

UNIVERSITY OF LONDON
-8 JUL 1953
INSTITUTE OF ADVANCED
LEGAL STUDIES

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

CANADIAN
LAW
LIBRARY

—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

LIBRARY
M. S.
MONTREAL

CANADIAN
LAW
LIBRARY

—&—

The Montreal Safe Deposit Company,

TIERS-SAISIS

CASE

VOLUME 1.—PAGES 1 TO 500.

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.

CANADA
Province of Quebec,
District of Montreal.

Court of King's Bench

No. 956.

(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.

10

The People of the State of New York,

(Plaintiffs in the Court below)

APPELLANTS

—vs—

20 ***Heirs of the late John M. Phillips,***

(Defendants in the Court below)

—&—

30 ***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

—&—

40 ***The Montreal Safe Deposit Company,***

TIERS-SAISIS

C A S E

PART I.—PROCEEDINGS.

A.—PLEADINGS OF THE PLAINTIFFS THE PEOPLE OF THE STATE OF NEW YORK.

10

DECLARATION.

The Plaintiffs declare:

1. 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.

20 2. 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.

3. 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.

30

4. 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.

5. 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.

40

6. 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.

7. That at all times hereinafter mentioned, Maurice E. Connelly was a public officer, to wit, the duly elected, qualified and 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.

10 8. That Frederick C. Seeley 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".

20 9. 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, willfully, 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.

30 40 10. 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.

10 11. 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 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
20 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, 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,
30 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.

40 12. And 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, 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, whereby 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 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 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.

20 13. 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.

40 14. 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.

15. 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
10 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.

16. 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
20 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.

17. And 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
30 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 payments 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
40 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.

18. 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:—

10 “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 water-tight;”

knowing that this requirement would preclude all bidders except those using Lock Joint Pipe Company's precast pipe sewers.

20 19. 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
30 bidders bidding on the monolithic type of sewer, against a precast type of sewer.

20 20. 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 Awixa Corporation, reinforced concrete sewer pipe, as follows:

40 (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 con-

tract, 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.

10 (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.

20 (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.

30 (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, thereby causing the City to lose, through said conspiracy, the sum of \$118,708.26, which amount benefited directly to said John M. Phillips.

10

(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 \$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.

20

21. 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 Duit Inc., whose principal officer is John J. Cream, reinforced, concrete sewer pipe, as follows

30

(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

40

said conspiracy, the sum of \$31,792.68, which amount benefited directly to said John M. Phillips.

10 (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.

20

22. 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 Hammen Construction Company, reinforced, concrete sewer pipe, as follows:

30 (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.

40

23. 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 Welsh Brothers Contracting Company, reinforced, concrete sewer pipe, as follows:

10 (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, under a contract with the City of New York, 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 45" 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.

20 (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.

30

24. 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 Oxford Engineering Company, reinforced, concrete sewer pipe, as follows:

40

(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.

10 25. 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 Everett Construction Company, reinforced, concrete sewer pipe, as follows:

20 (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 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. 80343. 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 mentioned 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
30 John M. Phillips.

26. 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 Muccini & Decker, reinforced, concrete sewer pipe, as follows:

40 (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 se-

wer 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 sold the amount of pipe required for said contract, at \$12.00, \$13.10, \$30.00 and \$31.50 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.

(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 Phillips 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.

(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.

(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 con-

10 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.

20 (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.

30 (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.

10 (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.

20 (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 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.

40 (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.

10 (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 \$27.56 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.

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

30 (l) 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 of 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

40

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.

10 (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
20 above mentioned conspiracy 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.

30 (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
40 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 \$2.69, \$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.

10 (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.

20 (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 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.

40 (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" 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 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, \$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.

10 (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 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. 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

30

27. 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 Angelo Paino, reinforced, concrete sewer pipe, as follows:

40 (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 \$10.00 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.

10 (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 54" and \$25.00 per linear foot for 66", for use in the construction of a public sewer at Broadway, 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, \$6.14 per linear foot; for 54" 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.

20

30

(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 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. 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.

40.

10 (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 for 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.

20 (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; 30 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 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, 40 thereby causing the City to lose, through said conspiracy, the sum of \$41,578.65, which amount benefited directly to said John M. Phillips.

(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 and \$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.

(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.

(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 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. 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 \$17.23 per linear foot, respectively, thereby causing the City to lose, through said con-

spiracy, the sum of \$31,131.79, which amount benefited directly to said John M. Phillips.

28. 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 Dominick Bonacci, reinforced, concrete sewer pipe, as follows:

10 (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 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
20 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.

29. 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 Necaro Company, reinforced, concrete sewer pipe, as follows:

30 (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 pipe, \$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 \$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

10 (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.

20 30. 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 H. J. Mullen Contracting Co., Inc., reinforced, concrete sewer pipe, as follows:

30 (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, \$18.25 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 of lose, through said conspiracy, the sum of \$46,370.42, which amount benefited directly to said John M. Phillips.

40 (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.

31. 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 Kennedy & Smith, Inc., reinforced, concrete sewer pipe, as follows:

(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 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, \$7.33 and \$4.72 per linear foot, respectively, thereby causing the City to lose, through said conspiracy, the sum of \$38,541.96 which amount benefited directly to said John M. Phillips.

(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 con-

10 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.

20 (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 a 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.

30 (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 conspiracy between the parties above mentioned, the said Phillips sold the amount of pipe re-

40

quired 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.

10 (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 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.

30 (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, \$4.72, \$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.

10 (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 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.

20 32. 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:

30 (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

10 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.

20 33. 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 Petracca & Peterson, reinforced, concrete, sewer pipe, as follows:

30 (a) In the year 1927 — 1011 feet of precast, reinforced, concrete sewer 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 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.

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

40 + 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 dis-

money
held or owned
by

state

domestic
municipal
other public

corporation for
itself

governmental
other public
interest

interest right obtained

X posed of, an action to recover the same, or 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 therefor in favor of the latter is or is not pending when the action in favor of the people is commenced;”

10

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.

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

20

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;”

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

36. 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;”

40

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

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

?

✓
+
+

OK

X

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.

10 38. 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;"

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

20 39. 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.

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

30 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 judgment 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; 40 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 section, he must 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;

40. The Defendants are secreting and making away with, have secreted and made away with, or were immediately about to secret or make away with, their property, with intend to defraud their creditors in general, and the City of New York and the Plaintiff in particular, and the Plaintiff will thereby be deprived of his recourse against the Defendant, without the aid of the present Writ of Attachment before judgment;

20 41. The Defendants 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;

30 42. 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;

43. 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;

40 WHEREFORE the Plaintiff asks that the seizure before judgment, and the Seizure before judgment in the hands of the tiers saisiss, 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 saisiss 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 Saisiss be declared personal debtors 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.

10

Montreal, January 23th, 1929.

BERTRAND, GUERIN,
GOUDRAULT & GARNEAU,
Attorneys for the Plaintiff.

20

AFFIDAVIT.

I, William T. Moore, of 50 Creen Street, Mechanicville, State of New York, who being duly sworn do depose and say:

1. I am Special Assistant Attorney General of the State of New York and duly authorized agent in these proceedings of the Attorney General of the State of New York;

X 2. Defendants above described are personally indebted in a sum exceeding \$5.00, to wit: in a sum of \$3,000,000.00;

3. This debt has been created as follows:

(a) For the last ten years previous to this date, John M. Phillips has defrauded the City of New York, through conspiracy with Maurice Connolly and Frederick Seeley, of the above sum, by selling directly or indirectly to the City of New York, sewer pipes at grossly excessive and extravagant prices, through said conspiracy.

40

(b) The Defendants are secreting or making away with, have secreted or made away with, or are immediately about to secrete or make away with, their property, with intent to defraud their creditors in general or the City of New York in particular, and the Plaintiff will thereby be deprived of his recourse against the Defendants;

to whom ? see B. next to Piff.

~~What of Mr.~~
Identity of Mr. - befalls ? OK by reference ?

estate accepted ? They continue secretly.
attention ? law.

4. I am credibly informed that the tiers-saisis have actually in their possession assets, bonds or debentures, moveable effects belonging to the Defendants.

AND I HAVE SIGNED

(Signed) WILLIAM T. MOORE

10 SWORN to before me, at
Montreal, this 9th day
of July, 1928.

(Signed) GEORGES BEAUREGARD
Commissioner of the Superior Court
for the District of Montreal.

TRUE COPY.

20 BERTRAND, GUERIN,
GOUDRAULT & GARNEAU,
Attorneys for the Plaintiff.

PLAINTIFFS' ANSWER TO ABOVE DESCRIBED
DEFENDANTS' FURTHER AMENDED PLEA.

30 1.—Plaintiffs join issue with said Defendants as to the
truth of the allegations contained in paragraph 1 of Plaintiffs'
Declaration;

2.—Plaintiffs admit paragraph 3 of said Defendants'
further Amended Plea;

3.—Plaintiffs are ignorant of the allegations contained
in paragraph 4 of said Defendants' further Amended Plea, and
state that the document referred to in said paragraph speaks
for itself;

40 4.—Plaintiffs pray acte of the admission contained in pa-
ragraph 5 of said Defendants' further Amended Plea;

5.—Plaintiffs join issue with said Defendants as to the
truth of the allegations contained in paragraphs 7 and 8 of
Plaintiffs' Declaration;

6.—Plaintiffs deny paragraph 8 of said Defendants' fur-
ther Amended Plea;

7.—In answer to paragraph 9 of said Defendants' further Amended Plea, Plaintiffs join issue as to the truth of the allegations contained in paragraphs 34, 35, 36, 37, 38 and 39 of said Plaintiffs' Declaration, and the remainder of said paragraph 9 of said Defendants' further Amended Plea is denied;

8.—Plaintiffs pray acte of the admission contained in paragraph 11 of said defendants' further Amended Plea, wherein it is admitted that the sum of \$312,000.00, seized by Plaintiffs
10 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;

9.—Plaintiffs deny paragraphs 12, 13, 14, 15, 16, 17, 18 and 19 of said Defendants' further Amended Plea as drawn, and each and every allegation contained in said paragraphs is irrelevant and unfounded both in law and in fact, and Plaintiffs further add:

20 a) That Plaintiffs reiterate each and every allegation of their Declaration and more specially that the late John M. Phillips was a supplier of pipe and not a sewer contractor;

b) That the late John M. Phillips, in his lifetime and for the period covered in the action, did knowingly and corruptly conspire with Maurice E. Connolly, Frederick C. Seely, other city officials, as well as with the contractors, to cheat and defraud the City of New York in order to sell and he did sell his pipe at an excessive, exorbitant and fraudulent price;

30 c) That Plaintiffs have a right of action against all parties who have conspired to cheat and defraud the City of New York out of property, in the way mentioned in Plaintiffs' Declaration;

WHEREFORE Plaintiffs, reiterating each, every and all the allegations of their Declaration, pray for the dismissal of said Defendants' further Amended Plea and further pray that their action be maintained; the whole with costs against Defendants.

40

MONTREAL, February 4th, 1933.

BERTRAND, GUERIN,
GOUDRAULT & GARNEAU,
Attorneys for Plaintiffs.

ANSWER TO PLEA.

PLAINTIFFS, FOR ANSWER TO PLEA OF DEFENDANTS SEVERING IN THEIR DEFENCE AND DEFENDANT EN REPRISÉ D'INSTANCE, SAY:

1. In answer to paragraph 1 of above described Defendants' Plea, Plaintiffs join issue with said Defendants as to
10 the truth of the allegations of paragraphs 1, 2, 5, 7, 8, 34, 35, 36, 37, 38 and 39 of Plaintiffs' Declaration;

2. 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;

3. In answer to paragraph 3 of above described Defendants' Plea, Plaintiffs join issue with said Defendants as to
20 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), (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;

(4) 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
30 in his own name a 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 to John M. Phillips;

5. Plaintiffs deny the truth of the allegations of paragraph 5 of above described Defendants' Plea and add that the methods and materials referred to by Defendants were well known to all and were matters of general and common knowledge;
40

6. 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;

7. Plaintiffs deny the truth of the allegations, contained in paragraph 7 of above described Defendants' Plea, and Plain-

tiffs further add that 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
10 Borough of Queens and was sentenced to jail;

8. 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 Plaintiff's 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;

20 9. Plaintiffs deny paragraph 9 of above described Defendants' Plea;

10. Plaintiffs deny paragraph 10 of above described Defendants' Plea;

WHEREFORE Plaintiffs, reiterating each and every and all the allegations of their Declaration, pray that above Described Defendants' Plea be dismissed and Plaintiffs' action be maintained, the whole with costs.

30 Montreal, 30th March, 1931.

BERTRAND, GUERIN,
GOUDRAULT & GARNEAU,
Attorneys for Plaintiffs.

ANSWER TO AMENDED PLEA OF DEFENDANTS THE
HEIRS OF THE LATE JOHN M. PHILLIPS.

Plaintiffs, for answer to amended plea of the defendants,
the heirs of the late John M. Phillips, say:

10 1.—In answer to paragraph 1 of above described defend-
ants' amended plea, plaintiffs join issue with said defendants
as to the truth of the allegations of paragraph 1 of plaintiffs'
declaration;

2.—In answer to paragraph 2 of above described defend-
ants' amended plea, plaintiffs join issue with said defendants as
to the truth of the allegations of paragraph 2 of plaintiffs'
declaration;

20 3.—In answer to paragraph 4, plaintiffs join issue with
said defendants as to the truth of the allegations of paragraph
4 of plaintiffs' declaration and add that said defendants' exhibit
No. 1 speaks for itself;

4.—In answer to paragraph 5 of above described defend-
ants' amended plea, plaintiffs pray act of the admission therein
contained;

5.—In answer to paragraphs 6 and 7 of above described
defendants' amended plea, plaintiffs join issue with said defend-
ants as regards the truth of the allegations contained in para-
graphs 6, 7 and 8 of plaintiffs' declaration;

30 6.—In answer to paragraph 8 of above described defend-
ants' amended 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
40 Connelly and Seely were convicted of fraudulent and wrongful
practice, while they were officials of the Borough of Queens and
were sentenced to jail, on an indictment which included the said
John M. Phillips, who died before the trial;

7.—In answer to paragraph 9 of above described defend-
ants' amended plea, plaintiffs join issue with said defendants
as to paragraphs 33, 35, 36, 37, 38 and 39 of plaintiffs' declaration

and deny the remainder of said paragraph 9 of said defendants' amended plea;

8.—In answer to paragraph 10 of above described defendants' amended plea, plaintiffs join issue with said defendants as to the truth of the allegations contained in paragraphs 40, 41 and 42 of plaintiffs' declaration;

10 9.—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 of the late John M. Phillips and is now the property of his estate;

10.—Plaintiffs deny paragraph 12 of above described defendants' amended plea;

20 WHEREFORE plaintiffs, reiterating each and every and all the allegations of their declaration, pray that above described defendants' amended plea be dismissed and plaintiffs' action be maintained, the whole with costs.

MONTREAL, October 3rd, 1932.

BERTRAND, GUERIN, GOUDRAULT &
GARNEAU,
Attorneys for Plaintiffs.

30

40

MOTION FOR ROGATORY COMMISSION

WHEREAS the testimonies of the following witnesses are necessary to the Plaintiff to establish the allegations of the Declaration;

10 WHEREAS the said witnesses reside outside of the Province of Quebec, to wit, in the State of New York and in the State of New Jersey, two states of the United States of America;

WHEREAS the witnesses to be examined will be called to give evidence on many different contracts to wit, over 87 contracts passed between the City of New York and Contractors mentioned in the Declaration in the present case;

WHEREAS Plaintiff is claiming \$3,405,449.02 damages arising out of the said contracts;

20 WHEREAS the witnesses to be examined have already been examined before the New York Supreme Court in a case of the People of the State of New York vs Maurice E. Connelly and Frederick Seeley, with the exception of Joseph L. Sigretto, James Rice and one Leidy;

WHEREAS the testimonies of the witnesses to be examined should be substantially the same as the testimonies given in the above mentioned case before the New York Supreme Court;

30 WHEREAS the testimonies given before the New York Supreme Court have been transcribed by official stenographers and recorded in three printed volumes, which are available to counsels acting in the present case;

WHEREAS it is of the greatest importance that this present commission be an open Commission on account of the practical impossibility to draft questions and cross questions for such a mass of documents including a tremendous amount of calculation and whereas the defendants are cognizant of the testimonies to be given by the witnesses hereinafter mentioned;

40 WHEREAS the exhibits to be produced with the examination of the witnesses are totalling over 279 and whereas the said exhibits have all been printed wholly, or in their material part in above mentioned printed volumes;

WHEREAS the subjects upon which the witnesses are to be examined is furthermore attached to this present motion;

SEEING the said list of witnesses attached hereto;

SEEING the affidavit attached to the present motion;

10 THAT by judgment to be rendered, an open Rogatory Commission be granted to receive the answers of the said witnesses to interrogatories that shall be put to them by all parties in the present case, the Defendants having the right to join the said Commission which shall be addressed to HAROLD TIRK of Brooklyn, or to Honourable JOHN T. TRACY, Hudson, or ABRAHAM MENNIN, New York City, or A. HOLLY PATTER-
SON of Hempstead and that the said parties be chosen by this Court as commissioners in the present case and that the said Commission shall be returned within a delay of nine months from this day costs to follow suit.

Montreal, March 8, 1930.

BERTRAND, GUERIN, GOUDRAULT &
GARNEAU,
Attorneys for Plaintiff.

20

AFFIDAVIT

I, ERNEST BERTRAND, King's Counsel, residing at No. 4342 Montrose Avenue, in the City of Westmount, District of Montreal, Province of Quebec, being duly sworn do declare and say:

30

The facts mentioned in the present Motion are true.

And I have signed:

ERNEST BERTRAND.

Sworn to before me at Montreal
this 8th day of March 1930.

J. N. VAILLANCOURT,
Commissioner of the Superior Court
District of Montreal.

40

JUDGMENT APPOINTING AS COMMISSIONER
M. DeCOURSEY FALES.

Province of Quebec,
District of Montreal.

No. 30804

10 On the 31st day of March 1930.

PRESENT: THE HON. MR. JUSTICE CODERRE.

THE COURT, after having heard the parties by their respective counsel on plaintiff's motion for rogatory commission, after having examined the proceedings and deliberated;

20 SEEING the agreement of the parties that the commission is to be addressed to one person only;

DOTH GRANT said motion; DOTH GRANT an open rogatory commission to receive the answers of witnesses mentioned in said motion to interrogatories that shall be put to them by all parties in the present case; and DOTH APPOINT as commissioner Mr. DeCoursey Fales of Cadwallader & Cie, 35 Wall Street, New York, E.-U., costs to follow.

LOUIS CODERRE,
J.S.C.

30

PLAINTIFFS' MOTION TO OPEN ROGATORY
COMMISSION.

40 1. WHEREAS, the Commissioner appointed for the execution of the Rogatory Commission in the case herein to examine the witnesses in virtue of the said Rogatory Commission, has now transmitted his report to the Prothonotary of this Honourable Court;

2. WHEREAS, the said report of the Rogatory Commission herein is now in the possession of the said Prothonotary of this Honourable Court;

WHEREFORE Plaintiffs pray that by judgment to be rendered upon this present Motion, the said report of the Com-

missioner be opened and published in order that it may serve for all its legal purposes, with costs to follow suit.

MONTREAL, October 26th. 1931.

BERTRAND, GUERIN,
GOUDRAULT & GARNEAU,
Attorneys for Plaintiffs.

10

JUDGMENT OF THE SUPERIOR COURT.

Province of Quebec
District of Montreal

No. 30804.

SUPERIOR COURT

20

JUDGMENT this twenty-eighth day of October 1931.

PRESENT: The Honourable Justice PATTERSON.

THE COURT, having heard the parties, by counsel, on the Plaintiffs' motion to open Rogatory Commission, having examined the proceedings and deliberated:

30

DOTH GRANT the said motion and DOTH ORDER that the report of said Rogatory Commission be opened and published so that it may serve for all its legal purposes; costs to follow suit.

WILLIAM PATTERSON,
J. S. C.

40

MOTION DES DEMANDEURS POUR REOUVRIR
L'ENQUETE.

1. ATTENDU que les demandeurs ont déclaré leur enquête close;

2. ATTENDU que les demandeurs en cette cause ont poursuivi les Héritiers de feu John M. Phillips pour une somme de \$3,405,449.02 et qu'ils ont saisi une somme de \$312,000.00 entre les mains du Montreal Safe Deposit Company, tiers-saisi en cette cause;

3. ATTENDU que les défendeurs ont d'abord comparu par l'entremise de leurs procureurs, MM. Cook & Magee;

4. ATTENDU qu'un premier plaidoyer de dénégation générale a été produit au nom de tous les défendeurs par MM. Cook & Magee;

20 5. ATTENDU qu'un plaidoyer spécial a été produit par MM. Cook & Magee, le 25 novembre 1929, pour les héritiers de feu John M. Phillips, et, dans ce plaidoyer, les défendeurs, par leurs procureurs MM. Cook & Magee, ont admis que l'argent saisi dans cette cause était la propriété de la Succession de feu John M. Phillips;

30 6. ATTENDU que subséquemment à ce plaidoyer, savoir dans le courant du mois de mars 1931, la Succession de Francis Phillips, par l'entremise de leurs nouveaux procureurs, MM. Foster, Hackett & Co., a produit un plaidoyer, dans lequel il est allégué que les argents saisis étaient la propriété de feu Francis Phillips et sont maintenant la propriété de sa succession;

40 7. ATTENDU que les deux groupes d'héritiers dans cette cause ont attendu l'audition de la présente cause pour faire décider qui était le propriétaire de cet argent et ont demandé à ce que la présente cause soit entendue la première, terminée la première et jugée la première;

8. ATTENDU que les demandeurs en cette cause viennent d'apprendre, et ce après avoir fini leur enquête, qu'il existe des témoins capables de prouver que l'argent saisi est bel et bien la propriété de la succession de feu John M. Phillips;

9. ATTENDU que la connaissance de ces témoins n'a été révélée que pendant l'enquête dans la cause de The Bank of

Rockville Centre Trust Company (représentant les héritiers de John M. Phillips) contre la Chase National Bank (représentant les héritiers de feu Francis Phillips), laquelle cause porte le No. 110169 des dossiers de la Cour Supérieure, à Montréal;

10 10. ATTENDU que la connaissance de ces témoins n'a été révélée aux avocats des demandeurs dans la présente cause que parce que les soussignés ont assisté à l'enquête dans la cause mentionnée au paragraphe 9 de la présente motion;

11. ATTENDU que malgré toutes les démarches et toutes les demandes faites à qui de droit, il a été impossible aux demandeurs dans la présente cause de savoir le nom des témoins en état de prouver la propriété de l'argent saisi et de savoir ce que ces témoins étaient en état de dire;

20 12. ATTENDU que les témoins en question, dont les noms n'ont été révélés aux demandeurs que lors de l'audition dans la cause mentionnée au paragraphe 9 de la présente motion, et que les demandeurs veulent faire entendre, sont les suivants:

George D. Frenz

Peter P. Campbell

Andrew Zorn

James E. Wilkinson

30 13. ATTENDU qu'il est de l'intérêt de la justice et des parties en cause que les témoignages des témoins George D. Frenz, Peter P. Campbell, Andrew Zorn et James Wilkinson, donnés dans la cause No. 110169 C. S. M., The Bank of Rockville Centre Trust Co. ès-qual. vs Chase National Bank of the City of New York, soient versés dans la présente cause et reçus en preuve;

40 14. ATTENDU que ces quatre témoins sont absents de la Province et hors la juridiction de nos Cours, et que les parties dans la cause No. 110169 C. S. M., The Bank of Rockville Centre Trust Co. ès-qual. vs Chase National Bank of the City of New York, ont eu pleine liberté d'interroger et de contre-interroger les dits témoins;

15. ATTENDU qu'il est de l'intérêt de la justice que la vérité soit connue sur tous les faits allégués dans cette cause;

POURQUOI les demandeurs concluent à ce que cette Honorable Cour, par jugement à être rendu sur la présente motion,

permette aux demandeurs soit : 1.—de réouvrir leur enquête et de verser dans la présente cause les témoignages rendus par les témoins George D. Frenz, Peter P. Campbell, Andrew Zorn et James E. Wilkinson, afin que les dits témoignages soient reçus en preuve; ou soit 2.—de réouvrir leur enquête et de faire entendre les témoins George D. Frenz, Peter P. Campbell, Andrew Zorn et James E. Wilkinson, à une date qu'il plaira à cette Cour de fixer, le tout avec dépens à suivre le sort de la cause.

10 MONTREAL, le 13 décembre, 1932.

BERTRAND, GUERIN,
GOUDRAULT & GARNEAU,
Procureurs des demandeurs.

20

AFFIDAVIT.

Je, MAURICE GOUDRAULT, avocat et Conseil du Roi, et l'un des avocats des demandeurs dans la présente cause, demeurant au No. 290 Carré St-Louis, à Montréal, étant dument assermenté, dépose et dis :

1. J'étais chargé spécialement de cette cause et c'est moi qui me suis occupé plus spécialement de la préparer et d'avoir les renseignements nécessaires pour faire l'enquête tant sur la Commission Rogatoire que sur l'enquête à Montréal;

30

2. Que le seul témoin que je connaissais en état de rendre témoignage sur la propriété de l'argent saisi en cette cause avant l'enquête dans la cause No. 110169 C. S. M., The Bank of Rockville Centre Trust Co. ès-qual., vs Chase National Bank of the City of New York, était T. M. Cassidy;

40

3. Que je me suis enquis auprès des personnes intéressées dans cette cause s'il y avait d'autres témoins capables de rendre témoignage sur ce fait et que j'ai été incapable de trouver d'autres témoins;

4. Que j'ai appris pour la première fois que George D. Frenz, Peter P. Campbell, Andrew Zorn et James E. Wilkiuson étaient en état de rendre témoignage sur les faits ci-haut allégués, savoir la propriété de l'argent, que lors de l'enquête dans

la cause No. 110169 C. S. M., The Bank of Rockville Centre Trust Co., ès-qual., vs Chase National Bank of the City of New York.

ET J'AI SIGNE.

MAURICE GOUDRAULT.

Assermenté devant moi à Montréal
ce 13ième jour de décembre 1932.

10 J. N. VAILLANCOURT,
Commissaire de la Cour Supérieure
pour le district de Montréal.

JUGEMENT DE LA COUR SUPERIEURE

Province de Québec
20 District de Montréal
No. 30804

COUR SUPERIEURE

Ce 2ème jour de février 1933.

