own responsibility, or in furtherance of a conspiracy between himself, Connolly and Phillips.

R. of P. p. 274.

He further states that from the analysis of these alleged overt acts, it appears that Phillips had nothing to do with the adoption by the Borough of Queens of the specifications for precast pipe; that there is no direct evidence that either Phillips or Seely conferred with Connolly in connection with the rejection of bids, and that there is no evidence of Connolly's participation in Seely's introduction of the water-proofing membrane, which was adopted with the knowledge and approval of Seely's superior officers. ³⁰

He further states that there being no direct evidence of conspiracy, and the pretended overt acts being insufficient to justify an inference of concerted action, therefore, in his opinion, the Appellants have ⁴⁰ failed to establish the basis of their action.

He states that it must be admitted that Phillips was successful in securing a virtual monopoly for the supply of precast pipe to the Borough of Queens in connection with the sewer contracts referred to, and that he charged the contractors unusually high prices. But, that it appears from the evidence that in many, if not all of these instances, the engineers of the Board of Estimate & Apportionment, a Department of

Greater New York, entirely independent of the Borough of Queens, must have had some knowledge of the prices the various contractors were paying for their pipe and it is rather remarkable that scores of 'contracts should have been approved by officials, of whose integrity there is not the slightest doubt. Record.
R. of P. p. 275.

31. Mr. Justice St. Jacques discusses the legality of the Appellants' claim for damages, a claim which originally belonged to the City of New York and which only could be exercised by the Appellants in virtue of a special law. R. of P. p. 270.

He makes a distinction between a civil action for damages arising out of a fraudulent conspiracy and a criminal prosecution, and states that in a civil action it is not enough to prove an agreement made between two or more persons to cause damage to a third party, but that it is necessary to prove also the real damage suffered.

He further states that the Estate of Phillips should not be condemned to pay the total or part of the sums claimed, unless the Plaintiffs prove beyond all doubt that the City of New York was forced to pay moneys, which it did not owe, as a result of a fraudulent agreement between its employees and Phillips. R. of P. p. 281.

Mr. Justice St. Jacques further states that, even if the Appellants had succeeded in proving that the City has paid for its sewers an excessive and exorbitant price, it would still have to be proven in a positive way that the City would not have had to pay these amounts, unless the fraudulent agreement made between Connolly, Phillips and Seely was put into execution, and that the prices paid by the City, in comparison with those which should have been paid, do not depend solely on the price of pipe paid by the contractors to Phillips, but also on the total price, including material and labor, and that this fact must be borne in mind in fixing the measure of prejudice suffered by the City of New York. R. of P. p. 282.

He further states that in the present case the Appellants cannot succeed in their claim, unless they prove overt acts, from which not only conspiracy could be presumed, but which were really the 'cause productive of the damage, which the City of New York is alleged to have suffered. R. of P. p. 283.

He states further that there is no proof of meetings or interviews between Phillips and Connolly, in the course of which there would have been any question of the sewers. R. of P. p. 284.

Regarding the evidence of conversations between Phillips and Seely, Mr. Justice St. Jacques agrees with the trial judge in expressing serious doubts on the credibility of some of the said witnesses. R. of P. p. 284.

Record.
R. of P. pp.
284 & 285.

He exonerates Phillips from all blame, or connection with the introduction of precast pipe into the specifications of the Borough of Queens.

R. of P. p. 285. He states further that the court is unable to judge if the prices were excessive or exorbitant, as there is no absolutely certain base for comparison of the prices, paid for pipe in the Borough of Queens, with the prices in other portions of the City of New York.

R. of P. p. 286. In his opinion, it would be extraordinary, that, during the whole¹⁰ period in question, and particularly from 1921 to 1927, the contractors were able to have the borough authorities accept their bids, at prices which were exorbitant and absolutely disproportionate to the value of the work, and that it would have been necessary to have, not only the complicity of the assistant civil engineer and of the Borough President, Connolly, but also the assistance of all the higher employees of the City of New York itself, which had duty to verify and to control the bids and contracts and the payment for the work from every point of view.