PRESENT:—L'HONORABLE JUGE MERCIER.

30 LA COUR, après avoir examiné la motion présentée, le 16 décembre dernier (1932), par les demandeurs en cette cause; entendu leurs procureurs et avoir mûrement délibéré, rend le jugement suivant:

ATTENDU que la présente motion est basée sur l'article 292 du Code de Procédure civile de cette province;

40 ATTENDU que les demandeurs allèguent, au soutien de leur présente motion, ce qui suit: que les demandeurs ont déclaré leur enquête close; que les demandeurs en cette cause ont poursuivi les Héritiers de feu John M. Phillips pour une somme de \$3,405,449.02, et qu'ils ont saisi une somme de \$312,000.00 entre les mains du Montreal Safe Deposit Company, tiers-saisis en cette cause; que les défendeurs ont d'abord comparu par l'entremise de leurs procureurs, MM. Cook & Magee; qu'un premier plaidoyer de dénégation générale a été produit au nom de tous les défendeurs par MM. Cook & Magee; qu'un plaidoyer spécial

a été produit par MM. Cook & Magee, le 25 novembre 1929, pour les héritiers de feu John M. Phillips, et, dans ce plaidoyer, les défendeurs, par leurs procureurs MM. Cook & Magee, ont admis que l'argent saisi dans cette cause était la propriété de la Succession de feu John M. Phillips; que subséquemment à ce plaidoyer, savoir dans le courant du mois de mars 1931, la Succession de Francis Phillips, par l'entremise de leurs nouveaux procureurs, MM. Foster, Hackett & Co., a produit un plaidoyer, dans lequel il est allégué que les argents saisis étaient la propriété de feu Francis Phillips et sont maintenant la propriété de sa succession; que les deux groupes d'héritiers dans cette cause ont attendu l'audition de la présente cause pour faire décider qui était le propriétaire de cet argent et ont demandé à ce que la présente cause soit entendue la première, terminée la première et jugée la première; que les demandeurs en cette cause viennent d'apprendre, et ce, après avoir fini leur enquête, qu'il existe des témoins capables de prouver que l'argent saisi est bel et bien la propriété de la succession de feu John M. Phillips; que la connaissance de ces témoins n'a été révélée que pendant l'enquête dans la cause de The Bank of Rockville Centre Trust Company (représentant les héritiers de John M. Phillips) contre la Chase National Bank représentant les héritiers de feu Francis Phillips), laquelle cause porte le No. 110169 des dossiers de la Cour Supérieure, à Montréal; que la connaissance de ces témoins n'a été révélée aux avocats des demandeurs dans la présente cause que parce que ces derniers ont assisté à l'enquête dans la cause mentionnée au paragraphe 9 de la présente motion; que malgré toutes les démarches et toutes les demandes faites à qui de droit, il a été impossible aux demandeurs dans la présente cause de savoir le nom des témoins en état de prouver la propriété de l'argent saisi et de savoir ce que ces témoins étaient en état de dire; que les témoins en question, dont les noms n'ont été révélés aux demandeurs que lors de l'audition dans la cause mentionnée au paragraphe 9 de la présente motion, et que les demandeurs veulent faire entendre, sont les suivants :

George D. Frenz

40

Peter P. Campbell

Andrew Zorn

James E. Wilkinson

qu'il est de l'intérêt de la justice et des parties en cause que les témoignages des témoins George D. Frenz, Peter B. Campbell, Andrew Zorn et James E. Wilkinson, donnés dans la cause No.

110169 C. S. M., The Bank of Rockville Centre Trust Co. ès-qual., vs Chase National Bank of the City of New York, soient versés dans la présente cause et reçus en preuve; que ces quatre témoins sont absents de la Province et hors la juridiction de nos Cours, et que les parties dans la cause No. 110169 C. S. M., The Bank of Rockville Centre Trust Co. ès-qual. vs Chase National Bank of the City of New York, ont eu pleine liberté d'interroger et de contre-interroger les dits témoins; qu'il est de l'intérêt de la justice que la vérité soit connue sur tous les faits allégués dans cette cause.

ATTENDU que les demandeurs concluent à ce que cette Honorable Cour, par jugement à être rendu sur la présente motion, permette aux demandeurs soit: 1. de réouvrir leur enquête et de verser dans la présente cause les témoignages rendus par les témoins George D. Frenz, Peter P. Campbell, Andrew Zorn et James E. Wilkinson, afin que les dits témoignages soient reçus en preuve, ou soit 2. de réouvrir leur enquête et de faire entendre les témoins George D. Frenz, Peter P. Campbell, Andrew Zorn et James E. Wilkinson, à une date qu'il plaira à cette Cour de fixer, le tout avec dépens à suivre le sort de la cause;

ATTENDU qu'il s'en suit que les demandeurs, par leur présente motion et ses conclusions, demandent l'une des deux choses ci-dessus mentionnées;

ATTENDU que cette Cour est d'opinion d'accorder aux demandeurs, afin d'éviter plus amples frais, la permission de réouvrir leur enquête aux fins seulement de verser, dans la présente cause, les témoignages rendus par les témoins George D. Frenz, Peter P. Campbell, Andrew Zorn, James E. Wilkinson afin que ces dits témoignages déjà entendus dans la cause de The Bank of Rockville Centre Trust Co. ès-qual. (représentant les héritiers de John M. Phillips) contre la Chase National Bank (représentant les héritiers de feu Francis Phillips), laquelle cause porte le No. 110169 des dossiers de la Cour Supérieure, à Montréal, soient reçus en preuve en la présente cause, ce que cette Cour accorde à toutes fins que de droit, refusant, cependant, de réouvrir l'enquête des demandeurs pour faire entendre de nouveau, viva voce, les témoins en question; le tout avec dépens à suivre le sort de la cause.

WILFRID MERCIER,
J. C. S.

**B.—PLEADINGS OF THE DEFENDANTS
THE HEIRS OF THE LATE
JOHN M. PHILLIPS.**

10

FURTHER AMENDED PLEA OF THE DEFENDANTS,
THE HEIRS OF THE LATE
JOHN M. PHILLIPS.

(1) The said Defendants are ignorant of the allegations contained in Paragraph (1) of the Plaintiffs' Declaration.

(2) Paragraph (2) of the Plaintiffs' Declaration is denied.

20

(3) The documents referred to in Paragraph (3) of the Plaintiffs' Declaration speak for themselves.

30

(4) Paragraph (4) of the Plaintiffs' 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' Exhibit No. 1.

(5) In answer to Paragraph (5) of Plaintiffs' Declaration, the said Defendants aver that the present action speaks for itself.

40

(6) The said Defendants deny Paragraph (6) of the Plaintiffs' Declaration.

(7) The Defendants are ignorant of the allegations contained in Paragraphs 7 and 8 of the Plaintiffs' Declaration.

(8) 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 and conspiracy with the said Maurice E. Connelly and/or Frederick G. Selly and/or any others to defraud the said City of New York or the Plaintiffs herein as falsely alleged.

10 (9) 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.

(10) The said Defendants deny the allegations contained in Paragraphs 40, 41 and 42 of the Plaintiff's Declaration.

(11) 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.

20 **AND WITHOUT WAIVER AND UNDER EXPRESS RESERVE OF THE FOREGOING THE SAID DEFENDANTS FURTHER PLEAD:**

(12) That the period referred to in Plaintiffs' action was a period of experiment during which many new and improved methods and materials in the construction of sewers were introduced in the Borough of Queens, the whole in an endeavour to meet the demand for sewer requirements then existing in the said Borough.

30 (13) 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 the consequent stress and strain to which they were exposed as well as the necessity that they be absolutely watertight.

40 (14) That during part of the period referred to in Plaintiffs' action the deceased, John M. Phillips, was interested in the sale and/or manufacture of reinforced concrete pipe which he sold and supplied to various contractors who entered into contracts of purchase therefor with him.

(15) That any such reinforced concrete pipe sold or manufactured by said Phillips and used in the Borough of Queens during the period aforesaid was of better quality, higher cost

and better adapted to the requirements and peculiarities of sewer construction in the said Borough than any other available.

10 (16) That any sales of reinforced concrete pipe made as aforesaid between Phillips and various sewer builders having contracts in the Borough of Queens were entirely a matter of contract and agreement between the said Phillips and any such contractors respectively as vendor and purchaser were freely entered into by both parties neither of whom was bound to contract with the other and all such contracts are in any event, matters foreign and irrelevant to any issues existing between Plaintiffs and the said Defendants and Plaintiffs are not legally entitled to invoke or in any way discuss any such contracts of sale in the present action.

20 (17) 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, in accordance with the best principles of the engineering art, with the approval of the governing bodies of the Borough of Queens as well as of the City of New York, which bodies were constantly entitled to and did supervise and review the discretionary acts of any minor Borough official and employee in any way connected therewith; and the construction work was likewise carried out under the supervision of the said engineers and governing bodies; and especially were the plans and specifications concerning the making and use of reinforced concrete pipe right and proper and such specifications could have been complied with by any manufacturer of pipe or contracting sewer-builder who desired
30 to manufacture in conformity therewith.

(18) That the cost of the manufacture of any such pipe to and/or the price paid therefor by, any contractor using the same for the purpose of constructing sewers in the said Borough of Queens was altogether a matter of indifference to the authorities of the said Borough and the City of New York, who required no information as to such costs and prices and who were interested only in the price of the completed sewer and not
40 in the costs of and the amounts paid by contractors for the various ingredients, materials and elements such as labour and other kindred factors which entered into the construction of any given sewer; and such costs and prices could not be determined from the bid or estimate submitted by the contractors, the form of which bid or estimate was duly and legally prepared with the consent and knowledge of the properly constituted executive au-

thorities of the Borough of Queens and of the City of New York with the aid of efficient technical and legal advisers.

(19) That no right of action exists in favour of the Plaintiffs 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.

10 WHEREFORE the said Defendants pray that the Plaintiffs' action may be dismissed with costs.

Montreal, December 10th, 1932.

COOK and MAGEE,
Attorneys for Defendants,
The heirs of the late John M. Phillips.

20

AMENDED PLEA OF THE DEFENDANTS, THE HEIRS OF
THE LATE JOHN M. PHILLIPS.

1. The said Defendants are ignorant of the allegations contained in Paragraph 1 of the Plaintiffs' Declaration.

2. Paragraph 2 of the Plaintiffs' Declaration is denied.

30 3. The documents referred to in Paragraph 3 of the Plaintiffs' Declaration speak for themselves.

40 4. Paragraph 4 of the Plaintiffs' 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' Exhibit No. 1.

5. In answer to Paragraph 5 of Plaintiffs' Declaration, the said Defendants aver that the present action speaks for itself.

6. The said Defendants deny Paragraph 6 of the Plaintiffs' Declaration.

7. The Defendants are ignorant of the allegations contained in Paragraphs 7 and 8 of the Plaintiffs' Declaration.

8. 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. Connolly and/or Frederick G. Seely and/or any others to defraud the said City of New York or the Plaintiffs herein, as falsely alleged.

9. 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.

10. The said Defendants deny the allegations contained in Paragraphs 40, 41 and 42 of the Plaintiffs' Declaration.

11. 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.

12. That no right of action exists in favour of the Plaintiffs, 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.

WHEREFORE the said Defendants pray that the Plaintiffs' action may be dismissed with costs.

MONTREAL, November 25th, 1929.

COOK & MAGEE,
Attorneys for Defendants, the Heirs
of the late John M. Phillips.

PARTIAL INSCRIPTION-IN-LAW AND REPLICATION TO
PLAINTIFFS' ANSWER TO AMENDED PLEA.

The Defendants inscribe in law against the allegation contained in the last five lines of paragraph (6) of the Plaintiffs' Answer to the Defendants' Amended Plea and give notice that the said Inscription will be presented to His Lordship Mr. Justice Mercier on Wednesday, the 5th day of October, 1932, at 10.30 o'clock in the forenoon or so soon thereafter as counsel can be heard and notice is given to Messrs. Bertrand, Guerin, Goudrault and Garneau of the said Inscription, the said allegation 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.”

20

And for reasons in support of their said Inscription, the said Defendants allege 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.

30

(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.

WHEREFORE 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:—

40

“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.

Montreal, October 4th, 1932.

COOK & MAGEE,
Attorneys for Defendants, the Heirs
of the late John M. Phillips.

10

REPLICATION TO ANSWER.

And without prejudice to the Partial Inscription-In-Law hereinabove 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.

20 WHEREFORE the Defendants pray as in and by their Amended Plea they have already prayed.

Montreal, October 4th, 1932.

COOK & MAGEE,
Attorneys for Defendants, the heirs
of the late John M. Phillips.

30

40

**C.—PLEADINGS OF THE DEFENDANTS
FRANCIS PHILLIPS AND
REPRESENTATIVES.**

10 PETITION TO INTERVENE, AFFIDAVIT & NOTICE.

TO ANY OF THE HONOURABLE JUDGES OF THE
SUPERIOR COURT SITTING IN AND FOR THE DISTRICT
OF MONTREAL, OR TO THE PROTHONOTARY THEREOF:

THE PETITION OF THE CROWN TRUST COMPANY
LIMITED, IN ITS SAID QUALITY OF CURATOR TO THE
EMANCIPATED MINOR FRANCIS (FRANK) PHILLIPS,
AND OF FRANCIS (FRANK) PHILLIPS,

20 HUMBLY REPRESENTS:

1. That an action between the People of the State of New
York and the Heirs of the late John M. Phillips is now pending
in the Superior Court of this District under No. 30804;

2. That the People of the State of New York claim from
the Estate of the late John M. Phillips the sum of \$3,405,449.03
which it is contended was obtained from the People of the State
of New York by fraud;

30 3. That the said John M. Phillips died on the 3rd day of
July, 1928, as appears by certificate of death produced as Plain-
tiff's Exhibit P-1 in the said suit;

4. That Francis (Frank) Phillips, who was born on the
19th February, 1910, and baptised on the 6th March, 1910, is a
son of the lawful marriage of the said late John M. Phillips and
Ellen Trudden, as appears by certificate of baptism filed here-
with as Petitioners' Exhibit No. 1;

X 40 5. That the said Francis (Frank) Phillips is one of the
heirs of the late John M. Phillips, mentioned in the Will of his
late Father, copy of which is produced herewith as Petitioners'
Exhibit No. 2;

6. That the said Francis (Frank) Phillips was married
to Helen Carroll Baines on the 12th day of June, 1928, at Ches-
tertown, Maryland, one of the United States of America, as ap-

pears by certificate of marriage filed herewith as Petitioners' Exhibit No. 3;

7. That your Petitioner, the Crown Trust Company, was duly appointed Curator to the property of the said emancipated minor, Francis (Frank) Phillips, by an Order of the Prothonotary of the Superior Court which issued on the 18th April, 1928, as appears by authentic copy thereof filed herewith as Petitioners' Exhibit No. 4;

10 X 8. That it is in the interest of your Petitioners that they be authorized and instructed to appear in the present suit, to intervene therein, and to sever in the defence to be made for and on behalf of the emancipated minor Francis (Frank) Phillips from the other heirs of the late John M. Phillips, the Defendants herein;

20 WHEREFORE your Petitioners pray that by the judgment to be rendered herein they be authorized and instructed to appear in the present suit, to intervene therein and sever in the defence to be made for and on behalf of the emancipated minor Francis (Frank) Phillips, from the other heirs of the late John M. Phillips, the Defendants herein, the whole with costs.

MONTREAL, April 20th, 1929.

FOSTER, PLACE, HACKETT, MULVENA,
HACKETT & FOSTER,
Attorneys for Petitioners.

30 I, IRVING P. REXFORD, residing at No. 4292 Montrose Avenue, in the City of Westmount, District of Montreal, Manager of the Crown Trust Company, Limited, being duly sworn do depose and say:

That I have taken communication of the annexed Petition and to the best of my knowledge and belief all the allegations thereof are true;

40 AND I have signed.

I. P. REXFORD.

Sworn to before me at the City of Montreal, this 20th day of April, 1929.

F. K. HAWTHORNE,
Commissioner of the Superior Court,
District of Montreal.

JUDGMENT GRANTING MOTION FOR AUTHORIZATION
TO APPEAR

Province of Quebec,
District of Montreal.

No. 30804

10

SUPERIOR COURT

On the 22nd day of April, 1929.

PRESENT: THE HON. MR. JUSTICE CODERRE.

20

THE COURT, having heard the parties by Counsel, on petitioner's petition praying for authorization to appear in the present suit, to intervene therein and sever in the defence to be made for and on behalf of the emancipated minor Francis (Frank) Phillips, from the other heirs of the late John M. Phillips, the defendants herein;

DOTH GRANT said motion as prayed for, costs to follow suit.

LOUIS CODERRE,
J.S.C.

30

PETITION EN REPRISE D'INSTANCE

TO THE HONOURABLE THE SUPERIOR COURT
SITTING IN AND FOR THE DISTRICT OF MONTREAL,
OR TO ANY ONE OF THE HONOURABLE JUDGES THERE-
OF:

40

THE PETITION OF THE CROWN TRUST COMPANY
LIMITED IN ITS QUALITY OF CURATOR TO THE PROP-
ERTY OF THE EMANCIPATED MINOR ELIZABETH EL-
LEN (KNOWN AS HELEN CARROLL) BAINES, WIDOW
OF THE LATE FRANCIS (FRANK) PHILLIPS, AND TO
THE PROPERTY OF HELEN FRANCES PHILLIPS, AND
THE SAID ELIZABETH ELLEN BAINES PHILLIPS

HUMBLY REPRESENTS:

1.—That an action between the People of the State of New

York and the Heirs of the late John M. Phillips is now pending in the Superior Court for this District under No. 30804;

2.—That the People of the State of New York claim from the Estate of the late John M. Phillips the sum of \$3,405,449.03 which it is contended was obtained from the People of the State of New York, by fraud;

10 3.—That the said John M. Phillips died on the 3rd day of July, 1928, as appears by Certificate of death produced as Plaintiff's Exhibit P-1 herein;

4.—That Francis (Frank) Phillips who was born on the 19th day of February 1910, and baptised on the 6th March, 1910, was a son of the lawful marriage of the said late John M. Phillips and Ellen Trudden as appears by Certificate of Baptism already fyled in the present suit as Petitioner's Exhibit No. 1;

20 5.—That the said Francis (Frank) Phillips was one of the heirs of the late John M. Phillips and was married to Helen Carroll Baines on the 12th day of June, 1928, at Chestertown, Maryland, one of the United States of America, the whole as appears by Exhibits 2 and 3 produced herein with the Petition of the said Francis (Frank) Phillips and his Curator for permission to intervene and sever in their defence in the present action.

30 6.—That the Crown Trust Company Limited in its quality as Curator to the property of Francis (Frank) Phillips was duly authorized to appear, intervene, and sever in the defence of the present action and in fact did appear and with the said emancipated minor Francis (Frank) Phillips did sever in the defence from the other Defendants, heirs of the late John M. Phillips and did continue the said proceedings.

7.—That the said Francis (Frank) Phillips died intestate at Roosevelt Field, Long Island, in the State of New York, on the 26th day of June, 1929, and notice of his said death has been duly given to Attorneys for Plaintiff.

40 8.—That of the aforesaid marriage of the said Francis (Frank) Phillips to Elizabeth Ellen (known as Ellen Carroll) Baines, there was born on the 23rd day of March, 1929, a daughter, Helen Frances.

8.—That the said Elizabeth Ellen (known as Helen Carroll) Baines, widow of the late Francis (Frank) Phillips and the said Helen Frances Phillips, daughter of the said Francis (Frank) Phillips, are the sole heirs and legal representatives of the said Francis (Frank) Phillips and have an interest in ap-

pearing and continuing the defence of the present action and protecting their property against claims which may be made against them.

9.—That your Petitioner the Crown Trust Company was duly appointed Curator to the property of the aforesaid minors by Judgment of the Superior Court dated the 9th day of October, 1929, as appears by authentic copy thereof produced as Petitioner's Exhibit No. III.

10 10.—That it is in the interest of the said minors and of the Crown Trust Company, es qualite, that they be authorized and instructed to appear in the present suit, to intervene therein insofar as necessary and severing in their defence from the other Defendants that they be permitted in their aforesaid quality and as heirs of the Defendant, the late Francis (Frank) Phillips, to take up and continue the proceedings herein begun.

20 WHEREFORE your Petitioners, the Crown Trust Company in its quality as Curator both to the property of Elizabeth Ellen, (known as Helen Carroll) Baines, widow of the late Francis (Frank) Phillips and to the property of Helen Frances Phillips and the said emancipated minor, Elizabeth Ellen, (known as Helen Carroll) Baines, widow of the late Francis (Frank) Phillips, personally pray that by judgment to intervene herein they be authorized and permitted to appear and intervene in the present action insofar as necessary for the protection or enforcement of their rights and therein severing in their defence from the other Defendants, to take up and continue as heirs of the late
30 Francis (Frank) Phillips the last proceedings herein, the whole with costs.

MONTREAL, this 12th day of November, 1929.

FOSTER, PLACE, HACKETT, MULVENA,
HACKETT & FOSTER,
Attorneys for Petitioners.

PLEA OF DEFENDANTS SEVERING IN THEIR DEFENCE
AND DEFENDANT EN REPRISE D'INSTANCE.

DEFENDANTS FOR PLEA TO PLAINTIFF'S ACTION,
SAY:

10 1. 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;

2. 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 suffi-
ciency of the said Exhibits;

20 3. That they deny the truth of the allegations of para-
graphs 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), (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;

30 4. That as regards paragraph 42 of Plaintiff's Declara-
tion, 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 pro-
perty placed therein by the said Francis Phillips was his own;

AND DEFENDANTS MOREOVER SAY:

5. That the period referred to in Plaintiff's action was
a period of experiment, during which sewer construction under-
went many changes and the said John M. Phillips was instru-
mental in introducing into the Borough of Queens many new
and improved methods and materials in the construction of sew-
ers in that Borough;

40 6. 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 water-tight;

7. 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;

10 8. 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;

9. That there is no lien de droit between Plaintiff and Defendants now pleading;

10. That Plaintiff's action is unfounded in law and in fact;

20 WHEREFORE Defendants pray for the dismissal of Plaintiff's action, with interest and costs.

MONTREAL, December 11th, 1929.

FOSTER, PLACE, HACKETT,
MULVENA, HACKETT & FOSTER,
Attorneys for Defendants
Severing in their defence and defendant
en reprise d'instance.

30

DEFENDANT'S PLEA

Defendant en reprise d'instance for Plea to Plaintiff's action says:

1. THAT it denies the truth of each and every allegation of Plaintiff's Declaration.

40 WHEREFORE Defendant en reprise d'instance prays for the dismissal of Plaintiff's action with costs.

MONTREAL, this 11th day of December, 1929.

FOSTER, PLACE, HACKETT, MULVENA,
HACKETT & MULVENA,
Attorneys for defendant en reprise d'instance.

REPLY OF DEFENDANTS SEVERING IN THEIR DEFENCE AND DEFENDANT EN REPRISE D'INSTANCE.

Defendants severing in their defence and Defendant en reprise d'instance, for reply to Plaintiff's Answer to Plea, say:

10 1. 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;

2. That they deny that the property contained in the said safety deposit box belonged to the late 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;

3. That they deny the truth of the allegations contained in paragraphs 5, 7, 8, 9 and 10 of Plaintiff's Answer to Plea;

20 4. That they are ignorant of the truth of the allegations of paragraph 6 of Plaintiff's Answer to Plea;

WHEREFORE Defendants, reiterating all the allegations of their Plea, pray for the dismissal of Plaintiff's action, with costs.

MONTREAL, September 28th, 1932.

30 HACKETT, MULVENA, FOSTER,
HACKETT & HANNEN,
Attorneys for Defendants severing
in their defence and Defendant en
reprise d'instance.

EXCEPTION TO JUDGMENT.

Defendants severing in their Defence and Defendant en
reprise d'instance, take respectful exception to the judgment
rendered by Mercier, J. on the 9th day of February, 1933, grant-
ing Plaintiff's Motion to reopen the enquete and put into the
record the depositions of George D. Frenz, Peter B. Campbell,
Andrew Zorn and James E. Wilkinson taken in the case of The
10 Bank of Rockville Centre Trust Co. es qual vs. Chase National
Bank of the City of New York.

MONTREAL, February 27th, 1933.

HACKETT, MULVENA, FOSTER, HACKETT,
& HANNEN,

Attorneys for Defendants severing in their Defence
and
20 Defendants en reprise d'instance.

20

30

40

D. — DECLARATIONS OF TIERS-SAISIS.

NEGATIVE DECLARATION OF MONTREAL SAFE DEPOSIT CO. ET AL, T. S. IN THIS CAUSE.

10 IN THE YEAR OF OUR LORD one thousand nine hundred and twenty-eight, on the eighteenth day of July, personally came and appeared JOHN M. SMITH, manager Montreal Safe Deposit Co., garnishee in this cause.

Who being duly sworn, deposes as follows:

At the time of the service of the present saisie-arrêt upon the said garnishee, it had not, has not now and is not aware that it will have hereafter in its hands possession or custody, or in
20 any manner whatsoever, any monies, moveable effects or other things due or belonging to the Defendant.

Nevertheless, the garnishee declares that it has leased a safety deposit box #1854 to Francis Phillips, one of the defendants in this case, but that the said Francis Phillips has not had access to the said box since the service of this writ.

And these presents having been duly read to deponent, he has signed.

JOHN M. SMITH.

30 Sworn and acknowledged before me at Montreal, the day, month and year first above written.

B. WENTMORE,
Deputy-Prothonotary, S.C.

DECLARATION OF THE ROYAL TRUST CO.

40

DECLARATION OF THE ROYAL TRUST CO., Tiers-saisi in this case, taken by consent.

I, the undersigned, L. A. SEWELL, authorized by the Tiers-Saisi to declare in this case, being duly sworn doth depose and say:

10. On the 10th. day of January, 1929, the parties in this case duly represented by J. W. Cook, K. C., acting for the defendants and ERNEST BERTRAND, K. C., acting for the Plaintiff, have deposited with the Tiers-saisi, the ROYAL TRUST COMPANY a sum of \$312,000.00;

20. The deposit of \$312,000.00 was made pursuant to a judgment rendered in this case on the 10th. day of January 1929, by Hon. Justice Surveyer, whereby the parties in this case and the Tiers-saisi, the Montreal Safe Deposit Co., were permitted to open a safety box in the possession of Francis Phillips and whereby it was ordered that the values found in this safety box be deposited with the Royal Trust Company jointly in the name of plaintiff and defendants represented as herein mentioned;

30. According to the same judgment the said sum of \$312,000.00 is to be invested according to article 981o of the Civil Code of this Province, the whole to be kept by the said Royal Trust Company until final adjudication in this case;

20. WHEREAS the Royal Trust Company has now in its possession this sum of \$312,000. which was already seized by the saisie-arrêt before judgment issued in this case, in the hands of the Tiers-saisi, the Montreal Safe Deposit Co.;

30. WHEREAS it is alleged by the Plaintiff that this sum of \$312,000.00 is the property of the defendants and whereas the defendants contest this assertion. The Tiers-saisi declares that the Royal Trust Company will obey the final judgment rendered in this case and will remit this sum to the party indicated in this final judgment.

AND I HAVE SIGNED.

L. A. SEWELL.

SWORN AND DECLARED
in the City and district
of Montreal, this 23rd.
day of January 1929.

40. W. GEORGE AYLIN,
Commissioner of the Superior Court
for the District of Montreal.

BY CONSENT:

BERTRAND, GUERIN, GOUDRAULT & GARNEAU,
Attorneys for Plaintiff.

BY CONSENT:

COOK & MAGEE,
Attorneys for Defendants.

E. — PROCES-VERBAL.

PROCES-VERBAL D'AUDIENCE.

10 Province de Québec
District de Montréal
No. 30804.

COUR SUPERIEURE

Enquête et Plaidoiries

Audience du 5 octobre 1932.

20 Présidence de l'Honorable Juge MERCIER.

Procès-verbal des procédures faites à l'audience devant le tribunal.

Les parties comparaissent par leurs procureurs respectifs.

12:00 hrs p. m. l'enquête ajournée à 2:00 hrs p. m.

30 2:00 hrs p. m. l'enquête continue.

Liste des exhibits prod. par déf. avec com. Rogatoire.

Prod. Petition of Helen Carroll Baines etc.

Prod. Notice from Bertrand, etc.

Prod. Partial Inscription-in-law etc., P. O. sur inscript. en droit C. A. V.

40 Prod. Answer to Plea from Bertrand. etc.

Prod. Subpoena from Bertrand & Cie.

L'Enquête des demandeurs.

Sténo:—Kenehan Dépôt \$10.00

John M. Smith 87 ans Gérant du Mont. Box. Montreal
ass. & ex.

Exh. P-1—Contrat.

Exh. P-2—Procès Verbal.

Exh. P-3—Déclaration du Royal Trust.

Norris Constable Vault Mgs 48 ans Montreal ass. & ex.

Exh. P-4—Extrait du registre de Montreal Deposit.

10 Arthur Garinther 25 ans. Credit Mgr M. R. Hotel Mont-
real ass & ex.

Exh. P-5—Carte d'enregistrement Hotel M. Royal.

Exh. P-6—Carte d'enregistrement Hotel M. Royal.

4:00 hrs. p. m. l'enquête ajournée à 10:15 a. m. le 6 oct.

Advenant le 6 oct. à 10:15 a. m. l'enquête continue.

Sténo: Kenehan.

20

Norris Constable déjà ass. rapp. par Proc. de la demande.

Audience du 6 octobre 1932.

Exh. P-7—Photo John M. Phillips.

Chs. H. Schneider 40 ans New York avocat ass. & ex.

12:15 hrs p. m. enquête ajournée à 2:00 hrs p. m.

2:00 hrs p. m. l'enquête continue.

30

Sténo: Kenehan.

Chs. H. Schneider déjà ass. cont. son témoignage.

Exh. P-8—Copie de la Com. de N. Y. nommant Hon. T.
Scudder.

Exh. P-9—Copie nommant Hon. C. J. Shearn.

Exh. P-10—Copie Re the Attorney.

40

Exh. P-11—Copie Acte d'accusation.

L'Hon. juge rend jugement sur l'inscription en droit en
date du 5 octobre et renvoie la dite inscription en droit avec dé-
pens.

Exh. P-12—Copie de la sentence.

Exh. P-13—Copie Cour Suprême.

Exh. P-14—Copie Cour suprême (Div. d'appel).

3:50 hrs p. m. ajournée à 10:15 hrs. a. m. le 7 oct.

Advenant le 7 oct. à 10:15 hrs a. m. l'enquête continue.

Sténo: Kenehan.

Hym. F. Ahrens 54 ans Treasurer of Lock Pipe Co. New York ass. & ex.

10

Exh. P-15—Vente par Lock 1917-1927.

Exh. P-16 Vente par Lock 1917-1918 à J. M. Phillips.

Exh. P-17—Vente par Lock 1919-1921 à J. M. Phillips.

12:15 hrs p. m. l'enquête ajournée à 2:00 hrs p. m.

2:00 hrs p. m. l'enquête continue.

Sténo: Kenehan.

20

Hym. F. Ahrens déjà ass. cont. son témoignage.

Audience du 7 octobre 1932.

Miss Mary Ann Ryan, ep. de J. W. Mooney, Sec. Treas. de H. S. Hart Inc. N. Y. ass. & ex.

Exh. P-18—Copie de Ventes.

30 Chs. H. Schneider déjà ass. cont. son témoignage en trans-
question.

Exh. P-19—Charte de la ville de New York.

Exh. D-1—Rapp. de l'ing. en chef.

Exh. D-2—Minutes du bureau d'estimation.

Exh. D-3—Lettre adressée à R. Gipson.

Exh. D-4—Livre des Minutes du Bur. d'estimation.

40

Exh. D-5—Map Borough Queen.

Exh. D-6—Map 1913 Ville de N. Y.

Exh. D-7—Map Photo 1913 Ville de N. Y.

Exh. D-8—Map.

4:00 hrs. p. m. l'enquête ajournée à 10:15 hrs a. m. le 11 courant.

J. E. DESLAURIERS,
D. P. C. S.

Advenant le 11 octobre à 10:15 hrs. l'enquête cont.

Steno: Kenehan.

10 L'Enquête des demandeurs est close.

Aussitôt après cette déclaration de la part des demandeurs, motion est présentée par Mtre Cook & McGee, dans une cause incidente portant le numéro C-110169 des dossiers de cette cour, mue entre The Bank of Rockville Centre Trust Company, Es qualité, Plaintiffs, vs Chase National Bank of the City of New York, es-qualité, et al. defendants, and The Royal Trust Company, M. E. C., la dite motion demandant des détails se rapportant au paragraphe 6 du Plaidoyer des défendeurs.

20 Cette motion est accordée par la Cour de consentement des parties et des particularités sont fournies aux demandeurs par les défendeurs.

A 10:35 hrs. a. m. la cause est continuée au 12 courant à 10:15 hrs. a. m.

30 Advenant le 12 oct. /32 à 10:15 hrs. a. m. une nouvelle motion est présentée par les procureurs des demandeurs dans la cause incidente ci-dessus numéro C-110169, aux fins d'avoir plus amples particularités et à défaut de ce faire par les défendeurs, demandant que l'allégation numéro 6 du dit plaidoyer soit retranchée d'icelui. Après argumentation, de part et d'autre, la motion est prise en délibéré.

Enquête des défendeurs représentés par Mtre Cook et Mtre Hackett sur l'action principale.

12:15 hrs. p. m. ajournée à 2:00 hrs. p. m.

40 2:00 hrs. p. m. la cause continue.

Sténo: Kenehan.

Enquête des défendeurs représentés par Mtre Cook.

Norris Constable déjà ass. ex. par Mtre Cook.

Thos. M. Cassidy, 53 ans, Horse Owner N. Y. ass. & ex.

Enquête des défendeurs représentés par Mtre Cook close.

Enquête des défendeurs représentés par Mtre Hackett.

Sténo: Kenehan.

& ex. Fred. A. Curran, 39 ans, News paper reporter, N. Y. ass.

Exh. D-9—Résignation de Connolly.

10 4:00 hrs. p. m. l'enquête est ajournée à 10:15 hrs. a. m.
le 13 courant.

J. E. DESLAURIERS,
D. P. C. S.

10:15 hrs. a. m. le 13 oct. l'enquête continue.

Sténo: Kenehan.

Fred. A. Curran, ass. cont. son témoignage.

20 11:45 hrs. a. m. l'enquête ajournée à 2:00 hrs p. m.

J. E. DESLAURIERS,
D. P. C. S.

3:00 hrs. p. m. l'enquête continue.

Sténo: Kenehan.

Chs. H. Schneider déjà ass. ex. par Mtre Hackett.

30 Exh. D-10—Copie du bureau d'est. de la Ville N. Y.

Exh. D-11—Copie du bureau d'est. de la Ville N. Y.

Exh. D-12—Copie du bureau d'est. de la Ville N. Y.

Enquête des défendeurs représentés par Mtre Hackett est définitivement close à toutes fins que de droit et l'enquête est définitivement close de part et d'autre.

40 L'argument au mérite est ajourné à une date ultérieure à être fixée par le président de cette cour en temps opportun à la demande des parties.

Le tribunal décide de procéder à l'instruction au mérite de la cause portant le numéro C-110169 et ce "instanter".

Mtre Cook représentant les demandeurs expose sa cause.

4:00 hrs. p. m. la cause est ajournée à 10:15 hrs. a. m. le
14 oct.

Advenant le 14 oct. /32 à 10:15 la cause continue.

Steno: Kenehan.

Enquête de la demanderesse.

10 & ex. Chs. H. Allan, 51 ans, Mgr of Nat. Surety Montreal, ass.

Exh. P-2 Lettre Nat. Surety Co. Dec. 20/27 Montreal.

Exh. P-3—Lettre Nat. Surety Co. Dec. 28/27 N. York.

Exh. P-4—Lettre Nat. Surety Co. Dec. 30/27 Montreal.

Geo. D. Frenz, 52 ans, Real Estate L. I. N. York, ass. & ex.

Peter Campbell, 50 ans, Rentier L. I. N. York ass. & ex.

20 Andrew Zorn, 56 ans. Vendeur L. I. N. York ass. & ex.

12:15 hrs. p. m. l'enquête est ajournée à 2:00 hrs p. m.

2:00 hrs. p. m. l'enq. continue.

Sténo: Kenehan.

Exh. P-5—Letters Testamentary, etc.

Exh. P-6—Petition for letters, etc.

30 Andrew Zorn, 56 ans, déjà ass. cont. son témoignage.

4:00 hrs. p. m. l'enq. ajournée au 17 oct. à 10:15 a. m.

J. E. DESLAURIERS,
D. P. C. S.

Advenant le 17 oct. /32 à 10:15 hrs. a. m. l'enq. cont.

Sténo: Kenehan.

40 James E. Wilkinson, 53 ans, Avocat, N. York ass. & ex.

Elizabeth Ellen Baines, ep. de Clarence L. Paulsen, Spokane, appelée par Mtre Hackett en contre-preuve, qui la transquestionne sur sa déposition en examen préalable ass. & ex.

Exh. P-7—Exemplification of Record #186405.

Enquête de la demanderesse close.

Enquête de la défenderesse.

Sténo: Kenehan.

Arthur Audet, 37 ans, Credit mg. Windsor Hotel Montreal, ass. & ex.

Exh. D-1—Windsor Hotel record.

Exh. D-2—Compte Windsor Hotel.

10

Exh. D-3—Windsor Hotel record.

Exh. D-4—Compte Windsor Hotel.

12:15 hrs. p. m. l'enq. est ajournée à 2:00 hrs. p. m.

2:00 hrs. p. m. l'enq. continue.

Sténo: Kenehan.

20 & ex.

Harold E. McCausland, 34 ans, Banking N. Jersey ass.

Exh. D-5—Photo. Contrat N. Jersey Bk.

Exh. P-8—Carte de record.

Exh. P-9—Autorisation en faveur de J. M. Phillips.

2:45 l'enq. est ajournée à 3:15 hrs p. m.

3:15 hrs. p. m. l'enquête continue.

30

Sténo: Kenehan.

Harold E. McCausland déjà ass. cont. son témoignage.

Exh. D-6—Carte d'identification.

Fred. A. Curran déjà ass. ex. par Mtre Hackett.

4:00 hrs. p. m. l'enquête est ajournée à 10:15 hrs. a. m.
le 18 oct.

40

J. E. DESLAURIERS,
D. P. C. S.

Advenant le 18 oct. /32 à 10:15 hrs. a. m.

Sténo: Kenehan.

Fred. A. Curran déjà ass. cont. son témoignage.

12:15 hrs. p. m. l'enquête est ajournée à 2:00 hrs. p. m.

2:00 hrs. p. m. l'enquête continue.

Sténo: Kenehan.

Fred A. Curran déjà ass. cont. son témoignage.

10 Vu la déclaration de Mtre Hackett de son intention d'en appeler du jugement interlocutoire rendu ce jour à l'enquête, sur certaines objections se rapportant à une preuve testimoniale des faits invoqués en son paragraphe 6 de son plaidoyer, l'instruction de cette cause est suspendue jusqu'à lundi le 24 courant aux fins de connaître alors ce qui est résulté de la demande d'appel du dit jugement interlocutoire, le tout à toutes fins que de droit.

J. E. DESLAURIERS,
D. P. C. S.

Advenant le 24 octobre /32 à 10:15 hrs. a. m.

20 La cause est ajournée "Sine Die", vu que l'incident qui s'est présenté dans la cause sur un jugement interlocutoire est actuellement devant la cour d'appel.

J. E. DESLAURIERS,
D. P. C. S.

Advenant le 16 décembre 1932, la présente cause qui avait été fixée au 15 courant pour arguments et continuée à ce jour, est appelée.

30 1er Mtre Cook, l'un des avocats des défendeurs présente une motion basée sur l'article 520 C. P. C.

Les parties sont entendues et la motion est prise en délibéré.

2ème Mtre Goudrault, l'un des avocats du demandeur, présente également une motion aux fins de réouvrir l'enquête du demandeur et verser au dossier certaines dépositions prises dans une autre cause mentionnée en sa motion basée sur l'article 292 C. P. C.

40 Les parties sont entendues et la motion est prise en délibéré.

3ème Mtre Goudrault, l'un des avocats du demandeur, déclare ne pas présenter devant cette Cour une autre motion aux fins de réouvrir l'enquête du demandeur, pour faire entendre un nouveau témoin du nom de Francis William Hopkins, motion duement signifiée aux parties en cause, le dit Mtre Maurice

Goudrault, déclarant, partant, se désister de la présente motion à toutes fins que de droit.

Du consentement des parties la dite motion est retirée sans frais.

4ème Une autre motion est présentée par Mtre Maurice Goudrault l'un des avocats du demandeur, aux fins d'amender sa déclaration.

10 Les parties sont entendues et cette motion est renvoyée avec dépens.

12:00 hrs. p. m. La cause est ajournée au premier jour du terme de février 1933, huit jours devant être accordés aux diverses parties pour l'audition et la cloture finale des deux causes dont cette Cour est saisie, à toutes fins que de droit.

J. E. DESLAURIERS,
D. P. C. S.

20 Advenant le 2 février 1933, la cour présidée par l'Hon. Juge Mercier, rend un jugement interlocutoire sur une motion présentée à la Cour le 16 décembre 1932, par les défendeurs, aux fins d'amender leur plaidoyer pour le faire concorder avec les faits prouvés. Le dit jugement interlocutoire, suspendant le jugement définitif à être rendu sur cette motion, après audition au mérite et mise en délibéré.

30 Advenant ce même jour la Cour rend jugement sur une deuxième motion présentée par les demandeurs, aux fins de réouvrir leur enquête pour verser dans la présente cause les témoignages de certains témoins entendus dans la cause portant le numéro C-110169. La Cour accordant la dite motion en partie, savoir: La permission de réouvrir leur enquête, aux fins seulement de verser dans la présente cause les témoignages des personnes y mentionnées, mais refusant, d'autre part, de réouvrir leur enquête pour faire entendre de nouveau, Viva Voce, les témoins en question. Frais de motion à suivre le sort de la cause.

40 J. E. DESLAURIERS,
D. P. C. S.

Advenant ce troisième jour de février 1933, la Cour rend jugement sur une autre motion à elle présentée, le 12 octobre dernier (1932) et prise, à cette date, en délibéré, par la Cour, la dite motion présentée dans la cause portant le numéro C-110169

de la Cour supérieure, par et en vertu duquel jugement, la motion en question est renvoyée, frais à suivre le sort de la cause.

J. E. DESLAURIERS,
D. P. C. S.

Advenant ce 8e jour de février 1933 à 10:15 hrs. a. m. la cause portant le numéro 30804 se poursuit. Mtre Goudrault argumente.

10 Mtre J. Hackett procureur des défendeurs Re 110169, désire exciper du jugement rendu le 2 février sur la motion des demandeurs, demandant de réouvrir leur enquête dans la cause portant le numéro 30804 et de verser au dossier de cette cause numéro 30804, certaines dépositions de témoins entendus dans la cause numéro 110169.

12:15 hrs p. m. ajournée à 2:00 hrs p. m.

2:00 hrs p. m. Mtre Goudrault cont. les arguments.

20 4:00 hrs p. m. ajournée au 10 fév. à 10:15 a. m.

Advenant le 10 fév. /33 à 10:15 hrs a. m. Mtre Goudrault cont. les args.

12:15 hrs p. m. ajournée à 2:00 hrs p. m.

2:00 hrs p. m. Mtre Goudrault cont. les arguments.

4:00 hrs p. m. ajournée au 13 oct. à 10:15 a. m.

30 Advenant le 13 février /33 à 10:15 hrs a. m.

Mtre Goudrault cont. les arguments.

12:15 hrs. p. m. ajournée à 2:00 hrs p. m.

2:00 hrs p. m. Mtre Goudrault cont. les argts.

4:00 hrs p. m. ajournée au 14 crt. à 10:15 hrs a. m.

40 Advenant le 14 février /33 à 10.15 hrs a. m. Mtre Goudrault cont.

12:15 hrs p. m. ajournée à 2:00 hrs p. m.

2:00 hrs p. m. Mtre Goudrault cont.

4:00 hrs p. m. ajournée au 15 crt. à 10:15 hrs a. m.

Advenant ce 15e février /33 à 10:15 hrs a. m. Mtre Goudrault cont.

12:15 hrs p. m. ajournée à 2:00 hrs p. m.

2:00 hrs p. m. Mtre Goudrault cont.

3:45 hrs p. m. ajournée au 16 crt. à 10:15 a. m.

10 Advenant le 16 fév. /32 à 10:15 hrs a. m., Mtre Hackett veut argumenter au mérite de la cause principale, mais Mtre Goudrault proc. de la demanderesse s'y objecte, prétendant que depuis la mort de Francis Phillips, vu le testament de feu John M. Phillips, les héritiers de feu Francis Phillips, représentés par Mtre Hackett, n'ont aucun intérêt dans la cause principale. La Cour permet à Mtre Hackett d'argumenter au mérite dans la dite cause principale, croyant, pour le moment, que c'est son droit de le faire.

20 12:15 hrs p. m. ajournée à 2:00 hrs p. m.

2:00 hrs p. m. Mtre Hackett cont. son argument.

3:00 hrs p. m. Mtre Hackett a terminé son argument.

3:00 hrs p. m. Mtre O'Donnell commence son arg.

4:00 hrs p. m. ajournée au 17 crt à 10:15 a. m.

Advenant le 17 fév. /33 à 10:15 hrs a. m. Mtre O'Donnell cont. son argument.

30 12:00 hrs p. m. ajournée à 2:00 hrs p. m.

2:00 hrs p. m. Mtre O'Donnell cont. son arg.

3:15 hrs p. m. Mtre O'Donnell a terminé son arg. et Mtre Cook commence.

4:00 hrs p. m. ajournée au 20 crt. à 10:15 a. m.

40 Advenant le 20 fév. /33 à 10:15 hrs a. m. Mtre Cook cont. l'argument.

12:15 hrs p. m. ajournée à 2:30 hrs p. m.

2:30 hrs p. m. Mtre Goudrault commence l'argum. Re Francis Phillips.

Produit "Plaintiffs' answer to above described defendants Further amended plea.

4:00 hrs p. m. ajournée au 21 crt. à 10:15 hrs a. m.

Advenant le 21 fév. /33 à 10:15 hrs a. m. Mtre Goudrault cont. la rép.

P. O. C. A. V. quant a la cause portant le numéro 30804.

10 La cause portant le numéro 110169 qui n'est pas encore terminée à raison de l'appel d'un jugement interlocutoire, elle est en conséquence continuée Sine Die, les parties devant se présenter devant le tribunal, en temps utile, pour y être procédé ultérieurement suivant que de droit.

J. E. DESLAURIERS,
D. P. C. S.

20 Advenant ce treizième jour de mai 1933, les procureurs des demandeurs dans la cause portant le numéro 30804, présentent une motion aux fins de forcer les procureurs des héritiers de feu Francis Phillips, défendeurs en cette cause, de produire leur factum sous un délai de huit jours ou tout autre délai que la Cour voudra bien fixer et qu'à défaut de ce faire, dans le dit délai, ils en soient forclos, la dite motion demandant en outre que jugement soit rendu d'abord dans la présente cause, le tout frais à suivre le sort de la cause.

30 Après avoir entendu les parties, la Cour en vient à la conclusion d'accorder la première partie de la motion comme suit: Ordonne aux héritiers de la succession de feu Francis Phillips, de produire leur factum, de ce jour (13 mai 1933) au dixième jour de juin prochain inclusivement, et ce péremptoirement, se réservant le droit, si les circonstances le justifient, de statuer sur la seconde partie des conclusions de la motion à toutes fins que de droit, frais de la dite motion à suivre le sort de la cause.

J. E. DESLAURIERS,
D. P. C. S.

40 Advenant le 14 juin 1933, une motion est présentée dans la cause numéro 110169 en chambre à Montréal, devant l'Hon. Juge Mercier, de la part du bureau Bertrand, Guérin, Goudrault & Garneau, avocats de People of the State of New York, intervenant en la présente cause en vertu d'une demande devant la Cour Suprême du Canada, demande qui lui aurait été accordée à toutes fins que de droit, la dite motion demandant qu'une date soit fixée aux fins de continuer devant cette Cour, l'enquête et l'audition au mérite de la présente cause.

La motion est reçue et l'audition en est ajournée à une date ultérieure que l'Hon. Juge Mercier fixe au 26 juin courant à 10 hrs a. m., les avocats devant se présenter en chambre ce jour-là à toutes fins que de droit.

J. E. DESLAURIERS,
D. P. C. S.

10 Advenant le 26 juin 1933 à 10:00 a. m. les parties sont entendues par les procureurs respectifs sur la motion que comporte l'avis du 14 juin 1933, avis et motion dont l'audition a été ajournée à ce jour 26 juin 1933 à 10:00 hrs a. m.

Après avoir entendu les dites parties la Cour prend en délibéré la demande des Procureurs Bertrand, Guérin, Goudrault & Garneau, avocats de The People of State of New York dans la cause portant le numéro 30804.

J. E. DESLAURIERS,
D. P. C. S.

20

30

40

PART II.—EVIDENCE

**A. — PLAINTIFF'S EVIDENCE ON
ROGATORY COMMISSION.**

10

SUPERIOR COURT

DISTRICT OF MONTREAL
PROVINCE OF QUEBEC

No. 30804.

20

PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

—vs—

THE HEIRS OF THE LATE JOHN PHILLIPS,

Defendants,

&

30

THE CROWN TRUST COMPANY,

Defendants severing in their defence,

&

THE CROWN TRUST COMPANY,

Defendant en reprise d'instance.

40

40 Wall Street, New York City,
Monday, January 19th, 1931.

BEFORE:

DE COURSEY FALES, Commissioner,
(In accordance with the Commissions attached in
the above-entitled action).

APPEARANCES:

For the Plaintiff:

MAURICE GOUDRAULT, C. R., ESQ.,
(Of Bertrand, Guerin, Goudrault & Garneau),
Suite 823, Insurance Exchange Bldg., Montreal,
P. Q.

10 For Estate of John M. Phillips:

J. W. COOK, ESQ., and
HUGH O'DONNELL, ESQ.,
(Of Cook & Magee), Transportation Bldg., Montreal,
P. Q.

For Estate of Francis Phillips, severing its defense:

20 JOHN T. HACKETT, ESQ.,
(Of Foster, Place, Hackett, Mulvena, Hackett &
Foster) Notre Dame Street, Montreal, P. Q.

DeCoursey Fales was sworn as Commissioner before Mr. Southard, a Notary Public, who administered the oath.

John K. Marshall was sworn as clerk and Michael Schultz was sworn as assistant clerk, by the Commissioner.

30 IT IS HEREBY STIPULATED AND AGREED by and
between the attorneys for the parties herein that the Commis-
sioner, DeCoursey Fales, appointed by commissions issued by
order of this Court dated March 31, 1930, and January 13, 1931,
to take testimony as directed in said commission, shall receive
compensation at the rate of One Hundred Dollard (\$100) a day
for his services for each day, or part thereof, in which he conducts
proceedings pursuant to said commission; and that Mr. John K.
40 Marshall, of 150 Nassau Street, City of New York, shall act as
Clerk to take down and transcribe the testimony of witnesses, and
that he shall receive the sum of One Dollar and Twenty-five cents
(\$1.25) per page, for the original copy and twenty-five cents
(25¢) per page, per copy, for each succeeding copy, for his ser-
vices.

IT IS FURTHER STIPULATED AND AGREED that,
in the first instance with regard to witnesses called by the plain-

tiff, the charges of the Commissioner and Mr. Marshall, shall be paid by the plaintiff in this case. It is also agreed between the parties that should witnesses be called by the defendants, each defendant, or any of them, in such event each defendant will assume the charges of the Commissioner and of Mr. Marshall, with regard to witnesses called by such defendant.

10 IT IS AGREED that said charges above outlined will form part of the taxable costs of the case, and will be chargeable against the losing party or parties, according to the judgment to be rendered in the final issue.

The parties herein consent that Messrs. Moore, Unterweiser, Gehrig, Lewis and Wicklow, be present at the hearings.

20 THE COMMISSIONER: Gentlemen, I assume you have no objection to Mr. Marshall's assistant, Mr. Schultz, staying here during the proceedings, in order that he may familiarize himself with the case, as he is to assist Mr. Marshall later.