R. of P. p. 287. He concludes by stating that, unless it could be said that the re-²⁰presentatives of the City and the Borough had deliberately closed their eyes, so as not to see the frauds committed by Connolly at the suggestion and by means of the fraudulent artifices of Phillips, it would seem to him impossible to conclude that the City of New York was, during the period in question, a victim of the theft of \$3,000,000.00 and more.

32. Referring to the judgment of Bernier J. wherein he puts up the objection that the contracts, on which the Appellants' claim for damages is based, were never annulled, it is to be observed that this is not an³⁰ action for breach of contract, but an action for damages based on conspiracy, and the annulment of the contracts has nothing to do with the case.

R. of P. p. 257. He further states that after reading the clauses of the City charter, it seems difficult to him that the contracts could have been obtained fraudulently.

This is merely a supposition, but the evidence proves that in spite of the charter clauses, and in spite of the fact that all the forms and for-⁴⁰malities were duly followed, nevertheless, Phillips was able to extract from the City of New York millions of dollars, which, as the evidence conclusively proves, 'could only have been done through a series of manipulations between him and the convicted borough officials. Furthermore, the charter clauses quoted supra, give the President of the Borough absolute discretion in the matter of awarding sewer contracts, rejecting bids, introducing specifications, buying material, hiring engineers, etc.

Bernier J. after criticising the credibility of the evidence of some of the witnesses called against Phillips, in the same breath, asks why the Appellants did not call the co-conspirators of Phillips, Connolly and Seely, to give evidence on behalf of the Appellants. The Appellants contend that if these convicted officials, who at the time of the trial, were serving terms in jail, were to be called, it was up to the Defendants to call them to contradict the evidence of the Plaintiffs implicating them.

10 Mr. Justice Bernier further states that the division of opinions in the Appellate Court leaves a serious doubt as to the conviction of Connolly and Seely. He states this, in spite of the fact that during the oral argument in the Court of Appeals, it was pointed out that out of the five judges in the Appellate Division, two of the judges dissented merely on the question of the admissibility of certain evidence, tending to show enrichment on the part of the Borough President from undisclosed sources, and when the appeal was carried further to the final court of Appeals of the State of New York, the judges of the latter court unanimously affirmed the decision of the majority of the Appellate Court.

20

Bernier J. states that there was nothing improper in Phillips selling his pipe at such prices as the buyers were willing to pay, and that, if the prices were exorbitant, it was up to the municipal authorities to either accept or reject. This merely begs the question, and the answer to the said question is found in the evidence which proves the exorbitant prices charged by Phillips and a whole series of overt acts of conspiracy to which the learned judge has made no reference in his notes.

R. of P. p. 258.

30 33. Mr. Justice Letourneau attempts to justify the excessive prices for pipe by the fact that the quality of pipe was superior to any other kinds and that in contracting with Phillips who was solvent, the contractors were assured of prompt delivery, and in case of need, of credit.

R. of P. p. 259.

40 The Appellants have shown just how much superior Phillips' pipe was and have proven by competent witnesses, who were not contradicted, how much more Phillips' pipe would be worth in the market as a result of the allegedly superior quality of Phillips' pipe. But the learned Judge does not make any reference thereto and we do not know if he took this evidence into account.

Furthermore, the fact that Phillips extended credit to the contractors, should not be taken into account, as there is nothing to prove that other manufacturing companies did not extend credit to contractors, and furthermore, if for this privilege of extending credit, Phillips was entitled to charge, as he has done in many instances, 800% more than the other companies were charging for pipe, then in such case the assumption of Letourneau J. may be correct.

Record.

R. of P. p. 282.

34. St. Jacques J. states that the price paid by the City should have been compared, not only with the sale price of Phillips' price, but also with the cost of the material and labor. It is quite clear that the learned Judge has missed the point. The evidence shows that the material and the labor, involved in the making of precast pipe, is included in the sale price in Phillips' case, as in the case of other manufacturing companies, with whose prices the Appellants have compared the prices charged by Phillips.