30 MR. GOUDRAULT: Mr. Commissioner, in the motion that we made and which is in the record, it appears that plaintiffs stated that the said commission which is now opening, should be returned within nine months. In the judgment appointing you as Commissioner, the said judgment does not stipulate the time of the return of the commission. I would not like it to appear that we are proceeding now to the execution of this Commission after the time appearing in the official court record for its return and production. I do wish, therefore, that a stipulation be made at this moment.

40 IT IS STIPULATED AND AGREED by the parties hereto, by their respective attorneys, to extend the date on which the commission and the supplementary commission may be returned, in accordance with the judgment to be rendered by a competent court in the District of Montreal.

IT IS STIPULATED AND AGREED that the parties consent that the depositions of the witnesses to be heard by the Commissioner shall avail as testimony in the case, although not signed by the respective witnesses, it being understood that the

depositions shall be certified by the Clerk or reporter, under his oath of office.

10 Depositions of witnesses, sworn and examined on the 19th day of January in the year of Our Lord One thousand nine hundred and thirty-one, at eleven o'clock in the office of DeCoursey Fales, 40 Wall Street, in the County of New York, State of New York, United States of America, by virtue of this commission issued out of His Majesty's said Superior Court, to us DeCoursey Fales, a lawyer, of 40 Wall Street, City and State of New York, directed for the examination of witnesses in a cause therein pending between The People of the State of New York, plaintiff and Heirs of the late John M. Phillips, et al., Defendants: — I, the Commissioner acting under the said commission, and also the clerk by me employed in taking, writing down, transcribing and engrossing the said depositions, having first duly taken the oaths annexed to the said commission, according to the tenor
20 and effect thereof and as thereby directed heard the following depositions:

DEPOSITION OF S. HOWARD COHEN.

30 S. HOWARD COHEN, of 23 West 73rd Street, New York City, in the County of New York, an attorney and counsellor-at-law, a witness produced, sworn and examined on the part and behalf of the People of the State of New York, the plaintiff, deposeth and saith as follows:

BY THE COMMISSIONER:

40 Q.—Mr. Cohen, you are about to be examined in the matter of the case of the Superior Court, District of Montreal, Province of Quebec; the People of the State of New York, plaintiff, against The Heirs of the Late John Phillips, defendants; and The Crown Trust Company, Defendants severing in their defence; and The Crown Trust Company, Defendant en reprise d'instance: Do you swear you will true answer make to all such questions as shall be asked by you, without favor, and speak the whole truth and nothing but the truth, so help you God? A.—I affirm.

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—Mr. Cohen, will you tell us your age and occupation?
A.—I am 49 years of age, and I am an attorney and counsellor-

S. Howard Cohen for plaintiff (direct examination).

at-law, and chief clerk of the Board of Elections of the City of New York since March 4, 1914.

Q.—Now, Mr. Cohen, in your capacity of Chief Clerk of the Board of Elections, you knew Mr. Maurice E. Connolly?

10 A.—Yes. I have examined the records of the Board of Elections and I find that at the general elections held in the years 1913, 1917, 1921 and 1925, Maurice E. Connolly was elected Borough President of the Borough of Queens. Under the terms of the Charter, municipal elections are held in this City every four years.

Q.—Is it of your knowledge that Maurice E. Connolly entered into his office and performed his duties as President of the Borough of Queens? A.—I knew him as President of the Borough of Queens, and I have seen him as Borough President sitting on the Board of Estimate and Apportionment in New York; I have also seen him at his residence and at his office in the Borough Hall.

20 Q.—In his time of office? A.—During his period of office, yes.

Q.—I understand that the Borough of Queens is in Queens County, and forms part of the City of New York? A.—The Borough of Queens is entirely in the County of Queens, and is one of the boroughs constituting the City of New York, one of the five boroughs.

Q.—Do you know if Mr. Connolly took the oath of office? A.—I do not. The Charter requires that the oath be filed with the City Clerk.

30

IT IS STIPULATED AND ADMITTED that Mr. Connolly acted as President of the Borough of Queens, and that he did take his oath upon his election, each time.

MR. GOUDRAULT: There are no more questions of this witness, Mr. Commissioner.

(No cross-examination).

40

William H. Bertram for plaintiff (direct examination).

DEPOSITION OF WILLAM H. BERTRAM.

WILLIAM H. BERTRAM, 45 years of age, residence 223-20 106th Avenue, Queens Village, Long Island, in the County of Queens, designing engineer, a witness produced, sworn and examined on the part and behalf of the People of the State of New York, the plaintiff, deposeeth and saith as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—Mr. Bertram, are you still in the employ of the City of New York? A.—I am.

Q.—How long have you been in the employ of the City of New York, altogether? A.—Since 1905, 25 years.

Q.—What is your actual position in the City of New York? A.—Now I am employed by the Borough President of Queens as Designing Engineer, with the Sewer Department.

Q.—Do I understand that you describe yourself as being the head of the Designing Department of the Sewer Department of the Borough of Queens? A.—Yes; that is on the sewer construction.

Q.—How long have you held that position? A.—Since Mr. Seeley left, about two years.

Q.—You do not recollect the exact date of your appointment? The month? A.—No; it was April — what year it was I don't know.

Q.—Was it about 1928? A.—April, 1928, I think.

Q.—Previous to that appointment, what was your connection with Mr. Seeley, whose place you took? A.—I was assistant to him.

Q.—And what was the denomination or description of Mr. Seeley's position? A.—Just what mine is now.

Q.—Head of the Designing Department, of the Department of Sewers? A.—Yes, sir.

Q.—Are you called the Assistant Engineer? A.—My title is Assistant Engineer.

Q.—The same as Mr. Seeley's title was? A.—Exactly.

Q.—Assistant engineer to whom? A.—That is a civil service title.

Q.—Who was the immediate superior of the assistant Engineer? A.—The Engineer of Sewers.

Q.—And who is he? A.—Mr. J. Franklin Perrine.

Q.—Is he the same engineer as at the time of the occupation of the position by Mr. Seeley? A.—He was not chief

William H. Bertram for plaintiff (direct examination).

engineer, James Rice was Chief engineer, on highways, sewers, etc.

Q.—Who was Mr. Seeley's immediate superior? A.—Mr. Perrine.

Q.—How is it that you came to have Mr. Seeley's position? A.—How did I get his position?

Q.—Yes. A.—Why, he was dismissed from the service.

10 Q.—I suppose, Mr. Bertram, you have a thorough knowledge of the sewage system of the Borough of Queens? A.—I think so, yes.

Q.—Do you know such a thing as the Rockaway and the Jamaica systems? A.—Yes, sir.

Q.—Could you tell us, in as few words as possible, what is understood by the Rockaway System? A.—The Rockaway System was a system of sanitary sewers; sewers to take the house water, from the toilets, baths, and so on, and not the water that falls on the streets, rain water, in other words; it separates the two flows. Sanitary sewers were built in Rock-
20 away.

Q.—And the same is true also of Jamaica? A.—The same is true for Jamaica, but they have built some storm water sewers there.

Q.—That was for the sanitary system of sewage in Rockaway? A.—Yes, sir.

Q.—What was the Jamaica system as compared with the Rockaway system? A.—Practically the same thing, except
30 that in Rockaway we built no storm water sewers; while in Jamaica we did build some. The Jamaica system was therefore further advanced, in other words, than the Rockaways.

Q.—Otherwise there is no special difference between the two systems, Rockaway and Jamaica? A.—No.

Q.—What gives the name to those systems? A.—Simply the location, one is in Rockaway, and the other in Jamaica.

Q.—Now, Mr. Bertram, it would appear, and is it of your knowledge that both the Rockaway and Jamaica divisions are in the County of Queens? A.—Yes, sir: as far as we build
40 sewers in the City of New York. Part of Rockaway and Far Rockaway is in Nassau County.

Q.—What is the meaning of Rockaway and Jamaica, are they villages and towns? A.—They are all part of the City of New York now, parts of the Borough of Queens, subdivisions. Rockaway was an incorporated village at one time; it is not part of the City of New York.

William H. Bertram for plaintiff (direct examination).

BY MR. HACKETT:

Q.—Mr. Bertram, Jamaica is a certain well defined geographical area within the Borough of Queens? A.—That is correct.

Q.—And Rockaway, likewise? A.—Yes.

10 Q.—Are they contiguous? A.—No, Jamaica Bay is in between Long Island and the Rockaway Peninsula, separates Jamaica Bay from the Atlantic Ocean. All in the Borough of Queens.

Q.—Both in Queens? A.—Yes.

BY MR. GOUDRAULT:

20 Q.—We are going to produce contracts and documents in which reference is made to the Type A system, and Type B system. Are you in position to explain in a few words what is meant by Type A system? A.—I think I can straighten that all out. Type A was a method of construction, and Type B was a method of construction.

Q.—What was Type A? A.—A model of construction, they set up the forms in the trench and poured the concrete in the form. Type B was a pipe already cast as a pipe, and lowered as a pipe into the sewer. In one case, they built the sewer in the trench; in the other case they built it on the ground and lowered it into the trench.

30 Q.—In the course of your work, Mr. Bertram, you have seen and examined both systems, I understand? A.—I have seen both systems.

Q.—You have given us, Mr. Bertram, what is meant by the Type A system? A.—Yes.

Q.—For the construction of sewers? A.—Yes, sir.

Q.—And also what is meant by Type B? A.—Yes, sir.

Q.—And furthermore, you have told us that in the Type B system they use, there, precast pipes only? A.—Precast pipes, the B type.

40 Q.—And what do they use instead of precast pipes in the Type A system? A.—I thought I explained that; we put the concrete in the trench and pour the concrete around it; a model form in the shape of pipe, and we pour the concrete around it.

Q.—And that is to take the place of the precast pipe used in 1913? A.—They use Type A and Type B in both systems of sewage. They use Type A or Type B in the sanitary system.

Q.—Do you know the size of the precast pipes that were used from 1917 to 1927? A.—The smallest precast concrete

William H. Bertram for plaintiff (direct examination).

pipe we used was 24 inches, and we did use some as large as 8 feet in diameter.

10 Q.—How big are the monolithic sewers? A.—The smallest monolithic concrete sewer is 27 inches, and that went to any size at all, we built them 14 feet wide and 9 feet high. I do not know what the biggest were that we did use, but I remember 14 feet by 9 feet in a storm sewer in Jamaica. I do not know what sizes the monolithic can be built — simply if you have the streets wide enough.

Q.—Mr. Bertram, I understand that there were small pipes used connecting the main sewer system to the house, and then they were using what type of pipes for that purpose? A.—6 inch vitrified pipe, or a 6 inch cement pipe.

Q.—Would you explain the difference in the use of the two? A.—They are both used for the same purpose, to connect the house with the sewer pipe, in other words.

20 Q.—Would you explain the character of the two, first, of the vitrified type of pipe? A.—Well, a vitrified pipe is a hard clay with a soft glaze. The other is simply the cement pipe cast with a form, 6 inches in diameter.

Q.—Can either be used? A.—Either could be used, and still are being used.

Q.—Was the vitrified pipe in position with the re-enforced pipe? A.—No, except with the one size, 24 inches, that we used.

Q.—Both of these kinds of sewers are to be found in Queens Borough? A.—Yes.

30 Q.—The smallest precast was how many inches? A.—24 inches.

Q.—And the largest vitrified was — A.—24 inches.

Q.—I suppose the vitrified pipe and the cement pipe were made at the plant and then delivered? A.—The vitrified pipe would have to be; but the precast —

Q.—But we are speaking of the small cement pipes. A. That can be made alongside the work, just as rapidly, just to mix the ingredients.

40 Q.—Is it of your knowledge that it was, as a matter of fact, made on the grounds, or near the place where the sewers were being constructed? A.—I know that the larger pipes were but I won't say as to the 24-inch pipes. I saw the bigger pipes being made, 3-feet, 4-feet, 5-feet.

Q.—Are you speaking, when make that statement, of the concrete re-enforced pipe? A.—The precast pipe.

William H. Bertram for plaintiff (direct examination).

Q.—You know what we mean, Mr. Bertram, the small, machine made cement pipes? A.—The machine made has to be made at the factory.

Q.—Just the same as the vitrified? A.—The same as the vitrified, yes.

10 Q.—Mr. Bertram, do you know when the cement manufactured pipe was first used in Queens Borough? A.—You mean the precast pipe, or the small sized cement?

Q.—Exactly; the small sized cement pipe. A.—That was not used until quite a while after the precast. Just what date it came in, I don't know —

Q.—The year? A.—About 1925, I should say. I don't know. I would have to hunt the records to find that.

Q.—Then, until that manufactured cement pipe came into use, I understand it was a vitrified pipe? A.—Entirely.

Q.—That was entirely used? A.—Entirely, yes.

20 Q.—I suppose you can tell us the year, the exact year in which this manufactured cement pipe was used instead of the vitrified? A.—I can from the records, yes. We were not so much concerned with them. Our design called for a size, and it was up to the Chief Engineer to accept.

Q.—Did you use the manufactured cement pipe only of the precast type? A.—You are talking about pipe now, small sized cement pipe?

30 Q.—Exactly. Did you use them only with the precast system, the Type B system? A.—That is the way the specifications were made up. Specifications for Type B included precast concrete pipe, and the cement pipe, the Type A, included monolithic and vitrified.

MR. HACKETT: Did you say precast and machine made?

40 THE WITNESS: Precast, and that small size cement pipe. That was all machine made. That was made alongside the trench, hand cast. But the smaller sizes were made and brought in to the trench.

MR. GOUDRAULT: I will make this clear by another question, Mr. Hackett.

Q.—If I understand well, then, Mr. Bertram, the specifications for the construction of sewers in the Borough of Queens to your knowledge, from a certain year, called for the use of the small cement manufactured pipe with the precast pipes or

William H. Bertram for plaintiff (direct examination).

system, Type B, and the said specifications called for the use of vitrified pipe whenever the monolithic system or Type A system was used. A.—That is correct.

Q.—That is correct. A.—They were in competition. On any job we could have used either type. Always in competition.

Q.—But then the contractors could not use the small manufactured cement pipe with the monolithic, and they could not use, either, the vitrified pipe with the precast, according to specifications. A.—The specifications were so drawn that they could not use those combinations.

Q.—All right. Well, now, in your own experience did that make any difference? Could the contractors have used either the small cement manufactured pipe or the vitrified pipe applied either to the monolithic pipes or the precast pipes? A. They could, yes.

20 MR. HACKETT: I object to the question as being illegal and irrelevant.

THE COMMISSIONER: I will take it subject to objection.

Q.—During the period of time which goes from January, 1917 to April, 1928, Mr. Bertram, I understand you were closely connected with the Sewer Department of the Borough of Queens? A.—Yes, I have been there since 1914.

30 Q.—And you pretty well know what was being, — the sewers that were being constructed during that period from 1917 to 1928? A.—Yes.

Q.—During that period of time, from 1917 to 1928, I understand that precast pipe sewers became in use in the Borough of Queens? A.—They did, yes.

Q.—When first? A.—I don't remember that. I think it was 1916 or 1917.

Q.—To the best of your recollection it was 1916 or 1917? A.—I remember the pipe being substituted in a contract that was already let. I remember that.

40 Q.—Do you know what that contract was? A.—In Richmond Hill, I know. Just exactly what street, I don't know.

Q.—If this contract was shown to you, would you recollect when A.—I think I would, yes.

Q.—Now, before the precast pipe sewers were introduced in Queens Borough in 1916 or 1917, as you state, what kind of sewers were being built? What kind of pipe, or system or type?

William H. Bertram for plaintiff (direct examination).

A.—We built a combined system, a storm system and sanitary system.

Q.—Just a minute. You stated at the very beginning of your examination that the Type B was a precast pipe. A.—That is correct.

Q.—And you further stated that the monolithic system could be known also and described also as the Type A? A.—Yes.

10 X Q.—Well, my question to you now is, was that monolithic system or Type A being used in the construction of sewers in the Borough of Queens prior to the introduction of the precast system? A.—Yes. That and vitrified pipe, yes.

Q.—Do you recollect the jobs in which the precast pipe was first specified in Queens Borough? A.—No. I wouldn't be able to remember the jobs.

Q.—A minute ago you remembered the year, stating that it was 1916 or 1917. A.—Well, that is about the time. I may be off by a year, but it was about that time.

20 Q.—Now, will you take communication of my original exhibit, the property of the City of New York, Department of Finance, Office of the Comptroller, which purports to be a contract for the construction of a sewer on Collins Avenue, which appears to be approved as of the 15th of February, 1917; the said contract containing, on a certain page marked 1, Notice to Bidders where bidders are invited to tender bids both on monolithic and on precast pipes; and state if it is to your knowledge, Mr. Bertram, that this would be the first time that precast
30 pipe or Type B system for sewers was being introduced in specifications and plans for the construction of sewers in the Borough of Queens? A.—I wouldn't want to say that was the first time it was specified.

Q.—You wouldn't want to say that was the first time it was specified? A.—No, I couldn't say that.

MR. HACKETT: Who was the contractor in this case?

THE WITNESS: The name is there. Joseph L. Segretto
40 is the name.

MR. GOUDRAULT: It was awarded to Segretto.

Q.—Now, will you take communication of an original contract, the property of the City of New York, which purports to be a contract for the construction of a sewer on Hull Avenue, in the Borough of Queens, together with a notice to bidders, in which notice appears that bidders are invited to tender bids

William H. Bertram for plaintiff (direct examination).

on monolithic and precast pipes, or system *B*; system *A* and system *B*. A.—Yes.

Q.—And will you state if you are in a position to tell us whether or not in this particular instance it was the first, or one of the first time that the precast pipe was introduced? A.—That was an early one, but I wouldn't want to say it was the first, second or third.

10

MR. HACKETT: What was the date of that, Mr. Goudrault? (Mr. Goudrault hands exhibit to counsel).

MR. HACKETT: No. 47339, April 23, 1917. That also says awarded to Joseph L. Segretto.

MR. GOUDRAULT: Joseph L. Segretto & Co.

Q.—Well, now, Mr. Bertram, I want you to look again at this —

20

MR. COOK: What was Mr. Bertram's answer to that question? It was one of the early contracts?

MR. GOUDRAULT: Yes. He answered that he did not think it would be the first. He said it was among the early ones where precast pipe was mentioned, but he could not say whether it was the first or not.

Q.—Have you ever seen these before, Mr. Bertram, these two original contracts? A.—It is in the books. I didn't see this part of the contract, these things.

30

Q.—That is just what I refer to, the red part of it. I asked you and I showed you the very spot where I wanted you to refresh your memory. A.—Yes, I have seen that.

Q.—You have seen this one, this exhibit? A.—Yes.

Q.—Have you seen this other exhibit, this contract bearing No. 47339, and this contract bearing No. 47340? You have seen those before? A.—I have seen those red pages. And these others papers in connection with that, I don't remember seeing this (indicating).

40

Q.—Wait a minute. I don't want you to state whether or not you have seen all the book, but I have shown to you the very pages which are here, in both of these original contracts, and, I want you to state if you have seen these before, at the pages where I show you. A.—Yes.

MR. HACKETT: How do you identify the pages which you have shown him?

William H. Bertram for plaintiff (direct examination).

MR. GOUDRAULT: Is that a question to me?

MR. HACKETT: To the witness.

MR. COOK: We have not seen those pages.

MR. GOUDRAULT: All right.

10 THE COMMISSIONER: I think counsel would like to see the two specified pages.

(Counsel examines pages referred to).

Q.—Do you recollect on what occasion you did see the pages that I have shown to you in these two original contracts?

A.—Well, these books are made up in groups of six.

20 Q.—No. Just answer my question, Mr. Bertram. Do you remember the occasion in which you have seen the parts of these contracts that I have shown to you, since you stated you saw them? A.—Well, it was my duty to check the contracts, check the preparation of these books. Whether I saw this particular one, or one of the other five in the group, that is a thing that I don't know. But they were all alike when they left my hands.

30 Q.—Were you ever called upon to explain if the Collins Avenue contract and the Hull Avenue contract, respectively bearing numbers 47,340 and 47,339, were the first or among the first contracts in which the precast pipe was used in the Borough of Queens? A.—I don't remember being asked whether those were the first, or not.

Q.—You don't remember? A.—No.

MR. O'DONNELL: You don't know anything about those particular contracts, as a matter of fact.

THE WITNESS: I know that they were among the early contracts that included the Type B sewer.

40 THE COMMISSIONER: These are not put in as evidence, as exhibits?

MR. GOUDRAULT: Not yet, no.

Q.—Do you personally know, Mr. Bertram, how that precast pipe system was put in first, in the specifications for the construction of sewers? A.—I don't know. Seeley told me that —

William H. Bertram for plaintiff (direct examination).

MR. O'DONNELL: I object to what Seeley told him.

Q.—Otherwise, you don't know? A.—My superior told me, —

MR. O'DONNELL: I object to what Seeley told you. You don't know personally?

10 THE WITNESS: No.

Q.—Oh, no. Did you have anything to do with the preparation of the specifications for contracts? A.—I checked them after they were prepared.

MR. O'DONNELL: That is all you did?

THE WITNESS: That is all I did with them.

20 Q.—And did you notice at one time that the Type B system, which is the precast pipe, was being introduced in the specifications? A.—Yes. I noted that.

Q.—You have noticed that in the contracts? A.—When it began I knew that was in there, yes.

Q.—In going back to your records, Mr. Bertram, would you be in a position to state in what contract for the Borough of Queens, the precast pipe was first used? A.—I could find the records, yes.

30 Q.—And you could state when for the first time the precast pipe was mentioned in the specifications? A.—I think so, yes.

Q.—All right; will you tell us, then? A.—Yes.

Q.—These two documents, Mr. Bertram, are the contracts of the City of New York with the contractors, aren't they? A. They are.

Q.—Will you look at them and state whether you are sure or not?

MR. O'DONNELL: They speak for themselves.

40 THE WITNESS: They speak for themselves.

MR. COOK: Those are the ones you referred to before. aren't they?

MR. GOUDRAULT: Exactly.

MR. COOK: Yes.

William H. Bertram for plaintiff (direct examination).

(Witness examines documents).

THE WITNESS: That is the contract for the Hull Avenue job. (Indicating).

10 Q.—What is the answer? A.—That is the contract for the Hull Avenue job, and this, I believe, is the contract for the Collins Avenue job.

Q.—For the Collins Avenue job? A.—Yes.

Q.—Do you know the signature of Maurice E. Connolly? A.—I think I do.

Q.—Do you or do you not know? A.—I have seen it enough times, yes.

Q.—You have seen it often? A.—Very often.

Q.—Then you do know? A.—Yes.

(Recess from 1.00 to 2.00 p. m.)

20

AFTER RECESS. 2.00 p. m.

(Mr. Thomas F. Purcell appeared as a witness called on behalf of the plaintiff, and was directed by the Commissioner to appear on Wednesday, January 21, 1931, at 11 a. m.)

30

WILLIAM H. BERTRAM, resumed and further testified:

BY MR. GOUDRAULT (Continuing):

Q.—Mr. Bertram, do you recollect preparing a tabulation of the awards of all contracts for sewer constructions in the Borough of Queens, from a certain date to a certain date? A.—I have prepared any number of such tabulations.

Q.—You have? A.—Yes.

40 Q.—Will you take communication of this tabulation, which is a photostatic copy, and tell us if this is the document you referred to in your answer?

MR. HACKETT: Well, in so far as my client is concerned, Mr. Commissioner, I feel that I should make an objection to the introduction of this document as entirely irrelevant; for the moment, anyway.

THE COMMISSIONER: You are offering this in evidence now?

William H. Bertram for plaintiff (direct examination).

MR. GOUDRAULT: Yes.

MR. COOK: Are you offering it in evidence?

MR. GOUDRAULT: I am.

10 MR. COOK: I object, on behalf of the defendant, to its production, as utterly irrelevant. The plaintiff's action is based on certain specific claims, and we have here nothing whatever to connect this document with the claims that are being advanced. It may be right, or it may not; but there is nothing at the moment to show. I think also its production is premature, Mr. Commissioner.

MR. GOUDRAULT: I understand the answer will be taken under the objections of Mr. Hackett and Mr. Cook.

20 THE COMMISSIONER: I will take it, subject to a later ruling.

Q.—What is your answer?

MR. COOK: You are producing that as an exhibit?

MR. GOUDRAULT: I will, in a minute.

Q.—What is your answer? A.—Yes.

Q.—You prepared it? A.—Yes.

30 THE COMMISSIONER: This is Plaintiff's Exhibit No. 1.

MR. GOUDRAULT: I produce this tabulation as Exhibit No. C-1.

40 MR. COOK: I object again, Mr. Commissioner. There may be something in this which is relevant to my friend's case, but until he indicates what it is, it is impossible for us to let this document go into the record without objection. I don't think it is proper. Here is a document with dozens and dozens of entries on it that have apparently no connection whatever with this case, so much so that until we know what my friend wants, we can not even frame a proper objection to it.

MR. HACKETT: I would like to associate myself with the remarks of Mr. Cook, and to ask that the benefit of the objection formulated by him enure to my client.

THE COMMISSIONER: The Commissioner will take the exhibit, subject to a later ruling.

William H. Bertram for plaintiff (direct examination).

MR. HACKETT: Yes.

MR. GOUDRAULT: A later ruling on your part?

THE COMMISSIONER: On my part, yes.

MR. HACKETT: Exhibit C-1, Mr. Goudrault?

10 MR. GOUDRAULT: C-1.

(The said document was thereupon received in evidence and marked Plaintiff's Exhibit C-1 of January 19, 1931).

Q.—This tabulation, I understand, was prepared, as you stated, by you and under your supervision? A.—Yes, sir.

Q.—Was this tabulation prepared from the original records that are at the City of New York? A.—They were prepared from contract books.

20 Q.—Contract books? A.—Yes.

MR. COOK: I renew my objection, on the ground that it is irrelevant.

THE COMMISSIONER: I will take it.

Q.—I understand that this tabulation contains, —

MR. HACKETT: Mr. Goudrault, would you mind modifying the form of the question? Just ask the witness what it contains.

30 MR. GOUDRAULT: All right.

MR. HACKETT: If you feel that the document does not speak for itself.

Q.—Will you tell us, in as few words as possible, what the exhibit C-1 contains? First of all, from what year to what year does it run? A.—The first date in here is September 23, '07.

40 Q.—1907? A.—1907.

Q.—To? A.—To November 28th, 1927.

Q.—To November 28th, 1927. A.—Yes.

MR. GOUDRAULT: Well, now I offer, as evidence from that Exhibit C-1, that portion of the tabulation which runs from the 15th of May, 1917, to 2nd of April, 1928.

MR. O'DONNELL: Subject to the same objection.

William H. Bertram for plaintiff (direct examination).

MR. GOUDRAULT: Sure.

MR. HACKETT: All subject to a later ruling.

THE COMMISSIONER: Will you describe it, Mr. Bertram, so that we will know what it is about?

MR. GOUDRAULT: Yes.

10

THE WITNESS: This is a record of sewer contracts and the dates the bids were opened, the date the contract was signed, date work started and completed, and time allowed, the contractor's name, and field engineer, the estimates, the engineer's estimates, the contractor's low bid, the final cost, type of the sewer, date of the final authorization by the Board of Estimate, and the number of bidders, and the segregation as to Type A or B. And then there is a percentage of the high and low bidders, percentage of the bids, the final estimate by the engineers. And then there is the highest bid. Almost a complete record.

20

MR. HACKETT: Does it show all the bids?

THE WITNESS: No. It gives the lowest bidder and the highest bid; the name of the successful contractor.

MR. GEHRIG: May we see it just a moment; that is, if you are through with it?

MR. GOUDRAULT: Yes. I want to show you where it starts.

30

MR. GEHRIG: I just want to look at it; that is all.

MR. GOUDRAULT: All right.

Q.—I understood you to say that that tabulation was made under your supervision from the original records.

MR. COOK: One moment, please, Mr. Goudrault. Could we look at this for a minute, if you please?

40

MR. GOUDRAULT: Sure.

(Counsel examines exhibit).

MR. HACKETT: With further reference to this document styled C-1, I make a further objection, that it is not the best evidence.

William H. Bertram for plaintiff (direct examination).

MR. O'DONNELL: I ask that that objection avail to the other defendants.

THE COMMISSIONER: Yes, that objection avails to the other defendant.

10 Q.—You still have the original of this tabulation, Mr. Bertram? A.—I don't believe I have it.

Q.—Who would have it? A.—That would be a hard question to answer. Mr. Benjamin Weiss was getting a lot of that data together, and I got it ready.

Q.—Do you know the department which would be in possession of the original? A.—I couldn't say where the originals were now.

20 Q.—I am asking if you know personally who would have the original of this tabulation from which this photostatic copy was made? A.—I am trying to figure out who would. I don't know anybody but Weiss who would be able to tell you where to find it.

Q.—Where is Weiss? A.—He is down in the Chief Engineer's office.

Q.—Of the Borough of Queens? A.—Yes.

MR. GOUDRAULT: I offer in evidence that part of Exhibit C-1 that refers to contracts awarded after the first of January, 1917, to the 2nd of April, 1928.

30 MR. COOK: I renew my objection to the production of this document on the grounds previously stated; also on the ground that it is not the best evidence of the existence or execution of any of the contracts referred to in it.

THE COMMISSIONER: Is that an exact copy of what you got ready?

THE WITNESS: It is a photostatic copy, as far as I can see.

40 Q.—It was made by your own handwriting? A.—Oh, no, I supervised the preparation of it. That is a lot of work. That took two men to do. It had to be done quickly.

Q.—And it was prepared by those two men under your supervision, and the data necessary for the preparation of this tabulation was taken from what records? A.—From the contract books.

William H. Bertram for plaintiff (direct examination).

Q.—The contract books? A.—And when the contract book failed to give us the information, we dug it out of the files.

MR. HACKETT: You did not, of course, verify the accuracy of each entry?

10 THE WITNESS: I did not, no. I did not have time to do that.

Q.—It has been made from the official records of the Borough of Queens, hasn't it? A.—That is correct, yes.

Q.—And it was made under your supervision, from the official records? A.—Yes.

Q.—You have explained to us, Mr. Bertram, what was understood by the Jamaica and the Rockaway systems, previously? A.—Yes.

20 Q.—Do you know in what year the Rockaway and Jamaica systems started? A.—You mean, —

Q.—I mean the construction. A.—I am not dead certain of the date when the construction began. I could tell you quickly if I looked it up on the sheet.

Q.—All right, we will let you look at it. By looking at this Exhibit C-1, could you tell us the approximate date on which the work began for the Jamaica and Rockaway system? A.—Bids were opened on February 13, 1925, for the first Jamaica system job.

30 Q.—What date? A.—February 13, 1925.

Q.—That is for the Jamaica system? A.—Yes, sir.

Q.—And the Rockaway? A.—For the Rockaway system, on August 18, 1924.

Q.—August what date? A.—18th, bids were opened. Work started, — didn't start until May 4, 1925.

MR. HACHETT: What date was that?

THE WITNESS: May 4, 1925, work started.

MR. COOK: That was on both?

40 THE WITNESS: That is the Rockaway system. The date work started on the other one was April 7, 1925.

Q.—I understand, Mr. Bertram, that in the Rockaway system there was a disposal plant of 69 feet that was built, wasn't there? A.—A disposal plant?

William H. Bertram for plaintiff (direct examination).

Q.—Of 96 feet. A.—You can't describe it by length. It is a building. It was built at Beach Channel Drive and Hammel's Boulevard.

Q.—Now, do you know how many monolithic sewers have been built in the Jamaica system and in the Rockaway system, between the sizes of two feet and eight feet? A.—How many sewers?

10 Q.—How many monolithic sewers, or Type A sewers, have been built in the Jamaica system and in the Rockaway system?

MR. COOK: Mr. Goudrault, limit your question. Between the period covered by the action.

MR. GOUDRAULT: No. That is why I asked him the previous question. He said 1924 in the Rockaway system, and 1925 in the Jamaica system.

20 MR. COOK: I see.

Q.—Since those dates, will you tell us how many monolithic sewers have been built? A.—You mean how many contracts?

Q.—Yes, how many contracts for monolithic sewers have been granted in the Jamaica system and in the Rockaway system? A.—Well, there was one in the Rockaway system.

Q.—And which one is that? A.—At Hammel's Boulevard; Beach Channel Drive to Hammel's Boulevard.

30 Q.—To refresh your recollection as to date, will you refresh your recollection from the tabulation that you have prepared, and identify and see if you can state on what date that Hammel's Boulevard contract was awarded? A.—It was the Hammel's Boulevard job, from Beach Channel Drive to Amstel Avenue, and so forth.

Q.—Will you tell us from your tabulation, the date of the award of the contract, and the completion, and the name of the contractor? A.—Bids were opened on the 12th of August, 1924; contract was signed on September 12, 1924, and the work was started on September 30, 1924. Work was finished on May 1, 1926. Low bidder was Patrick McGovern, Inc.

40 Q.—And who got the contract? A.—That is the contractor, Patrick McGovern, Inc.

Q.—Can you tell me of any other monolithic sewer that was built in either the Jamaica or the Rockaway System, where it was in competition with precast pipe, and where the diameters were between two feet and eight feet? A.—I don't know of

William H. Bertram for plaintiff (direct examination).

any other monolithic sewer that was built with diameter between 2 and 8 feet.

MR. HACKETT: Is it a fact, Mr. Bertram, that you are testifying from the document filed as Exhibit C-1, and that you would be unable to give these answers if you had not that document?

10 THE WITNESS: I wouldn't be able to give you the dates.

MR. HACKETT: Nor the facts?

THE WITNESS: I could tell you about the Rockaway sewer, of McGovern's sewer down there. I know about that. And I know of another monolithic sewer, but the size was bigger than that.

20 Q. Did you have anything to do with the bids for those?
A.—I took the tabulations when bids were opened. The Commissioner of Public Works usually read the bids off and we tabulated them as they were read.

Q.—And that was part of your work? A.—Yes.

Q.—Now, do you remember the occasion of Patrick McGovern getting the contract for Hammel's Boulevard? A.—I remember figuring up his bid and finding him the low bidder, yes.

30 Q.—Do you know if there were any other bidders for that sewer? A.—There were other bidders, yes.

Q.—Did they bid on precast pipe sewer? A.—There were some bids on precast.

MR. COOK: Mr. Commissioner, I understood — I hope that all this evidence is under reservation of our objections.

THE COMMISSIONER: Oh, certainly. Make what reservations you want.

40 MR. COOK: We object to all this evidence as illegal. Mr. Goudrault, you understand that?

MR. GOUDRAULT: Why, certainly.

MR. COOK: No acquiescence as to the legality.

THE COMMISSIONER: You mean in reference to this exhibit?

William H. Bertram for plaintiff (direct examination).

MR. COOK: Yes.

MR. HACKETT: And the testimony of the witness based upon it.

MR. COOK: It is understood that all our objections apply to all the testimony of this witness on this line.

10 MR. GOUDRAULT: Yes.

THE COMMISSIONER: In reference to Exhibit C-1.

MR. COOK: In reference to Exhibit C-1.

Q.—Did I understand you to say, Mr. Bertram, that your work in the Sewer Department of the Borough of Queens, obliged you to take communication of these bids, plans and specifications of contracts for sewers? A.—I don't know just what you mean by that.

20 Q.—Well, I will put the question otherwise. It is not clear enough. On this Exhibit C-1, there is, as you stated, a list of contracts that were awarded for the construction of sewers in the Borough of Queens, which run from, say, January 1, 1917, to the 2nd of April, 1928? A.—Yes.

Q.—Well, those contracts that were awarded, I understand were awarded after bids had been received by the Sewer Department? A.—By the Borough President. The Borough President received the bids, not the Sewer Department.

30 Q.—But in your capacity as assistant to Mr. Seeley, and in any other capacity as a member of the staff of the Sewer Department, did you have anything to do with the controlling and verification of those bids and contracts? A.—Well, we figured up the prices bid, to see who was the low bidder, and submitted that to the chief, the chief engineer.

Q.—And I understand that was part of your work? A. That was part of my work.

Q.—Do you recollect personally conducting that work? A.—Yes.

40 Q.—On contracts which are here enumerated from January 1, 1917, to the second day of April, 1928? A.—Yes.

Q.—I further understand that your work brought you in immediate contact with the original bids that were filed by contractors? A.—Yes. I saw them all.

Q.—You saw them all? A.—Yes.

Q.—And after you had this tabulation, C-1, prepared by employees of the Department under your supervision, did you

William H. Bertram for plaintiff (direct examination).

satisfy yourself that it was in accordance with the documents with which they had to make up this tabulation under your supervision? A.—Yes, I had the men check it.

MR. COOK: I object to that.

MR. HACKETT: The witness has already said, Mr. Commissioner, that he did not verify personally.

THE COMMISSIONER: He said this was made under his supervision.

MR. HACKETT: But that he did not check personally.

MR. GOUDRAULT: He certainly did not let the document go out without being sure that it was not a fake document.

MR. O'DONNELL: Don't tell him what you want him to state.

MR. HACKETT: Mr. Goudrault, we will have to make the witness's statement

MR. GOUDRAULT: Well, he can qualify it and make it a little clearer.

MR. HACKETT: You have stated, Mr. Bertram, that you gave instructions to men working under you to prepare Exhibit C-1.

THE WITNESS: Yes.

MR. HACKETT: And that you did not check the accuracy with which they did their work.

THE WITNESS: I personally did not do it, no. But I gave one team of men information to go ahead with it, and I would take that when they were through and give it to another team, and one team checked the other. So that it is reasonably correct.

Q.—Is it to your knowledge, Mr. Bertram, that these men working under your supervision, did prepare their work by checking the data and the details necessary for the preparation from the records and bids and specifications that were in the Sewer Department where they were working? A.—From the available records, yes.

MR. COOK: Same objection.

William H. Bertram for plaintiff (direct examination).

MR. O'DONNELL: Same objection.

Q.—Do you know personally, Mr. Bertram, if after McGovern got the contract for the Hammel's Boulevard sewer, if there were any changes made in the Sewer Department of the Borough of Queens, in the specifications for monolithic sewers?
A.—Yes. The specifications were made quite stringent.

10 Q.—What is that? A.—They were made very much stiffer. They were stiffened up.

Q.—Who made those, — who suggested or made or instructed to be made, those changes in the said specifications for monolithic sewers?

MR. HACKETT: Just a minute. I object, —

Q.—Was it made in your presence?

20 MR. HACKETT: One minute, Mr. Goudrault, please. Inasmuch as we are dealing with documents which are in existence, and inasmuch as all the witness can do is express an opinion as to their relative stringency, the question should be held in abeyance until the documents are available.

MR. GOUDRAULT: All right.

30 Q.—Will you take communication of a plan, profile and details for the construction of a sanitary sewer and appurtenances in 150th Avenue, from pumping station at 134th Street to Judith Street, and Judith Street from 150th Avenue to Farmers Boulevard, in the Borough of Queens, dated December 8th, 1924?

MR. COOK: May I see that, Mr. Goudrault?

(Counsel examines papers referred to.)

40 MR. COOK: I object to the production of this document. I object to any testimony being given by the witness concerning the document, because it is not an original document. It is merely a photostatic copy of alleged plans that we know nothing whatever about. I dislike raising technical objections, but it is highly important that we should have this thing in proper shape, Mr. Commissioner. It is just as irregular for the witness to speak from memory concerning original documents as it is for him to speak from photostatic copies of documents which he is not able to testify to as to the existence of.

William H. Bertram for plaintiff (direct examination).

MR. GOUDRAULT: Mr. Cook, I put in the first question just in order to put in the second question. After he having answered my first question, I would have asked him if he knew where he could get the original.

MR. COOK: Please ask him.

10 Q.—Do you know where is the original of the document described in my previous question? A.—I know part of that plan is on file in the Borough of Queens, at this time.

Q.—What is that? A.—Part of this plan is on file in the Borough of Queens now, because it only came back to us a few days ago.

Q.—In the Borough of Queens? A.—Yes.

Q.—Which department? A.—Sewer Department.

MR. COOK: Why do you say “part”?

20 THE WITNESS: Because I know the whole set did not come back from the other investigation. We are still waiting for records to be returned from the former investigation.

MR. COOK: I renew my objection to all evidence in regard to this plan, at the present time.

MR. GOUDRAULT: We certainly are not going to offer any evidence, —

30 MR. HACKETT: I associate myself with the objection.

MR. GOUDRAULT: There is no use making the objection, because we are not going on with evidence unless we have the original.

Q.—Have you any knowledge, Mr. Bertram, of any changes in the plans and specifications for the construction of a monolithic system in Queens Borough, that were ordered to be made?

40 MR. HACKETT: I have made an objection, Mr. Commissioner, asking that these documents containing an original preliminary set of requirements, and another lot of documents which are said to have been modified, be brought before the Commissioner.

MR. GOUDRAULT: We never spoke of any documents being modified, or anything of the sort, I am asking this gentleman if he knows of any changes, — I will put my question otherwise, if you please.

William H. Bertram for plaintiff (direct examination).

Q.—Mr. Bertram, have you any knowledge of verbal instructions being given by someone that changes be made in the preparation of plans for the construction of monolithic sewers?

MR. HACKETT: I object to that, —

Q.—(Continuing) In your presence?

10 MR. HACKETT: Have you finished your question?

MR. GOUDRAULT: Yes.

MR. HACKETT: I object to the question until the documents which were to be modified are produced.

MR. GOUDRAULT: I am just asking, — are you finished?

20 MR. HACKETT: Yes.

MR. GOUDRAULT: I am just asking the witness if he knows of any such changes, or instructions for such changes being made in his presence, or to himself, in the Sewer Department. I think that is perfectly legal.

THE COMMISSIONER: He may ask that. I will take the answer to that question.

Q.—What is your answer?

30 MR. HACKETT: Just a moment. Have you disposed of the objection, Mr. Commissioner?

THE COMMISSIONER: This last question is asked of his own knowledge. I will accept his answer to that, whatever it is.

Q.—What is your answer? A.—Yes, there were changes.

Q.—Were you, as assistant to Mr. Seeley, instructed to see that those changes in the specifications be made?

40 MR. HACKETT: Just a moment. I object to this, Mr. Commissioner, as the witness's testimony is not the best evidence of these changes, the documents being the best evidence of the alleged changes.

THE COMMISSIONER: My ruling is that I will accept the answer subject to your objection.

William H. Bertram for plaintiff (direct examination).

MR. GOUDRAULT: What is the question?

(Question read by stenographer).

THE WITNESS: Changes in the plans be made, yes.

Q.—And did you receive verbal instructions? A.—Yes.

10 MR. HACKETT: I object to any further evidence concerning changes or modifications in plans and specifications until the documents changed or modified are produced.

THE COMMISSIONER: Same ruling as before.

20 MR. COOK: It is not as though, Mr. Commissioner, all these documents were not available; it is not as though they were lost, or could not be found. The documents are in existence, and surely this witness can not be allowed to testify as to changes in important documents of this character, without producing the documents themselves and pointing out what the changes were.

MR. GOUDRAULT: He certainly can testify as to conversations he had concerning those changes; that he had with his immediate chief.

MR. HACKETT: I don't know.

30 MR. GOUDRAULT: I will argue that many times, with hopes of success.

MR. O'DONNELL: And further objection, on the ground that they are hearsay.

MR. GOUDRAULT: Not hearsay when he gets that direct from Mr. Seeley.

THE COMMISSIONER: I will accept the answers subject to the objections.

40 MR. GOUDRAULT: What is the question?

(Question and answer read by the stenographer).

Q.—What verbal instructions did you receive from Mr. Seeley concerning changes to be made in the plans and specifications for construction of monolithic sewers?

MR. HACKETT: I object to that, first on the ground that Mr. Seeley should be questioned first, and before the recip-

William H. Bertram for plaintiff (direct examination).

10 ient of the instructions should be questioned, on the ground that Mr. Seeley's evidence of having given the instructions would be preferred to that of Mr. Bertram's; and, in the second instance, I object on the ground already advanced, that the documents themselves, showing the original specifications and the modifications, are the best evidence of any alleged modification. And it is not competent for a witness to testify verbally about a subject matter which is embodied in a document.

 MR. COOK: I object also, for the reason stated by Mr. Hackett, and on the further ground that verbal evidence can not, under any circumstances, be given to vary or add to or supplement a written contract as this is admitted to be.

 THE COMMISSIONER: I will accept the evidence.

20 MR. GOUDRAULT: I want to have my objection to your objection put in, too.

 MR. HACKETT: All right.

30 MR. GOUDRAULT: I object to your objection, inasmuch as I am not trying to prove through this witness any changes in the plans and specifications, the originals of which I have not got in my possession. I am simply trying to prove, through my question to the witness, that verbal instructions were given to the witness by Mr. Seeley, who, he has already stated, was his immediate chief. And I am only referring to the words that Mr. Seeley might have told him pertaining to those changes in the plans and specifications.

 THE COMMISSIONER: The Commissioner rules that he will accept the evidence; that the litigants who are here before the Commissioner have their rights before the Superior Court in Montreal, on making such objections before me which will preserve their rights. I will take anything that appears to be relevant to the Commission.

40 MR. COOK: Mr. Commissioner, may I ask that your ruling apply to all evidence that is given in connection with this matter?

 THE COMMISSIONER: Yes. My ruling applies to all evidence heretofore given.

 MR. COOK: Or which may be given in the future.

William H. Bertram for plaintiff (direct examination).

THE COMMISSIONER: Which may be given, except as otherwise ruled.

MR. GOUDRAULT: What is the question?

(Question read by stenographer).

X¹⁰ Q.—In other words, what did Mr. Seeley tell you in connection therewith? A.—He made a detail, and told me to have the men trace it and put it in the plans.

Q.—Did he discuss the matter with you, or simply give you instructions? A.—He just gave me the instructions.

Q.—Do you remember what those instructions would be, Mr. Bertram? A.—Just to see that that was traced with the other things that had to be traced.

20 Q.—Do you know to whom he ordered that such changes be made, or to whom he gave instructions to that effect? A.—He gave them to me, and I passed them to one of the men who made the drawings. I don't know who did it.

Q.—You don't know who did it? A.—No. The tracings would tell. The names are signed on the bottom.

30 Q.—Now, will you look up your records in the Sewer Department, and produce the said record containing plans and specifications concerning the 150th Avenue sewer contract? This contract, Mr. Bertram, bears No. 74178. That might help you to find it. Will you also produce the original contract for the construction of that Hammel's Boulevard sewer, together with the plans and specifications — the plans and specifications which bear contract No. 71761? A.—That is the McGovern job, is it?

Q.—That is the one I refer to, yes. Do you know approximately at what time those instructions were verbally given to you by Mr. Seeley, concerning changes in the monolithic system? A.—The date on the plan would fix that. It was 1925, I think.

40 Q.—To help your memory, would you recollect for what particular street, — the sewer of what particular street was Seeley speaking then? A.—I think it was the 150th Avenue job.

Q.—Do you recollect if that was long after the McGovern job, on Hammels Boulevard? A.—It was very shortly afterwards.

Q.—Did you personally inspect the Jamaica and Rockaway sewer systems? A.—No.

William H. Bertram for plaintiff (direct examination).

Q.—I understand that your job called for you to be present when the bids were opened, and to tabulate the bids. A. Yes, sir.

Q.—That brought you, as I understand, in immediate contact with the plans and specifications for construction of sewers, didn't it? A.—Plans and specifications were made, yes, in our room.

10 Q.—I see. Were they made under your supervision? A. Well, second to Seeley, yes.

Q.—I understood you to say, Mr. Bertram, that instructions, verbal instructions, were given to you concerning changes to be made in the monolithic sewers, construction of sewers, by Mr. Seeley, pretty soon after the McGovern job was over. A.—Yes.

20 Q.—You stated that. You do not recollect any conversation that you had with Mr. Seeley concerning these changes in plans, otherwise than the one you stated? A.—No.

Q.—And Seeley did not discuss with you the said changes? A.—No.

Q.—He did not tell you what they referred to? A.—The change was in the sewer section; cross-section of the sewer itself.

Q.—What I want to get at, Mr. Bertram, is this: In your conversations with Mr. Seeley, when this change was ordered, did Mr. Seeley tell you exactly — tell you something about the said changes, and did he state to you what they were?

30 MR. COOK: I object, Mr. Commissioner. I can not let a question like that go.

MR. GOUDRAULT: Question withdrawn.

X
40 Q.—Do you recollect approximately the conversations that you had with Mr. Seeley in connection with those changes to be made in future monolithic construction of sewers? A.—There was no conversation at all. He said "Here, here is a new section we are going to use." And he gave me the section, to have somebody put it on the plan. That is all there was to it. There was not any conversation about it.

Q.—And you had somebody put it on the plan according to Seeley's instructions? A.—Yes, sir.

Q.—And he did not tell you to what that referred? A. He did not have to. I could read the plans.

Q.—You could read the plans? A.—I could see what it was. It was evident.

William H. Bertram for plaintiff (direct examination).

MR. COOK: It was all on the plans?

THE WITNESS: All on the plans, yes, sir.

Q.—In respect to what sewer? A.—I believe it was the 150th Avenue sewer. Now, whether it was that one or one of the half dozen others I was working on at the time, I am not certain.

10 Q.—Did you know John M. Phillips? A.—Yes, I knew John Phillips.

Q.—Do you recall when you were first acquainted with him? A.—I don't know when I first met him. It is quite a long time ago.

Q.—About when? A.—Oh, I should say 1918 or 1919. May be before that.

Q.—Maybe before that? A.—Yes.

20 Q.—In what year did you go in the Sewer Bureau? A. 1914.

Q.—Did you see Phillips at any time in the period from the early part of 1917 until the fall of 1921? A.—Quite frequently, yes.

Q.—Where did you see him? A.—He used to be in the office there.

Q.—What room? A.—Right in the Sewer Department.

Q.—What room of the Sewer Department? A.—Well, the room we were in; the designing room.

30 Q.—The designing room or drafting room? A.—Drafting room, we call it.

Q.—How often during that period would you say that you saw him in the Sewer Department? A.—Well, there were times there he was there every day.

Q.—Did you see him in the Sewer Bureau after the fall of 1921, or otherwise? A.—Well, there was an investigation, I think it was the Meyer investigation. After that time we didn't see much of Jack; that is, in the building.

40 Q.—By Jack, you mean John M. Phillips? A.—Phillips. Everybody called him Jack.

Q.—Do you know Andrew Zorn? A.—Yes.

Q.—How long have you known him? A.—Oh, I guess ten years.

Q.—Would you know him more than that? A.—I don't know. It may have been longer than that.

William H. Bertram for plaintiff (direct examination).

Q.—Did you ever see him at the Sewer Bureau with Phillips? A.—Yes. He was there sometimes with Phillips. Lots of times he was there alone.

Q.—A minute ago you said that you saw not much more of Phillips at the Sewer Bureau after the Meyer Investigation. When is it that you saw Zorn at the Sewer Bureau? After or before the Meyer Investigation? A.—Before and after, both.

10 Q.—I understand now you told us that after the Meyer Investigation, Phillips stopped going into the Bureau? A. Yes. We did not see him much after that.

Q.—Did you continue seeing Zorn after that? A.—Yes.

Q.—Frequently? A.—Yes.

Q.—Would it be a daily occurrence? A.—Two or three times a week, or sometimes almost a daily occurrence.

Q.—Where did you see him during that period? A.—In the drafting room.

20 Q.—And how long did these visits of Zorn continue in the Sewer Bureau? A.—Well, shortly before Seeley was ousted.

MR. HACKETT: Will you repeat that, please?

THE WITNESS: Shortly before Seeley was dismissed.

Q.—When was that? A.—I testified to that before.

Q.—The year? A.—1928?

Q.—I understand that was after the investigation began.

A.—Yes.

30 Q.—What investigation? A.—There were two or three.

Q.—Was it the one in which Judge Scudder was the Commissioner? A.—It was shortly after the investigations began, that one that finally wound up with the Buckner appointment. Now, there were two appointees after Buckner. Scudder was removed, and then Shearn.

MR. GEHRIG: Clarence J. Shearn.

THE WITNESS: It was after Scudder.

40 Q.—After that started, did you see Zorn often in the sewer Bureau? A.—Rarely then.

Q.—And do you know the year of the Scudder investigation? A.—Was it 1928?

MR. O'DONNELL: You don't, as a matter of fact know that?

THE WITNESS: I don't know exactly.

William H. Bertram for plaintiff (direct examination).

Q.—It was 1927 or 1928, wasn't it? A.—Yes.

Q.—After that you did not see Zorn any more at the Sewer Bureau? A.—No. We would see him occasionally; not in the office; but he would be in the building.

Q.—How many times? A.—I should say not as frequently as I did, before. I just saw him a few times, anyway.

Q.—What was Phillips doing from 1917 to 1921, whenever he went to the Sewer Bureau? A.—He would be talking to Seeley. He passed the time of day and walked around. He did not seem to do a great deal of anything.