The judgment of Mr. Justice St. Jacques is full of questions and suppositions but there is not one word in it whereby the learned Judge would even attempt to answer or to explain any of the series of overt acts introduced in evidence by the Appellants. ¹⁰

R. of P. pp. 285
& 286.

Mr. Justice St. Jacques states that there is no absolute certain basis on which the comparison of prices charged by Phillips with the prices of other companies can be made, and he criticizes the fact that the accountant Hopkins made the necessary investigations or inquiries, in order to determine the points of comparison, and that the Court had no control over his investigations, and further that the pipe made by the Lock Joint Pipe Co. was a first quality pipe. Reading the above portions of his judgment, it is clear that the learned Judge; overlooked the fact that the Appellants produced at the trial the Treasurer of the Lock Joint Pipe Co., Mr. Herman F. Ahrens who produced as exhibit P. 15, a list of sales of the Lock Joint Pipe Co.'s pipe to different contractors outside of the Borough of Queens, and has sworn to the prices charged by this Company for a pipe which was the same, as the one made by Phillips, made on the same moulds as their own pipe, as these moulds were rented by Phillips from the Lock Joint Pipe Co., and was manufactured in the same way, the only difference being the richer mixture and heavier wire reinforcement, and the extra cost of these two improvements, if they could be called such, were proved by the President of the Lock Joint Co. Mr. Hirsh and by Mr. W. L. Peterson, Superintendent in charge of the Phillips' manufacture of pipe. ²⁰ ³⁰

35. From the reading of the notes of Hall J. it appears that he takes each separate alleged overt act and tries to find the participation of Phillips, Connolly and Seely in each separate act, and not finding the participation of all three in each separate act, he concludes that there was no conspiracy. ⁴⁰

The learned Judge should have viewed the evidence as a whole, and should have looked upon each separate act merely as a link in the chain of circumstances involving all three conspirators.

Mr. Justice Hall picks out several small contracts, where the contractors' low bids fall below the engineers' estimates, and argues that

it must be assumed that Phillips supplied the pipe in those cases, and that therefore the Appellants' evidence: that Phillips' excessive prices follow closely the difference between the engineers' estimates and the contractors' low bids, falls to the ground.

If we take three large contracts which were awarded by Connolly, in August 1925, the evidence shows the following:

Low bidder	Engineers' estimates	Amount of low bid
10 Muccini & Decker	\$318,389.00	\$504,187.50
Angelo Paino	510,794.00	799,063.00
Duit, Inc.	717,557.00	1,104,117.00
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	\$1,546,650.00	2,407,367.50
	<hr/>	<hr/>

The total of the low bids exceeded the engineers' estimates for these three contracts by \$860,717.50. According to the evidence submitted by the Appellants, Phillips' excessive profits on the pipe sold for these
 20 three jobs was \$584,627.21.

Again, in the case of four contracts awarded by Connolly in April, 1926, the following appears:

Low bidder	Engineers' estimates	Amount of low bid
Highway Imp. Co.	443,547.25	638,766.00
Highway Imp. Co.	599,841.00	944,425.00
Highway Imp. Co.	244,032.00	368,044.00
Highway Imp. Co.	398,669.00	618,760.00
	<hr/>	<hr/>
30	\$1,687,089.25	\$2,569,995.00
	<hr/>	<hr/>

In these four contracts, therefore, the engineers' estimates were exceeded by \$882,905.75. Phillips' excessive profits for the pipe sold on these contracts amounted to approximately \$836,379.48. In addition to that, Phillips' friend, Turner, President of the Highway Improvement & Repair Co. received the sum of \$60,000.00 on the assignment of all the four contracts as we have already stated above.

40 In the case of 2 contracts awarded in July 1926. The evidence shows the following:

Low bidder	Engineers' estimates	Amount of low bid
Riverdale Company	230,914.50	399,089.00
Riverdale Company	204,309.00	377,372.00
	<hr/>	<hr/>
	435,223.50	776,461.00
	<hr/>	<hr/>

Record.

In these contracts the excess of the low bids over the engineers' estimates was \$341,237.50, and Phillips' excessive profits on the pipe used was \$297,070.17.

These figures, of course, tell their own story. They prove that Connolly was granting contracts for the construction of sewers that were far in excess of the estimates for the work made by his own engineers.

Appended to this case is a table showing the comparison between the engineers' final estimates and the contractors' low bids on all forty-seven contracts which the Appellants have produced in evidence. Also another table showing the difference between the final estimates and low bids on thirteen contracts awarded in the year 1926 and on which the Appellants based part of their claim. 10

We cannot understand why Hall J. would pick the several small contracts and overlook the huge contracts, involving millions of dollars, where the difference between the engineers' estimates and contractors' low bids, approximates the difference between the fair prices and Phillips' prices for pipe. The Appellants should not be reproached with the fact that Phillips did not defraud the City in connection with all the contracts. 20

Hall J. compares exhibit C. 1, which is a tabulation of sewer contracts in the Borough of Queens, from 1907 to 1927 with exhibit D. 1, introduced by the Defendants, which is statistical information containing cost of sewers in the Borough of Queens from 1902 to 1926. The comparison, which he makes is not justified in two respects: First of all, the period, during which Phillips charged such excessive prices, covers only a few years, namely: from about 1922 to 1927, whereas both of the said exhibits list all the contracts from 1907 to 1927. Secondly, his statement, that exhibit D. 1 is more reliable, is not justified. All the information contained in exhibit C. 1, was sworn to by witnesses as being correct, whereas exhibit D. 1 is merely a statistical compilation, the correctness of which was not affirmed by any witness and therefore as such it has no evidentiary value. 30

Speaking of the rejection of bids, the learned Judge finds that there were only three occasions on which Connolly rejected the bids. The Appellants have contended that Connolly rejected the bids, when the low bids were not favourable to Phillips, and that he did not reject bids at other times, although the low bids exceeded the engineers' estimates by more than half. Therefore, the rejection of bids must be considered together with the non rejection of bids in the contracts where the contractors' low bids were exceedingly high and far above the engineers' estimates. 40

Hall J. deals with the contract of O'Rourke Engineering Co. and makes a deduction that there was nothing improper in the said contract.

In spite of the fact, that O'Rourke has himself stated in evidence that he did not consider it proper to pay Phillips \$50,000.00, the learned Judge finds nothing wrong in this proceeding. He does not answer the significant fact that O'Rourke's tunnel blocks were tied to Phillips' precast pipe, and his conclusion, that Connolly had no connection with this matter and that therefore this act does not prove conspiracy, is not well founded. It was not necessary for the Appellants to prove the connection of each of the three conspirators with each act. It would have been enough to link Phillips and Seely or Connolly and Phillips without proving the participation of all three.

The learned Judge's reference to the evidence of Paulsen, as being a vindictive witness against Phillips, and unreliable on account of the financial position of the different companies in which he was interested, is unwarranted. It is unreasonable to presume that Paulsen would be vindictive against Phillips several years after his connection with Phillips had ceased, and especially in view of the fact, that Phillips was dead when Paulsen's evidence was being given. The financial position of the companies in which Paulsen was interested should have no bearing on his credibility as a witness in this case.

Hall J. states that between April 1917 when precast pipe was first introduced until December 1924, when the specifications for Type "A" sewers were changed, 105 contracts were awarded in which precast pipe was used, and that out of those the Appellants invoke only three in support of their allegations that Phillips charged exorbitant prices.

It is true that Phillips charged the highest prices after 1924 and that the majority of the contracts in which exorbitant prices were paid to Phillips were after 1924 and particularly in the years 1925 and 1926.

The fact shows clearly that Phillips charged the most excessive prices after the unnecessary changes in the type "A" construction were introduced, which eliminated the possible competition of the monolithic pipe to the extent that not one sewer was built of monolithic construction after the said changes in the specifications were introduced.

Dealing with the excessive prices charged by Phillips, the learned Judge tries to exonerate Connolly, Seely and Phillips by suppositions that the engineers of the City should have been qualified to appreciate the approximate cost of pipe. Whether the Borough engineers or any other officials, should have known, or whether they were remiss in their duty, has nothing to do with this case. It is quite possible that some of the higher officials relied upon the honesty of their subordinates. Furthermore, the Borough President employed the engineers, and if he chose to close his eyes to what was going on, nobody could do anything in the matter.

Record.

36. The Appellants submit that the Judgment of the Court of King's Bench and the Judgment of the Trial Judge should be reversed and their action maintained for the following among other.