Q.—What was Zorn doing during both these periods when he was there? A.—Well, Zorn would go in and be there a few minutes, talked to Seeley and out he would go again.

Q.—Talked to Seeley and out he would go again? A. Yes. He did not stay around.

Q.—Is that practically the same thing as John M. Phillips was doing? A.—Phillips, he would stay there all day, some days.

Q.—Did you ever see Seeley showing John M. Phillips or Zorn plans and specifications on sewers? A.—No, I never did.

Q.—You didn't? A.—No.

Q.—Did you ever see them with plans and specifications, either Phillips or Zorn, in their hands? A.—No.

MR. GOUDRAULT: Now, Mr. Commissioner, I must say that I want to continue the examination of this witness. I am only sorry to say that, not having the original plans that I have called the witness to produce, I will be unable to proceed this afternoon, and I would like that I continue with the examination of the witness as soon as he produces these plans that I have asked for, and that we dispense with the witness until he tells me that he is in no position to furnish me with these plans and specifications.

MR. HACKETT: Well, I would suggest, Mr. Commissioner, in so far as my clients are concerned, that a date be fixed.

THE COMMISSIONER: You have got the right of cross-examination still.

MR. HACKETT: Yes. But I don't want this commission to remain open indefinitely while Mr. Bertram is busily engaged in not finding these plans.

MR. COOK: You can come tomorrow, can't you, Mr. Bertram?

William H. Bertram for plaintiff (direct examination).

THE WITNESS: I can get here.

MR. GOUDRAULT: He can come here, yes. But I want to have my right to examine him on these plans, if he can find them. Whether he can find them between now and tomorrow, that short time, I don't know.

10 MR. COOK: Mr. Goudrault, nobody wants to limit you in that way. The only point is we want to go on with our cross-examination when your examination is finished.

MR. HACKETT: I do want to limit Mr. Goudrault; I don't want this thing to go on forever, and I want to know, Mr. Goudrault, if Mr. Bertram can produce these plans by Wednesday?

20 THE COMMISSIONER: Well, I have the power to order him back, as I understand it. I should like to have Mr. Bertram come back here, with the records, at his earliest convenience, or let us know when he can come, and have a date set that is convenient to the witness and the attorneys.

MR. COOK: Mr. Commissioner, as far as I am concerned — and I think I speak for Mr. Hackett too — we would like to proceed in the regular way and get rid of Mr. Bertram as quickly as possible. My cross-examination of Mr. Bertram will be very short, and then we will be finished.

30 THE COMMISSIONER: Can you come back tomorrow, Mr. Bertram?

THE WITNESS: I can come back tomorrow, but I don't whether I can get the records. These records were subpoenaed for the other examination, and just where they are, I don't know.

40 MR. HACKETT: Mr. Commissioner, my suggestion is that you fix a time within which Mr. Bertram find the documents which he is going to look for. He has told us that some are missing. The purpose for that is that we are going on with secondary evidence, if necessary. But I don't want the commission kept open unduly while he is seeking for things he may not find. And Mr. Goudrault's request to the Commissioner is in such terms that we might have to wait indefinitely.

THE COMMISSIONER: You shall not wait indefinitely, Mr. Hackett. Mr. Bertram, would 48 hours be sufficient for you to locate these instruments?

William H. Bertram for plaintiff (direct examination).

THE WITNESS: We have already made efforts to get those things back from Buckner's office, and could not locate them. I can say that.

THE COMMISSIONER: Well, you know where Mr. Buckner's office is, and you know where your own is.

10 THE WITNESS: Yes. And they have not got them.

THE COMMISSIONER: And you have got a subpoena duces tecum.

THE WITNESS: We have a receipt from Burckner's men.

20 THE COMMISSIONER: I direct that you be back Friday, at 11 o'clock, if you are not sooner called, and bring the papers requested; and if you have not got them, some explanation where they are or whether they have been lost, or what has happened to them.

MR. COOK: I would suggest that if Mr. Bertram could be there tomorrow with the papers, it would be a great convenience, because by the time he comes back the evidence he has given today will not be as fresh as it is now. And if he can come tomorrow, —

30 THE COMMISSIONER: Will you do your best this afternoon, Mr. Bertram, or you can stop at Root and Clark's office and ask where the papers are, or go back to your own office tonight, on the way home, and find out where the papers are, and come back tomorrow.

THE WITNESS: All right.

THE COMMISSIONER: Is that satisfactory to the plaintiff?

40 MR. GOUDRAULT: Yes. I understand he is to make his best efforts to get them tomorrow morning, otherwise it will go to Friday.

THE COMMISSIONER: I wish to facilitate and expedite this matter. We will adjourn until tomorrow at 11 o'clock. It is my purpose to continue these hearings from day to day, from 11 to 1 and from 2 to 4, excepting Saturdays.

Adjournment taken from 4 p. m. to Jan. 20, 1931, at 11 a. m.

Depositions of witnesses, sworn and examined on the 20th day of January in the year of Our Lord one thousand nine hundred and thirty-one, at eleven o'clock in the forenoon, in the office of DeCoursey Fales, 40 Wall Street, in the County of New York, State of New York, United States of America, by virtue of this commission issued out of His Majesty's said Superior Court, to us DeCoursey Fales, a laywer, of 40 Wall Street, City and State of New York, directed for the examination of witnesses
10 in a cause therein pending between The People of the State of New York, plaintiff and Heirs of the late John M. Phillips, et al., Defendants: I, the commissioner acting under the said commission, and also the clerk by me employed in taking, writing down, transcribing and engrossing the said depositions, having first duly taken the oaths annexed to the said commission, according to the tenor and effect thereof and as thereby directed heard the following depositions:

20

DEPOSITION OF EUGENE J. TULLY.

EUGENE J. TULLY, aged 43 years; of 1014 East 40th Street, Brooklyn, in the County of Kings, State of New York, a clerk in the Comptroller's Office of the City of New York, a witness produced, sworn and examined on the part and behalf of the People of the State of New York, the plaintiff, deposeth and saith as follows:

30

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—Will you look at this file of papers, Mr. Tully, and tell us in a word what it is,—in a few words, what it is. A.—This is,...

40

MR. COOK:—I object on behalf of the defendants to the introduction of this file or evidence concerning it, on the ground that it is irrelevant and illegal, and I ask that my objection be noted, as a matter of form.

MR. HACKETT:—I associate myself with that objection.

(Discussion off the record).

A.—(Continued) This is a contract, No. 47340, awarded by the City of New York, to Joseph L. Sigretto & Company, for

Eugene J. Tully, for plaintiff (direct examination).

the construction of a sewer and appurtenances in Collins Avenue, Borough of Queens.

Q.—What is the date of the award of the contract? A.—Date of award of contract was April 10, 1917.

Q.—What is the date the contract was signed. A.—Date of contract is April 23, 1917.

10 Q.—And what number does it bear? A.—I gave that. 47340, I gave that in my description.

Q.—And did you state the contract, for what it was? A. Yes.

Q.—In looking through the file I here find an agreement dated the 14th of February, 1918, between the City of New York, acting by the President of the Borough of Queens, and Joseph L. Sigretto & Company as party of the second part. Will you take communication of same and tell us in a word what it is?

20 MR. COOK:—All this is taken subject to our general objection.

MR. GOUDRAULT:—Yes.

A.—This is a modification of the contract.

Q.—What kind of modification, or what part of the contract or terms of the contract did the modification apply to? A.—That part of the contract “Whereas, the contractor has requested and the City is willing, in view of the abnormal conditions prevailing due to the present war and the inability to procure coal for the operation of the plant necessary in the construction of this sewer, that the contract be modified so that 30 partial payments may be made to the contractor as the work progresses, for re-enforced concrete pipedelivered on the site of the work, although not incorporated in the sewer structure.”

Q.—Now, will you read from the contract where it is agreed No. 1? A.—“That the contract No. 47340 dated April 23, 1917, be and the same hereby is modified to provide that 85 per cent. progress payments be made to the contractor for re-enforced concrete pipe actually delivered on the site of the work, 40 and accepted by the engineer in accordance with schedule of prices annexed hereto and made part hereof, and in accordance with clause XLIV of the contract.”

Q.—Will you further read the contract and state if there were any further modifications in that agreement? A.—“This agreement shall take effect if and when and only when the written consents of the National Surety Company and the United

Eugene J. Tully for plaintiff (direct examination).

States Fidelity and Guaranty Company, the sureties upon the said contract, are obtained and attached hereto, and the Comptroller of the City has approved the schedule of prices.”

Q.—And it is signed by whom? A.—It is signed by Maurice Connolly, President of the Borough of Queens, and Joseph H. Sigretto, President of the Joseph L. Sigretto Company.

10 Q.—Do you know Maurice E. Connolly’s signature? A. I do, yes, sir.

Q.—You have seen it often? A.—Many, many times.

Q.—And is that his signature (indicating)? A.—This is Maurice Connolly’s signature attached hereto, yes, sir.

MR. GOUDRAULT:—Gentlemen, have you any objection to a stipulation being entered as follows: In view of the fact that these original contracts are the property of the City of New York, and public records, and in view of the impossibility on the part of the plaintiffs to have the said public records out of the State
20 of New York, that photostatic copies of the said original documents, or any part thereof that may be necessary for the purpose of this case, be filed in lieu of said originals; provided the said original contracts are properly identified.

MR. HACKETT:—Will you say whether the impossibility to produce the original is an arbitrary ruling on the part of the custodian, or whether it is a matter of law?

MR. GOUDRAULT:—Well, I can not ask that the stipulation be entered into this morning, because I will endeavor within a few days to make evidence that these originals are not otherwise available than in the way I just stated.
30

MR. HACKETT:—Mr. Tully, will you tell us the significance of the serial number 47340?

THE WITNESS:—That is the Comptroller’s contract number. That contract is identified by number while the work is progressing, by that number; and everything pertaining to that number contract is attached to that.
40

MR. HACKETT:—Yes. Now, this Comptroller’s number is the City number as distinct from any borough number.

THE WITNESS:—Yes, sir.

MR. HACKETT:—I notice on the reverse side stencil No. 760. What is that?

Eugene J. Tully for plaintiff (direct examination).

THE WITNESS:—That is a number put on by our record room when the contract is finally completed and filed away. That means that they will find it in box 760.

MR. COOK:—It is of no significance?

10 THE WITNESS:—Absolutely none. This is the number that identifies that contract (indicating).

MR. HACKETT:—When do negotiations acquire a number? Is it only after the contract is awarded, or when bids are called for?

THE WITNESS:—After a contract is awarded.

20 MR. HACKETT:—Then if I have correctly understood your evidence, after a contract is awarded, a number is given it and a file is opened, and all correspondence, protests, memoranda, all documents bearing upon that contract directly or indirectly, including modifications in the plans and specifications, would go into this file.

THE WITNESS:—Yes, sir. You understood me correctly. Everything pertaining to that particular number, modifications and everything else, is attached to this contract.

MR. HACKETT:—How about the plans?

30 THE WITNESS:—The original plans are kept in the Borough office.

MR. HACKETT:—Under the contract number.

THE WITNESS:—After we advise the Borough office that the contract has been registered, we give them our registration number, which is that number that appears in the right-hand corner, and they usually put it on the plans, Comptroller's contract number so-and-so.

40 MR. HACKETT:—But the plans are not filed with the contract and correspondence?

THE WITNESS:—The original plans, no. They are filed in the Borough office.

BY MR. GOUDRAULT:—

Q.—Will you now produce, for identification purposes,

Francis J. Hogan for plaintiff (direct examination).

this contract 47340, and will you remain in possession of same in case we want you on the matter in the course of this evidence that you are now giving?

MR. HACKETT:—Same objection.

A.—Yes, sure.

10 BY MR. HACKETT:—

Q.—Will you say where the documents that precede the final formulation of the contract, such as the advertisements, the bids and the rejections when there were such, are filed? A. They would be filed, the bid sheets would be filed in the Comptroller's office.

Q.—They don't remain in the Borough office? A.—No, sir.

20 BY MR. GOUDRAULT:—

Q.—Do you know of such a thing as the City Record of the City of New York? A.—Yes, sir; that is the official publication of the City of New York.

Q.—Who would know, in the City of New York, who would be the proper official to tell us by virtue of what authority the said City Record is published? A.—Well, the charter of the City of New York covers the publication of the City Record.

30 MR. GOUDRAULT:—That is all for the present.

DEPOSITION OF FRANCIS J. HOGAN.

40 FRANCIS J. HOGAN, of 517 Washington Boulevard, Long Beach, New York, Nassau County; age, 54; attorney, a witness produced, sworn and examined on the part and behalf of the People of the State of New York, the plaintiff, deposeth and saith as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT:—

Q.—Mr. Hogan, will you please look at file paper bearing No. 47340, which has already been identified by a proper official of the City of New York as being a file of papers together with contract for the construction of sewer in Collins Avenue,

Francis J. Hogan for plaintiff (direct examination).

Borough of Queens, date of award appearing on the first page here, and will you kindly look through this file or contract and state in a word if any of its parts or the contract itself you know of?

10 MR. COOK:—I object, on behalf of the defendants, to all evidence in regard to this contract, on the ground that it is irrelevant and illegal, for the reason stated in the objections to the evidence given by Mr. Tully; just the same form of objection.

MR. GOUDRAULT:—What is your answer to that, Mr. Hogan?

THE COMMISSIONER:—All exhibits are taken subject to the reservations of counsel.

20 THE WITNESS:—It is acknowledged before me as Notary Public.

MR. COOK:—I ask, Mr. Commissioner, if you will be kind enough to order all evidence in regard to this agreement be taken subject to the general objections we have made.

THE COMMISSIONER:—All the evidence and all the contracts which are exhibited now and put into evidence, are taken subject to counsel's objection.

MR. HACKETT:—On behalf of all the defendants.

30 THE COMMISSIONER:—On behalf of all the defendants. Now, may I just ask one question, how long that objection is to run?

MR. GOUDRAULT:—Yes. We may change this afternoon, and your objection runs to all contracts.

MR. COOK:—Mr. Goudrault, I will limit my objection, then, to this particular contract.

40 MR. GOUDRAULT:—That is better. The same with you, Mr. Hackett?

MR. HACKETT:—Yes.

MR. COOK:—So that when a different contract is produced, why, we will deal with it as it comes up.

Francis J. Hogan for plaintiff (direct examination).

BY MR. GOUDRAULT:—

Q.—What is your answer? A.—In February, 1918, I was a Notary Public of the State of New York, and this particular contract was executed before me and acknowledged before me and I took the acknowledgment as Notary Public.

10 Q.—You took the acknowledgment from whom? A.—I took the acknowledgment of Maurice E. Connolly and Joseph L. Sigretto.

Q.—Maurice E. Connolly was the President of the Borough of Queens at the time? A. Yes, sir.

MR. COOK:—What is the date of that, please, Mr. Witness?

THE WITNESS:—February 14th, 1918.

20 Q.—Do I understand from you, Mr. Witness, that the whole contract was signed before you, or just a modification of that contract, which would appear there? A.—I only know that this particular instrument which you handed me is the one to which I took the acknowledgment. I don't know whether it is a modification — I don't know anything about the contents of the document.

Q.—This was not prepared by you? A.—No.

30 Q.—Just for the purpose of identification and signing, you were called upon? A.—It just came before me as Notary Public.

Q.—Will you explain in a few words how it was you were called upon to take the declaration of both parties to that modification of contract? A.—I was asked by an acquaintance and client of mine named Thomas F. Purcell to take the acknowledgment. I went with him and took the acknowledgment of the two parties.

Q.—Mr. Purcell, who is he? Who was he then? A.—Well, he was a man, . . .

40 Q.—I mean to say, what was his occupation? A.—He was in the surety business, placing of bonds.

Q.—Bonds of contractors? A.—Contractors and general surety business, I believe.

Q.—Where did Mr. Purcell make of you that request? A. He came to my office at 271 Broadway, and I went with him and met the parties.

Francis J. Hogan for plaintiff (cross-examination).

Q.—You met the parties. Now, where did you meet those parties? A.—I met Mr. Sigretto in City Hall Park, and met Mr. Connolly on Park Row, back of the Post Office, near Hahn's Restaurant.

10 Q.—I see. And then what happened? A.—To the best of my recollection,—this has gone on 12 years ago,—I asked them both,—they both signed and I asked them if they acknowledged the execution of it.

Q.—I see. Was there anyone else present but Sigretto and Connolly? A.—They were not together. Sigretto was not with Connolly when this paper was signed.

Q.—No?

MR. COOK:—They were not together. Sigretto was in one place and Connolly was in another.

20 Q.—Yes; but when you took their acknowledgment, both were there at the same time? A.—No. Neither at the same time nor the same place.

Q.—No. A.—I left my office and I met Mr. Sigretto, as far as I can recollect now, in City Hall Park, near some newspaper stand.

Q.—Yes. A.—And then I had to go south through the park to Park Row.

Q.—Where you met Mr. Connolly? A. Yes.

30 Q.—Was Connolly alone? A.—There were a couple of men with him, I think.

Q.—Men that you know or that were introduced to you? A.—No, I did not know them.

Q.—During that time had Purcell left you? A.—I think he was with me. I won't be sure about that. That is my best recollection.

Q.—You say to the best of your recollection there were two men with Maurice E. Connolly at the time? A.—There may have been two or three, yes.

40 MR. GOUDRAULT:—I see. No other questions.

MR. HACKETT:—No cross-examination, as far as I am concerned.

CROSS EXAMINATION BY MR. COOK:—

Q.—Mr. Hogan, there is nothing remarkable in going out to get a signature of one man one place and another man another. A.—Yes.

John J. Creem for plaintiff (direct examination).

Q.—It is an ordinary transaction? A.—Mr. Pucrell did not want the Borough President to come to my office, and it was a matter where I did not take any fee. It was a convenience to Purcell. I had transacted some business for him, and I was showing him a courtesy.

10 Q.—Yes, that is right. A.—I had absolutely no knowledge of the contract. I did not draw it or ever read it.

MR. COOK:—Thank you very much, Mr. Hogan.

MR. GOUDRAULT: Thank you.

DEPOSITION OF JOHN J. CREEM.

20 JOHN J. CREEM, of 203 Argyle Road, Brooklyn, Kings County, New York; 61 years of age; occupation, contractor, a witness produced, sworn and examined on the part and behalf of the People of the State of New York, the plaintiff, deposeth and saith as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT:—

Q.—Mr. Creem, do you know Mr. John L. Sigretto? A.—Joseph Sigretto.

30 Q.—Joseph L. Sigretto. A.—Yes.

Q.—I understand you know him for quite a number of years. A.—Well, I don't think I have seen him in ten years past. But I think that it is probably 30 years ago when I first met him.

Q.—Did you state that your occupation was that of contractor? A.—Yes.

Q.—And it has been so for years? A.—Yes.

Q.—You have completed contracts for the City of New York? A.—Yes.

40 Q.—Have you done any particular public work or sewers in the Borough of Queens? A.—Yes.

Q.—In Greater New York? A.—Yes.

Q.—Do you recollect having the contract to build a sewer in 51st Street, in Queens County, and Borough of Queens? A.—Yes.

John J. Creem for plaintiff (direct examination).

MR. COOK:—What was the number of that contract? Are you going to produce that to the witness?

MR. GOUDRAULT:—I don't think so. The number is 49784.

10 Q.—Would you tell us how you got that contract from the,—

MR. COOK:—I object to any evidence in regard to this contract, on the ground that the same is irrelevant and illegal, and can have no bearing on the issues in the present action.

THE COMMISSIONER:—I will take the evidence subject to counsel's objection.

20 Q.—Will you look at this paper, which purports to be an agreement between Joseph L. Sigretto & Company,—

THE COMMISSIONER:—Do I understand this last contract has not been offered in evidence?

MR. GOUDRAULT:—It was not offered in evidence, Mr. Commissioner.

30 Q.—Will you look at this paper, which purports to be an agreement between Joseph L. Sigretto & Company and yourself, dated September 3, 1918, and will you produce same as Exhibit C-2?

MR. COOK:—Let me see it before the witness answers.

MR. GOUDRAULT:—Sure.

(Counsel examines agreement referred to.)

MR. COOK:—I object to this document as irrelevant, and to all verbal evidence in regard to this agreement and its transfer.

40 MR. HACKETT:—I ask to be associated with that objection.

THE COMMISSIONER:—I will accept the evidence, and the agreement will be marked Exhibit C-2, in evidence.

(The agreement referred to was thereupon received in evidence and thereupon marked "Plaintiff's Exhibit C-2 of January 20, 1931).)

John J. Creem for plaintiff (direct examination).

Q.—In a word, Mr. Creem, what is the document? A.—It is an agreement to take over that particular contract, as I understand.

Q.—That was the contract for the 51st Street sewer? A.—Yes.

Q.—You got the contract by assignment? A.—Yes.

10 Q.—Do you know a man named Purcell? A.—Yes.

Q.—You have known him for a long time? A.—Why, yes; probably 25 or 30 years.

Q.—That is your signature that appears there on that paper, Exhibit C-2? A.—Yes.

Q.—And I suppose that Sigretto signed in your presence, also? A.—Yes.

20 Q.—Who was there when that agreement was signed? Where was it signed, first, do you recollect? A.—I think it was signed in Sigretto's attorney's office, which would be 215 Montague Street, Brooklyn.

Q.—Would it be Mr. Titcomb's office? A.—Yes.

Q.—Who was there on that special occasion? A.—Well, now, it isn't clear in my mind whether I met them once or twice. I don't know whether this indicates that I turned over money to him on the day this was signed.

Q.—Yes, but we will come to that later on. A.—Well, it will make a difference to me who was there.

30 Q.—You went there on two or three occasions? A.—I imagine so, because this contract is also conditioned upon the City of New York agreeing to this. The City evidently had not agreed at the time I was there, so I can not conceive that I turned over any money until such time as the City had agreed.

Q.—Well, on the occasions that you went to Mr. Titcomb's office in reference to the agreement which you were having with Sigretto & Company in reference to the 51st Street sewer, tell us whom you met there, to the best of your recollection, besides Sigretto? A.—Well, Purcell was there, and Phillips was there on one occasion when the money was paid.

40 Q.—Which Phillips? John M. Phillips? A.—John M. Phillips.

MR. COOK:—Mr. Goudrault, aren't you putting the cart before the horse here? You have not proved the agreement yet, and you have not made any efforts concerning the agreement.

MR. GOUDRAULT:—I filed the agreement, and he told us what it was, and he has identified the signatures.

John J. Creem for plaintiff (direct examination).

MR. COOK:—Yes, but the original agreement.

MR. GOUDRAULT:—That is the one.

Q.—That is the original agreement? (Indicating). A.—
Yes.

10 Q.—And filed agreement as between Sigretto and your-
self? A.—As far as I know.

Q.—After this agreement was signed, I presume you paid
money in consideration of the said assignment? A.—I carried
out the terms of the agreement.

Q.—Did you pay money, and to whom, and how, for the
assignment of this contract? A.—My recollection is that I drew
a check to the order of Joseph L. Sigretto & Company.

Q.—Do you remember the amount? A.—Well, now, I
believe it was two checks. I think one was \$14,000 and one was
\$1,000.

20 Q.—And have you got those checks with you? A.—Me?

Q.—Yes.—A. No.

Q.—Do you know where they are? A.—No, I have not
the slightest idea where they are.

Q.—That is years ago? A.—Yes.

Q.—And I understand,—tell us exactly, if you remember,
to the best of your recollection, if the payment was made by
check or in cash? A.—The payment was made by check.

30 Q.—And then I understand you have not got that check,
that cancelled check of yours? A.—No.

Q.—You said two checks, one of \$14,000. and one of \$1,000,
to the best of your recollection? A.—That is the best of my
recollection.

Q.—I understand that after you made those checks,—do
you recollect doing anything with them? A.—Well, my best
guess would be that they were turned over to some investigating
committee here 8 or 10 years ago, and I don't think I ever got
them back.

40 Q.—What I mean, Mr. Creem, is when you signed the
check, if I understand well you say to the best of your recollec-
tion it was to the order of the party with whom you were then
having an agreement, Sigretto; and I am asking you if anything
else was done with those checks at the very moment they were
given by you to Sigretto, or to any other party? A.—Why, my
recollection is that Sigretto endorsed one of them in my presen-
ce and turned it over to Phillips.

Q.—In your presence? A.—In my presence.

John J. Creem for plaintiff (direct examination).

MR. COOK:—I object to that evidence, Mr. Commissioner, and ask that that answer be stricken out until the witness clearly establishes that he has made efforts to get these checks and that they are not available. The best evidence is the production of the checks.

10 THE COMMISSIONER:—I will take the evidence subject to your objection.

MR. HACKETT:—I avail myself of the same objection.

Q.—Did you hear any discussion between Phillips and Sigretto?

MR. COOK:—I object to that also on the ground that any discussion between Phillips and Sigretto is irrelevant and illegal, and not susceptible of verbal proof.

20 Q.—Will you tell us, Mr. Creem, if you heard any words stated by Phillips or Sigretto, when this transaction was going on?

MR. COOK:—The same objection, and I ask that all evidence in regard to conversations between Mr. Phillips and Sigretto be held to be illegal, Mr. Phillips being deceased.

THE COMMISSIONER:—Taken subject to objection.

30 MR. HACKETT:—I will add, on behalf of the other defendant, that it is incompetent to put this question to the witness until the other witnesses have been asked, being the source of best evidence, if they did or did not say thus and so.

MR. COOK:—I, too, avail myself of the objection made by Mr. Hackett.

A.—Why, there seemed to be some quarreling and bickering between them.

Q.—Quarreling? A.—Yes.

40 Q.—Did you hear any substance of it, any words? A.—No, I could not repeat any words.

Q.—The substance? A.—Well, it has always been on my mind that they were partners breaking up.

MR. COOK:—I ask that that be stricken out, Mr. Commissioner. The opinion of this witness as to matters of this sort is not relevant.

John J. Creem for plaintiff (direct examination).

MR. GOUDRAULT:—It will be appreciated as an opinion.

MR. COOK:—Yes, but it can not be allowed to go in without objection.

10 MR. GOUDRAULT:—Well, put in your objection and we will go on.

MR. COOK:—My objection is in.

Q.—Do you recollect if anything was said about that check of \$14,000 or the proceeds of the said check?

MR. COOK:—Same objection.

A.—Anything said about it?