REASONS

1.—Because the evidence proves that John M. Phillips with the aid and connivance of Connolly, the President of the Borough of Queens, and Seely, the Engineer in charge of the Designing Department of sewers, and other persons, established a monopoly for the sale of pipe to be used in the construction of sewers in the Borough of Queens. 10

2.—Because having established a monopoly, Phillips was enabled to sell his precast pipe to the contractors building sewers in the Borough of Queens at excessive and unheard of prices, which Phillips collected from the City, through the medium of the contractors in the amount of \$3,000,000.00 which amount constituted illicit profits made by the said John M. Phillips over and above the fair price or value of the pipe supplied by him. 20

3.—Because the aid given to Phillips by Connolly and Seely through acts of commission or omission constitutes a conspiracy with Phillips to defraud the City of New York.

4.—Because this conspiracy creates a right in the People of the State of New York, against John M. Phillips and his legal heirs to recover the damages above mentioned.

BERTRAND, GARNEAU and PIGEON, 30

Attorneys for Appellants.

AIME GEOFFRION, K. C.,

Counsel.

Table showing final estimates and low bids on 13 contracts awarded in 1926 and on which Appellants base part of their claim.

No. on C-1 Sheet	Date of contracts	No. Table "A"	Final Estimate	Low Bid	Phillips' excess price
285	Jan. 19, 1926	44	81,918.75	79,464.00	44 — 20,488.49
286	April 26, "	4	443,547.25	638,766.00	4 — 115,092.78
287	" " "	25	399,669.00	618,760.00	25 — 256,949.00
288	" " "	24	244,032.00	368,044.00	24 — 142,622.50
289	" " "	26	599,841.00	944,425.00	26 — 17,534.30
					304,180.90
290	May 7 "	45	205,672.40	219,990.00	45 — 30,235.10
292	" " "	46	133,347.15	143,813.65	46 — 14,412.08
296	July 29 "	10	204,309.00	377,372.00	10 — 159,564.90
297	" " "	5	230,914.50	399,089.00	5 — 137,505.27
305	Nov. 8 "	27	104,029.00	170,975.00	27 — 39,757.19
306	" 9 "	37	379,039.00	277,858.00	37 — 41,399.24
308	" 8 "	28	219,901.00	210,901.00	28 — 5,321.76
309	" " "	18	48,542.00	46,098.00	18 — 6,112.51
			3,311,218.05	4,495,555.65	1,291,176.02
				3,311,218.05	
				1,184,337.60	

If we had taken the final costs in lieu of low bids, the difference would still be higher. We did not take the final costs on account of certain contracts not being paid in full at the time of the preparing of exhibit C-1. Phillips' excess price on these same 13 contracts awarded in 1926 as appears from our table "A" is the sum of \$1,291,176.02.

COMPARISON between the final estimates and the low bids of the 47 contracts of Table A of the Appellant's factum in the Court of King's Bench. (These contracts are taken in the order in which they are on Exhibit C-1).

Table A Numbers	Exhibit numbers Page 47 R. of P.	Final Estimate See Exh. C-1	Low Bid See Exh. C-1
32	C-31 (Norwood Place)	365,782.85	311,855.60
1	C-159 (25th Street)	353,113.00	309,866.85
6	C-19 (Fisk Ave.)	362,589.50	339,783.00
20	C-77 (Grand Ave.)	279,940.25	240,883.91
34	C-204 (Broadway)	202,852.25	205,438.93 ²⁰
41	C-131 (Saul St.)	281,653.25	237,150.00
21	C-79 (Queen's Blvd)	178,080.80	138,103.00
42	C-132 (Laburnum Ave.)	166,020.55	168,792.80
8	C-36 (150th Ave. No 2)	385,620.00	407,045.00
35	C-205 (150th Ave. No 1)	772,608.00	749,240.00
2	C-161 (Horstmann)	829,345.00	1,651,231.40
9	C-137 (150th Street)	541,152.50	546,325.00
36	C-206 (Farmers Blvd. No. 1)	510,704.00	799,063.00 ³⁰
7	C-20 (Farmers Blvd. No. 3)	717,557.00	1,104,117.00
22	C-78 (" " No. 4)	318,389.00	504,187.50
23	C-100 (Polk Ave.)	30,149.35	36,086.06
12	C-74 (Amstel Ave.)	794,920.00	992,268.00
43	C-133 (Woodside Ave.)	27,212.50	38,155.30
13	C-75 (150th Street)	315,080.00	471,150.00
3	C-160 (158 " "	418,680.00	740,754.00
33	C-30 (150 " No 2.	390,250.50	696,657.00 ⁴⁰
44	C-140 (N. Conduit Av	81,918.75	79,464.00
4	C-57 (Foch Blvd.)	443,547.25	638,766.00
25	C-56 (Springfield Blvd)	399,669.00	618,760.00
24	C-55 (Hampstead Ave.)	244,032.00	368,044.00
26	C-58 (Jamaica Ave.)	599,841.00	944,425.00
45	C-134 (Hazen St.)	205,672.40	219,990.00
46	C-135 (Polk Ave.)	133,347.15	143,813.65

	10	C-105	(Brinkerhoff Ave.)	204,309.00	377,372.00	
		5	C-109	(Jamaica Ave.)	230,914.30	399,089.00
		27	C-81	(Brinkerhoff Ave.)	104,029.00	170,975.00
		37	C-207	(Hayes St.)	379,039.00	277,858.00
		28	C-80	(108 Street)	237,357.00	210,901.00
		18	C-141	(88th Street)	48,542.00	46,098.00
		29	C-138	(Monroe St.)	122,881.00	87,963.00
10		38	C-208	(124th Street	433,053.00	320,314.00
		11	C-128	(130th "	34,918.30	29,677.25
		47	C-136	(40th Road (Grove Ave)	241,386.00	219,202.15
		16	C-96	(Beach 23rd St.)	98,264.00	125,206.98
		30	C-99	(Ditmars Ave.)	38,862.50	35,556.50
		15	C-101	(121st St.)	68,521.30	45,168.54
		31	C-98	(Rockaway Blvd)	250,466.00	165,616.20
		14	C-97	(38th St.)	98,853.00	71,592.00
		17	C-95	(Decker St.)	567,727.00	598,344.00
20		39	C-209	(Sutphin Blvd.)	318,556.00	339,818.00
		40	C-210	(Tuckerton St.)	324,318.50	250,351.00
		19	C-142	(45th Ave.)	72,942.05	61,292.25
				<hr/>		
				14,204,767.90	17,513,609.25	

		Total low bids	\$17,513,609.25
		Total final est.	14,204,767.90
30			<hr/>
		Difference between low bids and final estimates	3,308,841.35.

In the Privy Council

No. **1** of 1937

ON APPEAL FROM THE COURT OF KING'S BENCH, FOR
THE PROVINCE OF QUEBEC (Appeal Side) CANADA.

BETWEEN

The People of the State of New York,

herein represented by the Attorney General of the State
of New York, one of the United States of America,

(Plaintiffs in the Superior Court)

(Appellants in the Court of King's Bench)

APPELLANTS

—vs—

Heirs of the late John M. Phillips,

in his lifetime of New York,

(Defendants in the Superior Court)

(Respondents in the Court of King's Bench)

—and—

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

a body corporate and politic duly incorporated, having its
head office and principal place of business in the city
and district of Montreal, in its quality of curator to the
minor child, Helen Frances Phillips, of the village of
Roslyn, in the state of New York and Elizabeth Ellen
Carroll Baines, wife separate as to property of Clarence
L. Paulsen, merchant of the city of Spokane in the state
of Washington, one of the United States of America, and
the said Clarence L. Paulsen, for the purpose of authoriz-
ing his said wife,

Defendants severing in their defence in the Superior Court)

(Defendants in the Court of King's Bench),

RESPONDENTS

—and—

The Montreal Safe Deposit Company,

a corporation having its head office in the city and
district of Montreal,

(Tierce-saisie in all Courts)

TIERCE-SAISIE.

Case for the Appellants

LAWRENCE, JONES & Co.,
Solicitors,

Lloyd's Bldg.
Leadenhall, st.,

LONDON, Eng.