20 Q.—In your presence by Sigretto and Phillips? A.—I don't recall at this time.

Q.—Now, after you saw Sigretto endorse the check to Phillips, what happened? A.—My best,—

MR. HACKETT:—I would draw to the attention of the Commissioner that the witness did not say that he saw Mr. Sigretto endorse the check.

MR. GOUDRAULT:—Question withdrawn. Will that be satisfactory to you?

30 MR. HACKETT:—Will you please not interrupt me. He did not say that he saw Sigretto endorse the check to Phillips.

Q.—Did you see Sigretto endorse the check to Phillips? You stated it, I think, there. A.—I remember that it was endorsed by Sigretto. Whether I saw him doing it or not, I don't know.

Q.—You don't know? A.—No.

Q.—Did you see the check endorsed? A.—I saw his name on the check.

40 Q.—You saw the name of Sigretto?

MR. HACKETT:—I object to the evidence of what is on the check, until the check be produced.

MR. GOUDRAULT:—All right; take the answer under reserve.

John J. Creem for plaintiff (direct examination).

Q.—Now, what happened after that, with Phillips and Sigretto and yourself, and whoever was there? A.—Well, my recollection was they discussed getting it cashed, and proposed that I take it to my bank and have it cashed.

Q.—And did you, as a matter of fact, have it cashed? A. Yes.

10 Q.—And did you give the money? A.—Phillips and I went to the bank, and I gave him the money.

Q.—And after that, what happened? A.—Well, I went home. I did not go back to the office.

Q.—Do you remember how much money you gave to Phillips? A.—My recollection was that it was \$14,000.

Q.—All right, in money. Did you give Purcell anything? A.—I have no recollection of giving him anything.

20 Q.—I understood you to say that there was another check of \$1,000. signed by you on the occasion of this agreement being signed and executed. Will you tell me what was done with that \$1,000, if you recollect, with that check?

MR. COOK:—Same objection, about evidence of the check without the check being produced.

THE COMMISSIONER:—Same ruling.

A.—I gave it to Sigretto. Nothing done about it that day. It came back in the regular course.

30 Q.—Am I right in stating that you paid no other money at the time but that \$14,000. and that check for \$1,000? A.—That is all I recollect paying.

Q.—Had that work on the 51st Street sewer been commenced at the time when that agreement was signed? A.—No.

Q.—You did the entire job? A.—Yes.

(Recess at 1:00 p. m. to 2:00 p. m.)

40 AFTER RECESS. 2:00 p. m.

MR. GOUDRAULT: Now, Mr. Commissioner, I am under the obligation to ask you to kindly accept my suggestion that Mr. Creem as witness be relieved, as he is a most important witness, and I have to proceed with his examination and produce through him a series of documents which unfortunately I am not in a position to do this afternoon.

I just talked the matter over with Mr. Creem, and I told him I would make this prayer to your Lordship, and I at the same time would ask my adversaries on the other side that they agree with this request. And without binding myself, I do hope that by Thursday morning, as I said to Mr. Creem, we will be in a position to complete his evidence; which means a delay of a day and a half.

THE COMMISSIONER: And in the meantime.

10 MR. GOUDRAULT: We have another witness to go on, yes, where documents are not to be filed.

MR. COOK: Now, Mr. Goudrault, you have adjourned the examination of Mr. Bertram, and now you are adjourning the examination of Mr. Creem.

MR. GOUDRAULT: Yes, I know it is awkward.

20 THE COMMISSIONER: Well, these gentlemen have the right to cross-examine as far as we have gone.

MR. HACKETT: The examination of Mr. Tully was likewise suspended.

30 MR. GOUDRAULT: Well, that is different, Mr. Hackett. You know that Mr. Tully is here to be examined 100 times if we have 100 documents to file, because he is an officer here and we can get him any time. I think the circumstances justified the adjournment of Mr. Bertram's examination, and in this particular instance I am asking the same favor, I having no objection if you wish to proceed with his cross-examination. But I may tell you that I will need Mr. Creem for a lot more.

MR. COOK: If Mr. Hackett would like to cross-examine, I would rather wait for my cross-examination until he has finished his evidence.

MR. HACKETT: So would I.

MR. GOUDRAULT: All right

40 THE COMMISSIONER: Then we will suspend with the witness. And when do you wish him ordered to be in attendance, Mr. Goudrault?

MR. GOUDRAULT: I wish him to be in attendance Thursday morning, at eleven, at the opening of the sitting on the 22nd.

THE COMMISSIONER: Mr. Creem, can you be here at 11:00 o'clock sharp, Thursday morning?

THE WITNESS: I can.

THE COMMISSIONER: Thank you.

MR. GOUDRAULT: Now, Mr. Commissioner, I have another request to make. Would you please call in Mr. Decker, who was subpoenaed for today, and relieve him, because I have enough
10 witnesses to proceed with during the course of the afternoon.

MR. COOK: One minute. Before Mr. Decker is called, did you give us notice that Mr. Decker was to be examined?

MR. GOUDRAULT: Yes; I must have given you notice.

MR. HACKETT: You did not. His name has never been mentioned.

MR. GOUDRAULT: You mean on the list I gave you last
20 night?

MR. HACKETT: No.

MR. COOK: On any list.

MR. GOUDRAULT: He is on the motion list.

(Mr. Albert Decker was called in, and not sworn.)

MR. GOUDRAULT: Mr. Decker, I have asked that you
30 be relieved this afternoon, to come back later on.

MR. DECKER: You can get me on the telephone.

MR. GOUDRAULT: On the other hand, I would not like that no definite date be set, so we will say that we will require you on Thursday morning, the 22nd inst., at 11 o'clock, and if we can not then proceed with you, I will telephone you and we will have you some other day.

MR. DECKER: All right, sir.

40. THE COMMISSIONER: You will be here Thursday, at eleven, unless you are otherwise notified.

Albert F. Kraus for plaintiff (direct examination).

DEPOSITION OF ALBERT F. KRAUS.

ALBERT F. KRAUS, age 45, of 4343 Elbertson Street, Elmhurst, Queens County; civil engineer; a witness produced, sworn and examined on the part and behalf of the People of the State of New York, the plaintiff, deposeth and saith as follows:

10

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—By whom are you employed, Mr. Kraus? A.—Board of Transportation of the City of New York.

Q.—Were you ever in the Queens Sewer Bureau as an employe? A.—Yes, sir.

Q.—How long were you in the Queens Sewer Bureau? A.—From approximately 1908 to February, 1920. The date of entry there, whether it was 1908 or 1909, is not clear in my mind now.

20

Q.—Did you know in his lifetime, John M. Phillips? A.—I did know him, yes, sir.

Q.—Do you recollect when you first got acquainted with John M. Phillips? A.—I remember distinctly. I was employed by the Topographical Bureau of the Borough of Queens, and I was introduced by a co-worker to Mr. Phillips, at that time, which was in the year approximately 1908 or 1909.

Q.—I understand you left the Bureau in February, 1920? A.—Yes, sir.

30

Q.—Did you know Frederick C. Seeley? A.—Yes, sir. I don't remember whether his initial was "C". It was just Frederick Seeley, wasn't it?

Q.—What was his occupation or position? A.—He was an assistant engineer in the Sewer Bureau.

Q.—And were you working in the Sewer Bureau, in the same Bureau as he? A.—Yes, sir.

Q.—Was he your superior? A.—My immediate superior.

Q.—Your immediate superior? A.—Yes, sir.

40

Q.—Now, limiting yourself to the year 1917, until such time as you left your employment at the Queens Borough Sewer Bureau, did you meet Phillips quite often? A.—I saw him quite often, yes.

Q.—Where did you see him during that period from 1917 to 1920? A.—Well, largely in the Borough Hall.

Q.—Which department of the Borough Hall? A.—In the Sewer Bureau.

Albert F. Kraus for plaintiff (direct examination).

Q.—In the Sewer Bureau? A.—That is, the Sewer Bureau had a certain allotted space which was known as the Sewer Bureau quarters, and in those quarters I saw Mr. Phillips.

Q.—Quite often? A.—Quite frequently, yes, sir.

Q.—What do you mean exactly by “quite frequently”?
A.—Well, once a week sometimes. Sometimes more frequently. And then at stretches, — well, on an average of, say, once a week.

10 Q.—On an average. But without an average, was there any time when his visits were more frequently, to your knowledge than once a week at the Sewer Bureau of Queens Borough?
A.—Yes. At such times as contracts were to be bid upon, Mr. Phillips was a frequent visitor there. Sometimes two or three times a day, I would say offhand.

Q.—During that same period of time, which runs from the spring of 1917 until February of 1920, did you know a man named Andrew Zorn? A.—Yes, sir, I knew of him.

20 Q.—How long had you known him? A.—I did not know Zorn personally. I simply knew him as Zorn, as Mr. Zorn.

Q.—Where was it that you saw him? A.—I also saw him in the Sewer Bureau quarters.

Q.—How often? A.—Well, perhaps not as frequently as I saw Phillips.

MR. COOK: Mr. Goudrault, pardon the interruption. I presume this is all preliminary.

30 MR. GOUDRAULT: Yes; to something different.

MR. COOK: Something that you are leading up to.

Q.—And where did you see him on those occasions? A.—As I said, in the Sewer Bureau quarters.

Q.—Did you see him with Phillips or without Phillips?
A.—Usually without Phillips; but occasionally with Phillips.

40 Q.—During this period, what was Phillips doing in the Sewer Bureau? A.—Why, at times he was in conference with Mr. Seeley; at other times talking with Mr. Cox, Raymond Cox, who was a clerk in charge of distributing the blueprints on these various contracts. He may have talked to some of the engineers at random. But usually it was with either Seeley or Cox.

Q.—Did you ever see him doing anything except talking with Mr. Seeley and Cox, or passing in and out of the Sewer Bureau? A.—I don't quite understand the question.

Q.—I will retract it. We will come to that. What was exactly the nature of your occupation there in the Sewer Bureau

Albert F. Kraus for plaintiff (direct examination).

during the time that Phillips or Zorn were coming to the said Bureau? A.—Well, I made the computations for the preliminary estimates for most of these contracts. I had charge indirectly of the preparation of the specifications, and had under my direction, several drafts men and assistants for the preparation of plans.

10 Q.—Do you recollect any particular time when Phillips came over to you when you were doing that job of computing the results of the bids on some jobs? A.—Why, I should supplement that other one too, and say that in addition to those duties it was my duty to receive and compile the bids, as far as the computation.

Q.—Yes. A.—Now, I will answer this last question. At times during the preparation of these bids, that is, as they were received, Mr. Phillips would come over and ask the results of the bids, and things of that character.

20 Q.—When you state that Mr. Phillips would come in and ask the result of the bids.

MR. COOK: One moment. I object to any conversation between Mr. Phillips and the witness as illegal, improper and irrelevant. You are aware that Mr. Phillips is dead, Mr. Witness?

THE WITNESS: Yes, sir.

30 MR. COOK: I make my objection to all conversations between Phillips and the witness.

MR. HACKETT: I make the same objection.

THE COMMISSIONER: I will take it subject to counsel's objection.

MR. COOK: I ask that this apply throughout the deposition, without having to be repeated.

40 THE COMMISSIONER: I wonder how that is going to work out.

MR. COOK: Well, I will make my objection every time.

THE COMMISSIONER: I think that is better.

Q.—Now, will you answer the question, if you still remember it. A.—You asked me if Mr. Phillips.

Albert F. Kraus for plaintiff (direct examination).

Q.—Came to see you. A.—Came to see me in connection with these computations.

Q.—Yes. A.—Yes, sir, he did.

Q.—He did. A.—This was not a regular procedure of Mr. Phillips.

10 Q.—What do you mean by that? A.—That is for instance, if there were bids opened today it would not necessarily follow that Mr. Phillips would ask me what the results of today's bids were.

Q.—No. But am I right in stating that you recollect certain occasions where that was done? A.—Yes, sir.

Q.—I see. Were the bids, then, a matter of public record? A.—Not at that time, no, sir.

20 Q.—Not at that particular time? A.—No, sir. Now, may I also supplement that, — I don't know whether this is proper or not. You realize that when the bids are opened by the Borough President or his accredited assistant, the Commissioner of Public Works, the amount of the bid, the total of that particular bid for each contract, is usually on that contract or on that bid; and it was our duty to verify this, or, in other words, to check up the sum so shown on that bid sheet. So if you mean if that was a public record at that time, it could have been given out to the press prior to our final computation, subject to any error.

30 Q.—Yes. But as a matter of fact it was never a matter of public record at that particular time? A.—I don't believe so.

Q.—Are you sure or not? A.—I don't know.

Q.—Didn't you state a moment ago that it was not a matter of public record at that time? A.—I just qualified that to the best of my knowledge. In other words, I am trying to explain to you the procedure through which these bids passed.

Q.—What did Mr. Zorn do? A.—I don't know of any particular position that he held.

40 Q.—But on the occasions that you saw him, that you testified that you saw him in the Sewer Bureau, what was he doing there? A.—Why, he was gathering blueprints similar to those that were given out to the contractors.

Q.—Blueprints of what? A.—Of the contracts which were to be bid upon.

Q.—Any particular kind of contract? A.—The sewer work.

Q.—For what boroughs? A.—For the Borough of Queens

Albert F. Kraus for plaintiff (direct examination).

Q.—Who was then President of the Borough of Queens?

A.—Maurice E. Connolly.

Q.—And who was the assistant engineer in charge of that Sewer Bureau in the County of Queens at that time? A.—Mr. Seeley was my immediate superior at that time, and he was the assistant engineer in charge of designs. And then there was an engineer in charge of both the highways and sewers. His name
10 has slipped my mind just now. A military, — they called him “Captain”.

Q.—It would not be McBride? A.—No. Captain Rice.

MR. COOK: He was above Seeley?

THE WITNESS: Yes, sir.

Q.—Were there any instances that you are talking about, were there any instances that you spoke to him, to Zorn, when
20 he was visiting the Sewer Bureau? A.—I can not recall.

Q.—Did you ever see Mr. Zorn have any talk with Mr. Seeley? A.—Yes, sir.

Q.—As well as with Mr. Phillips? A.—Yes, sir.

MR. COOK: The same objection as to conversations with Phillips.

MR. GOUDRAULT: Mr. Seeley is not dead.

MR. COOK: No, so far as Mr. Phillips.

30 MR. HACKETT: Yes, and as regards the form of the question, which is suggestive and leading.

Q.—Putting the question otherwise, Mr. Kraus, with whom did you see Zorn speak to in your department? A.—I saw Mr. Zorn in conversation with Mr. Seeley and with Mr. Cox.

Q.—How often as regards Mr. Zorn with Mr. Seeley? A. Fairly frequently.

40 Q.—Did you gather any impression, Mr. Kraus, from these frequent visits of Mr. Zorn to the Sewer Department — may I ask first, if you have stated what Mr. Zorn was doing when he did come to the Sewer Bureau? A.—I believe I have. I believe that was covered in one of your previous questions.

Q.—And do you mind repeating it, in just a word or two? A.—I saw Mr. Zorn in conversation with Mr. Seeley and Mr. Cox, and at other times I saw Mr. Zorn with blueprints which were obtained from the Sewer Bureau through Mr. Cox.

Albert F. Kraus for plaintiff (cross-examination).

Q.—Do you know what was Mr. Zorn's occupation?

MR. COOK: I object to that as absolutely irrelevant.

MR. HACKETT: So do I.

Q.—Do you know what was Mr. Zorn's occupation? A.—
No, I do not.

10 Q.—Do you recollect a certain time that Phillips ceased
going to the offices of the Sewer Bureau? (Question withdrawn).

MR. GOUDRAULT: No other question. I have the pleasure, gentlemen, to transfer over to you this witness for cross-examination.

CROSS-EXAMINATION BY MR. HACKETT:

20 Q.—Mr. Kraus, this Sewer Bureau is the portion of the
public building from which the contracts for the construction of
sewers are let, is it not? A.—It is in that same building.

Q.—Yes, A.—That building is known as the Borough
Hall.

Q.—Known as the Borough Hall. And rather extensive
works were being carried on in that Borough at the time, were
there not? A.—Yes, sir.

30 Q.—And it was not at all unusual that men interested in
construction work, whether they were contractors, guarantors,
suppliers of material, or men who might be interested profes-
sionally as engineers, did frequently visit the Bourough Hall?
A.—The Borough Hall?

Q.—Yes. A.—Yes, sir.

Q.—And the Sewer Bureau? A.—Not particularly, no.
The supplymen never came into the Sewer Bureau; they had not
any interest. Their interest was directly with the contractor.

Q.—Well, I put it to you that if a sewer were to be built
out of brick, it would be of interest to a supplier of brick to know
whether it was to be built out of brik instead of concrete? A.—
40 Yes, the specifications would so indicate.

Q.—Yes. So the specifications and the plans would be of
interest to a supplier of material? A.—Yes.

Q.—And in consequence, suppliers of material did from
time to time go to the Borough Hall? A.—Borough Hall, yes,
sir.

Q.—Yes? A.—Yes, sir.

Albert F. Kraus for plaintiff (cross-examination).

Q.—And you did not think it strange when you saw men of these different categories come to the Borough Hall? A.—No.

Q.—You knew that they came there? A.—Yes.

Q.—On business arising out of their own calling? A.—Yes.

10 BY MR. GOUDRAULT:

Q.—You did not know the calling of Zorn, though? A.—No, sir. This gentleman is limiting this to the Borough Hall.

BY MR. HACKETT:

Q.—Yes. A.—Anyone has access to the Borough Hall.

Q.—Then Mr. Cox appears to have been the clerk who was entrusted with the issue to interested parties of blueprints? A.—Yes, sir.

20 Q.—And whenever any of these would be contractors, suppliers of materials, engineers and others, wished for information, one of the persons to whom they would naturally apply was Mr. Cox? A.—Yes.

Q.—Because he was particularly allotted to the function of distributing to contractors and others information that might be necessary for their purposes? A.—That's true.

30 Q.—And I suppose in a well organized business it was well to have one person distribute these blueprints and information in order that others might not be continuously disturbed by the public; is that correct? A.—Yes, sir.

Q.—It was a matter of observation and experience to you that numbers of people called upon Mr. Cox? A.—Yes.

Q.—I understand that bids were on invitations contained in the public press and were based upon plans and specifications which were available at the Borough Hall? A.—Yes, sir.

Q.—And these invitations invariably fixed a date within which they had to be lodged at the Borough Hall? A.—I don't follow that.

40 Q.—Well, when the advertisement was put in? A.—The City Record.

Q.—The City Record, it indicated that the bidders would have to put in their bids on or before a certain date? A.—Yes.

Q.—And then it was your duty, after these bids were received, to open them up and tabulate them? A.—No. It was the province of the Borough President, or the Commissioner of Public Works, to open the bids.

Albert F. Kraus for plaintiff (cross-examination).

Q.—Yes. A.—And read the itemized bid. Then it was tabulated by one of my assistants and then I took charge of that compilation and made the necessary computations.

Q.—Yes. So it really was a matter of record when it came to you. It had been to the Borough President? A.—It had been to the Commissioner of Public Works, or the President of the Borough, yes, sir. It had been read in public meeting.

10 Q.—Yes. So just to make it quite clear, you were not revealing any state secret or committing any impropriety when you answered the question that was put to you by Phillips? A. I don't believe I was.

MR. HACKETT: No. That is what I wanted to make quite clear. That is all.

CROSS EXAMINATION BY MR. COOK:

20 Q.—I understood you to say, Mr. Kraus, that you did not know Mr. Zorn. Is that correct? A.—I did not know Mr. Zorn personally, no, sir.

Q.—You did not personally know Mr. Zorn? A.—No. I knew he was Mr. Zorn.

Q.—Yes; but you had nothing to do with him personally? A.—Absolutely no connection. I don't believe that I had any conversation with Mr. Zorn.

Q.—None at all. So we can leave him out of the matter altogether as far as you are concerned? A.—Yes, sir.

30 Q.—Now, you stated, I think, that you were immediately under Mr. Seeley? A.—Yes, sir.

Q.—Mr. Seeley was the assistant engineer, was he not, of the Sewer Department? A.—Yes. His title was assistant engineer in charge of designs, I believe.

Q.—In the Sewer Department? A.—In the Sewer Department, yes, sir.

40 Q.—And who were the officials, will you mention them again, Mr. Kraus, if you please, that were over Mr. Seeley? A. Mr. Rice was in charge of a dual department consisting of the Bureau of Sewers and Highways.

Q.—Yes. A.—And if my memory serves me I believe Mr. Perrine was the engineer of sewers at that time.

Q.—Mr. Rice and Mr. Who? A.—Perrine. Perrine.

Q.—So that Mr. Rice and Mr. Perrine — Mr. Rice would be the head of the department, Mr. Perrine would be next or would be associated with Mr. Rice as head of the department;

Albert F. Kraus for plaintiff (cross-examination).

then would come Mr. Seeley, and then would come yourself; is that correct? A.—I would consider them in that order, although it would be pretty difficult to differentiate, except by title.

Q.—Except by title? A.—Yes, sir.

Q.—Do you remember the title of Mr. Rice? A.—Mr. Rice's title was Engineer of Highways and Sewers, I believe.

Q.—Yes. And Mr. Perrine? A.—Engineer of Sewers.

10 Q.—Engineer of Sewers. And Mr. Seeley? A.—Assistant Engineer of Design, Bureau of Sewers.

Q.—And yourself, what was your title? A.—Assistant Engineer.

Q.—Assistant Engineer. And that you would take would be the order of seniority in the department in regard to those officials whom you have mentioned? A.—Yes.

20 MR. HACKETT: Just to get that clear, we were told yesterday that assistant engineer was merely a civil service title, for purposes of grading them in the service.

THE WITNESS: That is right. Mr. Perrine, Mr. Seeley and myself were all assistant engineers, and the other titles ascribed to them were purely local titles subject to the whim of the Borough President.

BY MR. COOK:

30 Q.—But the authority that they had would be in the order mentioned? A.—I would presume it would, yes. I considered Mr. Seeley my immediate superior. And while I don't believe that he considered Perrine as his superior, he considered Mr. Rice as his superior.

Q.—Yes. A.—In other words, I can not link Mr. Perrine up in this combination that you have just mentioned, except by title.

Q.—Mr. Seeley would see, in the course of his day's work, a great many men, would he not, to your knowledge? A.—In the course of the day's work?

40 Q.—Yes. People would see Mr. Seeley and see Mr. Rice and see Mr. Perrine? A.—Perhap see Mr. Rice. But not so frequently; there would not be so much occasion to see Mr. Seeley.

Q.—But they would see him, would they not? A.—Oh, yes.

Q.—You would see Mr. Seeley very frequently? A.—Absolutely, yes.

Albert F. Kraus for plaintiff (cross-examination).

Q.—You would constantly report to him? A.—Yes, we would be in conference on the work continually.

Q.—All the time? A.—Yes. Now, I might draw a picture of this room for you, so that you could see this operation a little more clearly, if you care to have it.

10 Q.—We are very much interested, Mr. Kraus. A.—There was a general outer room, which may be termed an executive room, in which there were the clerks, stenographer, chief engineer, — that is, Mr. Perrine, and the general files. That was partitioned from an inner room where there were draftsmen, engineers and so forth. So that if persons entered this general room, they would appear to the clerks and Mr. Perrine, or the executive division of our Bureau, before they could possibly pass into this petitioned room. In other words, we were the tail end of this compartment.

20 Now, if they had business in our Bureau, then a clerk would escort them through this paneled board, and they would then come into our office.

Q.—Into your office? A.—Yes. So that you can readily see that anyone interested in work which was not directly vital to us, would not enter into this inner room.

Q.—Yes, I see. A.—So that is simply to help qualify that last question of yours.

MR. COOK: That is all.

30 MR. HACKETT: That is all.

MR. GOUDRAULT: That is all. Thank you very much, Mr. Kraus.

William H. Bertram for plaintiff recalled (direct examination).

DEPOSITION OF WILLIAM H. BERTRAM.
(recalled).

WILLIAM H. BERTRAM was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposeth and saith as follows:

10

DIRECT EXAMINATION BY MR. GOUDRAULT: (Resumed):

20

Q.—Mr. Bertram, you were called upon yesterday to look up your records in the Sewer Department and elsewhere, the record containing plans and specifications concerning the 150th Avenue sewer contract; and I told you at the time the contract bears No. 74178. Have you been able to locate the said plans and specifications? A.—I have found all of the Boulevard contract, but the 150th Avenue I have not been able to find all of the sheets.

Q.—Will you tell us what sheets you have found for the 150th Avenue sewer contract? A.—For the 150th Avenue, I found sheets 1, 5 and 10, three sheets out of a set of 11.

Q.—Sheets 1, 5 and 10. That is three out of eleven. You have not been able to locate the missing sheets? A.—No, I have not.

30

Q.—Have you searched for them? A.—Yes. These sheets were returned from Buckner's office, the former investigator. Not so long ago I had a man down there, and he spent a whole day running through the files, and that is all he was able to find, those sheets. Those are part of the specifications. You have a book here which has the complete specifications.

Q.—You mean Mr. Tully has a book? A.—Well, I though I saw it here yesterday, didn't I?

Q.—And so the document was found by you after searches made by you and under your supervision, not complete, is that right? A.—Not complete is correct, yes.

40

Q.—These plans, these eleven sheets of plans, are not or are they necessarily bound together? A.—No.

Q.—They are not? A.—No. They are kept separately for purposes of making blueprints.

Q.—I see. Kept separately? A.—Yes.

MR. COOK: I object to a partial production of the document. I don't know whether Mr. Goudrault intends to put those three sheets in, three out of eleven.

William H. Bertram for plaintiff recalled (direct examination).

MR. GOUDRAULT: I may have the pleasure of just putting one in. I am getting to that now.

Q.—Will you look, please, at this sheet, this separate sheet, and tell us if this would be the first sheet of the eleven? (Indicating)? A.—Yes, that is sheet No. 1.

Q.—Will you please look at this sheet No. 1:

10

MR. COOK: Wait a minute; don't answer the question, Mr. Bertram, when Mr. Goudrault is finished, because I want to make an objection. Put your question, please, Mr. Goudrault.

MR. GOUDRAULT: That question is withdrawn, and last one made by me, and I will put another one. We will get down to it.

20

Q.—Will you please produce as Exhibit C-3, sheet No. 1 of the plan, profile and details for the construction of a sanitary sewer and appurtenances in 150th Avenue, in the Borough of Queens, dated December 8th, 1924.

30

MR. COOK: I object to the production of this document by this witness, inasmuch as on his own statement it is an incomplete document. He states that the specifications for this sewer comprise eleven different sheets, and he is now tendering the first of eleven sheets as an exhibit, and I object to that as an improper production of an exhibit in this case, and as not making proper evidence. I will ask the Commissioner for a ruling as to that. The exhibit must be produced as a whole, and not piecemeal.

MR. GOUDRAULT: I will ask the Commissioner to take the question and objection under reserve, in the absence of a judge.

THE COMMISSIONER: I will take the exhibit under counsel's objection.

40

MR. HACKETT: I object, on the same ground.

MR. GOUDRAULT: And will you mark this exhibit as C-3.

(The said sheet No. 1 of plan was thereupon received in evidence and marked Plaintiff's Exhibit C-3, Jan. 20, 1931).

William H. Bertram for plaintiff recalled (direct examination).

Q.—Will you now produce as Exhibit C-4 and C-5, sheet No. 5 and sheet No. 10 of the plan, profile and details for the construction of a sanitary sewer and appurtenances in 150th Avenue, in the Borough of Queens, dated December 8th, 1924; the same to be marked respectively as C-4 and C-5.

10 MR. COOK: I renew my objection to the production of these two exhibits, Mr. Commissioner, on the ground that they are irrelevant in the first place, and they have not been connected in any way with this suit, in the second place; and in the third place, you can not produce a document in parts, and its production is entirely illegal and improper.

MR. HACKETT: I associate myself with that objection.

THE COMMISSIONER: I make the same ruling as before. Received, subject to counsel's objection.

20 (The said sheet No. 5 was thereupon received in evidence and marked Plaintiff's Exhibit C-4, Jan. 20).

(The said sheet No. 10 was thereupon received in evidence and marked Plaintiff's Exhibit C-5, Jan. 20).

Q.—Now, Mr. Bertram, you stated that you have been unable to find the missing sheets? A.—That is true.

30 Q.—Did you or did you not state that you did endeavor to find the missing sheets and that to the best of your knowledge this work was carried on by yourself, and under your supervision? A.—Yes. I made such a statement.

Q.—Did you send anybody to Buckner's office to find out if the missing sheets could be located? A.—I sent up Mr. Pearson.

Q.—Is Mr. Pearson here this afternoon? A.—No.

Q.—We could have him; he is a member of the staff? A. Absolutely, in half an hour, by telephone.

40 Q.—Now, I think I am right in stating that you stated you recollect that only a few of those 11 sheets went to Buckner's office? A.—That is right. I think their records show that they only received those three sheets.

BY MR. HACKETT:

Q.—Whose records, yours or Buckner's? A.—Buckner's.

Q.—All you know about his records is what he or his office told you? A.—Yes.

William H. Bertram for plaintiff recalled (direct examination).

BY MR. GOUDRAULT:

Q.—Or what Mr. Pearson told you. A.—I have nothing to do with transmitting those to Buckner.

Q.—Were you called upon to transfer those to Buckner when he called for them? A.—No. I was not, no. The man in charge of the files was.

10 Q.—Now, will you look at photostatic copy of plan and profile and details for the construction of a sanitary sewer and appurtenances at 150th Avenue, and state if this is a photostatic copy, to the best of your knowledge, of the eleven sheets pertaining to the said plan and profile?

MR. COOK: I object to the question. It is impossible for this witness to say that this is a photostatic copy of a document that he has not seen. The original document is the proper way to establish this, and then if necessary, produce a photostatic copy after we have seen the original, or after the original has been proven.

MR. HACKETT: I associate myself with that objection.

MR. GOUDRAULT: That is your objection?

MR. COOK: Yes.

Q.—Is this a photostatic copy? A.—It is more than a photostatic copy. It includes more than the original contract drawings.

30 Q.—Does it include the eleven sheets of the plan? Does it or not? A.—It includes the eleven sheets.

Q.—Fine; that is what we want. And so it is a photostatic copy of exhibits that you have produced as C-3, C-4 and C-5? A.—Yes. That and more.

Q.—Yes, and more. But I mean at least that. Now, what is the part that is added to that photostatic copy? A.—That is a modification requiring a tile foundation under the sewers.

40 Q.—Before you go into the question of whether or not this contains much more, or more than the original eleven sheets, I will put you another question, Mr. Bertram.

MR. COOK: One minute, Mr. Goudrault. How can you speak about a modification, or how can you ask the witness to speak about a modification, when you have not produced the original?

William H. Bertram for plaintiff recalled (direct examination).

MR. GOUDRAULT: I am coming to that.

MR. COOK: No. I object to that.

MR. HACKETT: So do I.

10 Q.—Have you had occasion to look at this, — you had occasion to look at this plan and profile which is reproduced here in this photostatic copy (indicating)? A.—Yes, I saw the originals of these.

MR. COOK: I object to that again. Same objection.

MR. GOUDRAULT: All right.

Q.—Then will you produce as Exhibit C-6.

MR. COOK: Let me make an objection before that.

20 Q.—This is photostatic copy of the plan and profile of the 150th Avenue sewer construction.

MR. COOK: I object to the production of the exhibit.

MR. HACKETT: How many sheets?

MR. GOUDRAULT: There are 14 sheets.

30 MR. COOK: May it please the Court, I object to the production of this document as irregular, illegal and improper. There is no evidence as to how it was obtained, there is no suggestion that it is correct, there is nothing is no suggestion that it is correct, there is nothing at all to link it up with what counsel examining upon, and I ask this be not received as an exhibit. It is impossible for us to say what the effect of the document will be. We have no way of checking it, no way of knowing whether it is right or wrong, or anything about it.

MR. HACKETT: I associate myself with that objection.

40 THE COMMISSIONER: It will be taken as part of the evidence, subject to counsel's objection.

(The said photostatic copy of plan and profile was thereupon received in evidence and marked Plaintiff's Exhibit C-6, of this date).

Q.—Now, that this document is produced, will you tell us about the modifications, — I mean to say not the modifications

William H. Bertram for plaintiff recalled (direct examination).

but the additional sheets beside the eleven? A.—The first additional sheet.

10 MR. HACKETT: One moment. Mr. Commissioner, I assume that the objection already made with regard to the production of what is called a photostat of an original that has not been produced, will avail for all testimony referring to this Exhibit C-6.

MR. COOK: C-3, C-4, C-5 and C-6.

MR. HACKETT: The others are originals.

THE COMMISSIONER: I direct the clerk to make that note upon the minutes.

Q.—Now, can you answer?

20 MR. COOK: The defendant renews its objections to the production of this document on the additional ground that the document under any circumstances speaks for itself; and that this witness is not competent to add to or vary a written document.

THE COMMISSIONER: His answer will be taken subject to counsel's objection.

30 A.—The first sheet is the modification requiring an addition to the sewer of a tile foundation and concrete cralde. That is an addition to the original contract.

Q.—Does that modification bear a number? A.—Except that it has the same file number. That is our file number. It has not a sheet number, as the others have. You see, they are all numbered and filed together.

40 MR. COOK: May it please the Court, it appears utterly ridiculous that this witness should be allowed to give evidence as to the modification of an original contract which is not before the Court, by means of a photostatic copy concerning which there has been no evidence whatever to justify its production. I object again.

THE COMMISSIONER: His answer will be allowed subject to your objection, as before.

Q.—Now, go on with your answer. A.—I have described the pile foundations.

William H. Bertram for plaintiff recalled (direct examination).

Q.—Just state in a word what each additional sheet stipulates, or what it is meant for? A.—Well, this sheet is the details of the foundation for sanitary sewer.

Q.—The following? A.—The following sheet is a change in one of the manholes.

Q.—The following? A.—The following is a record of the sewer as built. That is a final map after the sewer is built, and is not a part of the contract. It is a record of how it was built.

Q.—Now, in looking up to find the original plan for this 150th Avenue sewer, were you or were you not able to locate with the three sheets that you have succeeded in finding, these additional sheets? A.—I was unable to find any but the three that I have brought over here.

Q.—You have endeavored to find those? A.—I did endeavor to find them.

Q.—You are quite familiar, — were you or were you not familiar with this plan and profile for the 150th Avenue sanitary sewer? A.—I was familiar with it.

Q.—You were? A.—Yes

Q.—Did you work on that plan, or did you give instructions? A.—I gave instructions as to how parts of it were to be done.

Q.—Whom did you get your instructions from for giving your subordinates instructions to design these plans? A.—Well, except that I was second to Seeley, and Seeley provided the details, and I assigned the men to do the work of tracing.

Q.—And that was within your jurisdiction? A.—Yes.

Q.—And that was part of your work? A.—Yes, that was part of my duties.

Q.—I see. And in particular, with this plan and profile of the 150th Avenue sanitary sewer? A.—Yes.

Q.—Now, will you look at Exhibit C-3, which is the original of the first sheet of the said plan and tell us, in a few words, what is meant by this design? (Indicating). I point there to type A. A.—8 foot no inch.

Q.—8 feet no inch, monolithic sewer section. And to the various designs that do appear on the said Exhibit C-3.

MR. COOK: I object, my lord, inasmuch as the question has for its object the obtaining of evidence to vary a written document. The document speaks for itself.

THE COMMISSIONER: The answer will be taken subject to counsel's objection.

William H. Bertram for plaintiff recalled (direct examination).

Q.—Now, you tell us what those designs there are, in a few words, Mr. Bertram. A.—Those are cross-section views of a sewer section built monolithic.

Q.—So we must conclude that this plan and profile called for a monolithic sewer? A.—The plan shows the sections of the monolithic sewers.

10 Q.—Now will you tell us more particularly what is meant by these designs that appear on this first sheet of the plan and profile? A.—Well, there is a cross-section showing the area of concrete, the position and size of the steel rods for re-enforcement, and water proofing membrane.

Q.—A waterproofing membrane. Did I understand you to say that these plans, — no, I withdraw that question. So you are quite familiar with this plan and profile? A.—Yes.

Q.—At whose orders was that design or waterproofing membrane put in, do you know? A.—Yes, Mr. Seeley's.

20 MR. COOK: Wait a minute.

MR. GOUDRAULT: What is objectionable to that?

MR. HACKETT: All that you can say, Mr. Bertram, is what Mr. Seeley told you.

THE WITNESS: Yes.

30 MR. HACKETT: Whether the orders came to Mr. Seeley from his superior officers or not, you don't know?

THE WITNESS: No, I don't know.

MR. GOUDRAULT: I am asking from whom he himself received the orders.

Q.—You had instructions from Mr. Seeley, didn't you? A.—Yes, from Mr. Seeley.

40 Q.—And you gave orders to your draftsmen and designers to go ahead and put in that waterproofing membrane? A.—That is correct.

Q.—Do you know what was the first job in which the waterproofing membrane was inserted in the manner indicated in these plans? A.—As I said before, I wouldn't be sure, but I think it was this job.

X MR. COOK: What is the date of that one?

MR. GOUDRAULT: December 8th, 1924.

William H. Bertram for plaintiff recalled (direct examination).

Q.—In what kind of sewer? Your answer is? A.—In a concrete sewer.

Q.—Monolithic? A.—Monolithic concrete sewer.

Q.—And to the best of your recollection, this was the first time that this waterproofing membrane was inserted? A.—To my best recollection, this was the first time.

Q.—Do I understand Mr. Bertram, that the plan and profile for the construction of a sewer, and the contract for the construction of said sewer, is quite different, isn't it? A.—I don't know what you mean.

Q.—In a general way? A.—This becomes a part of the specifications and part of the contract.

Q.—Yes; but we would like to know if an original contract when same is awarded, if these plans are attached to the contract, or just the specifications are attached to the contract?

MR. COOK: Well, the contract has not been produced, Mr. Goudrault.

MR. GOUDRAULT: No. I am just asking him a general question. No particular reference to any contract whatever, except the contracts in general for the construction of sewers.

THE WITNESS: The plans and specifications are one. They are all part of the contract. even though they are not fastened together.

Q.—Oh, yes. We understand that. That is what I want you to say. They are not fastened together? A.—They are not fastened together, no.

Q.—Meaning this, that the plan and profile and details are one document, and the contract is another? A.—They are actually made by us, yes, but under the terms of the contract they are a parcel of the same contract.

MR. COOK: They all form one contract?

THE WITNESS: Yes. Not only that, but there are other standards we have, even though they are not shown here.

Q.—Are the plans and profiles of a sewer contract in the Borough of Queens, to your knowledge, left out, and does the contract go to the Comptroller's office of the City of New York? A.—The contract books go to the Comptroller's office, yes. I don't think he gets any copies of these things. They are available to him if he wants them.

William H. Bertram for plaintiff recalled (direct examination).

Q.—But they remain in the Borough of Queens Sewer Department? A.—These remain in our files.

MR. COOK: They don't remain in your department, apparently.

THE WITNESS: They didn't this time.

10 MR. COOK: They should.

Q.—And these explanations you have given apply in general to the plans and profiles and contracts given for the construction of sewers in the Borough of Queens? A.—Yes.

Q.—You notice here on Exhibit C-3, that these plans were designed and drawn and traced and checked in 1924. A.—Yes. Some time before December 8th.

Q.—They were drawn before December 8th, 1924? A.—The plan is dated after the things are complete.

Q.—As to chambers, and manholes, was this 150th Avenue the first job or not the first job where a waterproofing was put in the chambers and manholes of monolithic design? A.—The waterproofing was not put in the manholes.

Q.—It was not? A.—These were all put in the bottom sections of the manholes.

Q.—It was? A.—The waterproofing is shown in the bottoms of these manholes.

Q.—Was it the first job? A.—It was the first one I remember.

30 Q.—Was that requirement ever put in manholes and chambers again after the 150th Avenue job? A.—Oh, yes. It was put in other jobs.

Q.—Are you positive of that? A.—Yes.

Q.—I understood you to say a minute ago that this was the first time that you had ever seen this requirement for monolithic sewers to have a waterproofing membrane, to the best of your recollection. Is that right? A.—Yes, it was the first time it was put in.

40 MR. HACKETT: Since then you have seen it?

THE WITNESS: The same sets of plans of the same kind were put in all of the sections.

Q.—But that was the first time it was ever put in? A.—It was the first time I remember.

William H. Bertram for plaintiff recalled (direct examination).

MR. HACKETT: Just a minute. Did you say that waterproofing was required in the manholes on this job?

THE WITNESS: The plans show it was required.

Q.—And that was the first time? A.—In the bottom sections of the manholes.

10

Q.—And that was the first time? A.—The first time.

Q.—But now I am speaking about the waterproofing membrane in the barrel of the monolithic sanitary sewer. A.—That was the first time I ever saw it.

Q.—It was the first time that the designers were ever called upon, or that you were called upon, to put it in there? A.—To put a waterproofing membrane in concrete sewers, yes.

Q.—And do you know if after December 8th, 1924, these same requirements, — I mean, you stated that these same requirements were made in subsequent monolithic plans; is that right? A.—Subsequent plans, yes.

20

Q.—But was there ever one monolithic sewer constructed of the Type A class, after this one? A.—No contract was ever won with that type of sewer, with that section.

Q.—Never awarded? A.—Never awarded.

Q.—Did you abolish in your department, the requirements of the said waterproofing membrane to be put in the barrel of the monolithic sewer; did you ever receive instructions to abolish it?

30

MR. COOK: What has that got to do with this case? You are going very far, Mr. Goudrault.

MR. GOUDRAULT: I have just obtained from the witness, Mr. Cook, the affirmation that to his knowledge this was the first time that a waterproofing membrane was ever.

MR. COOK: I don't question.

MR. GOUDRAULT: Let me finish.

40

MR. HACKETT: What is the use of repeating what the witness has said?

MR. GOUDRAULT: Well, for enlightenment of counsel for the defense.

MR. HACKETT: That is very considerate of you, I will admit, but it loses a lot of time.

William H. Bertram for plaintiff recalled (direct examination).

MR. GOUDRAULT: Well, we have come to a point where it is very important, and we are going to make the case to the best of our ability. The witness has stated that that was so.

MR. HACKETT: We are going.

10 MR. GOUDRAULT: This is my examination. If you object to my questions, you may do so.

MR. HACKETT: I would like to make an objection, Mr. Commissioner.

MR. GOUDRAULT: To what question?

20 MR. HACKETT: To the question which has been asked the witness concerning changes which may have been made at a later date. We all know that experience teaches men and causes them to modify their ways, and that being so, any change is irrelevant and could have no bearing upon a charge of conspiracy. Because it is irrelevant and illegal, I ask that the question be not allowed.

THE COMMISSIONER: The answer will be taken subject to counsel's objection.

Q.—Do you know when the Hammell Boulevard sewer was built?

30 MR. COOK: Is this a new one, Mr. Goudrault?

MR. GOUDRAULT: A new sewer?

MR. COOK: A new contract.

MR. HACKETT: We had it a little while yesterday. Mr. Cook.

MR. COOK: I only want to know, just for convenience.

40 MR. GOUDRAULT: What is the question?

(Question read by the clerk).

Q.—The approximate date?

MR. COOK: I object to any evidence regarding Hammell Boulevard sewer, as irrelevant and illegal.

William H. Bertram for plaintiff recalled (direct examination).

Q.—You know that it was built? A.—I know that it was built, yes.

Q.—You were in the department when it was built? A. Yes.

Q.—Tell us, if you know, when it was built, to the best of your recollection? A.—Well, in 1924 or early 1925, as I remember it. It is hard to pin me down to dates on these things.

10 Q.—When was it built, the Hammel's Boulevard sewer, in respect to the building and construction of the 150th Avenue sewer?

MR. COOK: The contract will speak for itself. Produce it.

MR. GOUDRAULT: We will.

20 MR. COOK: Do. Don't have evidence concerning it before it is produced.

MR. GOUDRAULT: We will have the Court tell us whether or not this evidence, the way I am putting it in, is legal or not. We are coming to that.

Q.—What is the answer? A.—I believe that the Hammel's Boulevard job was started before this 150th Avenue job. But the work was going on in both places at the same time.

30 Q.—I see. But which of the two, to the best of your knowledge, was first started, the Hammel's Boulevard or the 150th Avenue? A.—I think the Hammel's Boulevard job.

MR. HACKETT: It began, according to your testimony of yesterday, Mr. Bertram, on the 30th of September, 1924.

Q.—That would be the Hammel's Boulevard? A.—Yes.

MR. GOUDRAULT: And naturally this one would start after its date. That is logical enough.

40 Q.—Do you know of the Sewer Department of the Borough of Queens, City of New York, ever constructing a sewer within its limits, having this waterproofing membrane in the monolithic sewer, type A?

MR. COOK: Mr. Goudrault, pardon me. But you don't mean that question, really, do you? Because there is no evidence that the Borough of Queens ever constructed any. You mean the contractors constructed them.

William H. Bertram for plaintiff recalled (direct examination).

MR. GOUDRAULT: I said, was there ever constructed within the limits of the Borough of Queens, a monolithic sewer, sanitary sewer, Type A, sewer?

MR. COOK: That is not the way I understood your question. Let it go.

10 THE COMMISSIONER: Repeat that question for the gentlemen.

(Question read by the clerk).

MR. GOUDRAULT: I mean did the Sewer Bureau, if it ever did have contractors construct such a monolithic sewer, Type A, after the Hammel's Boulevard, or from the 8th of December, 1924, to the 2nd of April, 1928.

20 MR. COOK: If evidence as to contracts is to be given, the best evidence is the production of the contracts.

MR. GOUDRAULT: He will give us his knowledge. He is in the department he knows something about it.

Q.—To your knowledge?

MR. COOK: I register my objection, Mr. Commissioner, against this.

MR. HACKETT: Note my objection, too.

30 THE COMMISSIONER: Your objections will be placed on the minutes.

MR. GOUDRAULT: Mr. Bertram, will you kindly look into all records, or cause your assistants to look into the records of the Borough of Queens Sewer Department and state whether, for the period extending from the 8th of December, 1924, to the 2nd of April, 1928, if ever a contract was awarded to contractors for the construction of a monolithic sewer, type A, with waterproofing membrane, and kindly let us know; because if
40 there is no such monolithic sewer ever constructed, we can not produce any contract.

THE WITNESS: I can answer that right now.

X Q.—All right, give us your answer. A.—No sewer was ever built with that waterproofing membrane.

William H. Bertram for plaintiff recalled (direct examination).

Q.—And the last one, to the best of your recollection, would be which one? A.—None was ever built with the waterproofing membrane.

Q.—I see, none. As a matter of fact, you had occasion to go through the official records of the Sewer Bureau of the Borough of Queens, have you? A.—I think so. They are available to me all the time.

10 Q.—And you are working there? A.—I am using them daily.

Q.—Daily. And do you know if ever any type A monolithic sanitary sewer has been built, with or without membrane, waterproofing membrane, since the 8th of December, 1924, to the 2nd of April, 1928? A.—Well, Patrick McGovern had that sewer in Rockaway, and it did not have a waterproofing membrane in it, and he was building it after December 8th 1924.

20 Q.—Quite right. He had commenced work previous to this plan and profile dated December 8th, 1924, hadn't he?

MR. COOK: I object to that previous answer as not being an answer to the question that was put, and I move that it be stricken out.

MR. HACKETT: I join in that objection.

MR. GOUDRAULT: I move that it remain.

30 THE COMMISSIONER: It will remain, subject to counsel's objection. You gentlemen understand that when I say subject to objection, it will be for the Superior Court to pass upon the objection.

Q.—Mr. Bertram, I will make myself clear. The Hammel's Boulevard sewer, as you stated, had been under construction previous to this plan and profile which is dated December 8, 1924? A.—Yes. Work began on that before that date.

Q.—Before that date? A.—Yes.

40 Q.—You stated yesterday three or four months before that date. You said September or October. Mr. Hackett just told you. A.—Yes.

Q.—And the Hammel's Boulevard job was whose job, whose job was it? Who was the contractor for that job? A.—Patrick McGovern, Inc.

(Whereupon, at 4:05 o'clock p. m. an adjournment was taken to tomorrow, Wednesday, January 21, 1931, at 11:00 o'clock a. m.)

Depositions of witnesses, sworn and examined on the 21st day of January in the year of Our Lord one thousand nine hundred and thirty-one, at eleven o'clock in the forenoon, in the office of DeCoursey Fales, 40 Wall Street, in the County of New York, State of New York, United States of America, by virtue of the commission issued out of His Majesty's said Superior Court, to us DeCoursey Fales, a lawyer, of 40 Wall Street, City and State of New York, directed for the examination of witnesses
10 in a cause therein pending between The People of the State of New York, plaintiff and Heirs of the late John M. Phillips, et al., Defendants: — I, the commissioner acting under the said commission, and also the clerk by me employed in taking, writing down, transcribing and engrossing the said depositions, having first duly taken the oaths annexed to the said commission, according to the tenor and effect thereof and as thereby directed heard the following depositions:

20 (George P. Slack, Daniel Rogge and Fred H. Weaver, appeared as witnesses on the part and behalf of the People of the State of New York, the plaintiff, but were not sworn).

MR. GOUDRAULT: Mr. Commissioner, these three witnesses have been subpoenaed to be here before you on this 21st day of January. I am sorry to say that I will not be able to reach the part of my case where these gentlemen have to come in as witnesses. So I would like to ask you to order the said witnesses to be back on a future date, which I would suggest as being the
30 27th, next Tuesday.

THE COMMISSIONER: You are ordered to return here at 11:00 o'clock on Tuesday, the 27th of this month next ensuing.

DEPOSITION OF WILLIAM H. BERTRAM.
(recalled)

40 WILLIAM H. BERTRAM was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposeth and saidth as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT:
(Resumed):

Q.—Mr. Bertram, yesterday you told us that to the best of your recollection the plan and profile of the construction of

William H. Bertram for plaintiff recalled (direct examination).

a sewer, the 150th Avenue sewer, was the one in which requirement, new requirement for waterproofing membrane in the barrel of the monolithic concrete system of sewer was required. Am I right in stating so? A.—Yes.

10 Q.—Then I asked you a question concerning the approximate date of the previous or very last, — the previous, rather, monolithic or type A sewer that was constructed in the Borough of Queens by your department, and if I am not mistaken you told us that it must have been the Hammel's Boulevard that I was referring to. A.—That's correct.

Q.—Now, according to my requests of the day previous, on your first examination before this Commissioner, I have asked you to make searches in the department and see if you could locate the plan and profile for the construction of the sewer on Hammels Boulevard. Have you succeeded in your endeavors? A.—I have it right here.

20 Q.—Would you kindly look at this plan, profile and details for the construction of a sewer and appurtenances in Hammels Boulevard, dated July 6th, 1923 —

MR. COOK: One minute, Mr. Goudrault. I object, —

Q. (Continuing)—and state if this is the original plan and profile and details for the construction of a sewer on the said Hammel's Boulevard?

30 MR. COOK: One minute, please, before you answer. I object to all evidence in regard to the matters connected with Hammels Boulevard as irrelevant and illegal.

MR. HACKETT: And I object, for the reasons advanced by Mr. Cook, as well as for the additional reason that it is not yet established that plans and profiles now exhibited to the witness were prepared by him.

THE COMMISSIONER: I will take the exhibit subject to counsel's objection.

40 MR. COOK: I avail myself of the additional reason given by Mr. Hackett.

Q.—Will you kindly produce as Exhibit No. C-7, the said plan and profiles and details?

MR. COOK: Same objection.

A.—There are seven sheets in there.

William H. Bertram for plaintiff recalled (direct examination).

Q.—Is that complete? A.—Original, complete.

(The said sheets were thereupon received in evidence and marked plaintiff's Exhibit C-7, of this date, consisting of seven sheets.)

10 Q.—Now, will you look at the signatures thereon appearing, being the signature of Frederick Seeley, assistant engineer, Division of Sewers, also those of Maurice E. Connolly, President of the Borough, and the signature of J. Franklin Perrine in his capacity of engineer of sewers, and the signature of William H. Burr, consulting engineer, and state if those four signatures are the signatures, to the best of your knowledge and recollection, of the parties whose signatures appear?

MR. HACKETT: I object to the question as illegal, in that it does not elicit the best evidence of the signatures.

20 MR. COOK: Same objection.

Q.—I understand that you have seen how many hundreds of these documents signed by Connolly and Seely? A.—I don't know; a few hundred of them, anyway.

Q.—A few hundred. Do these signatures of Connolly and Seely appear to be their signatures?

MR. COOK: Same objection.

THE WITNESS: Shall I answer it?

30 Q.—Answer it. A.—Yes. But I am not familiar with Mr. Burr's signature.

Q.—I don't care for his. Now, who is the proper official in your department who would be able to testify, in order to satisfy the gentlemen on the other side, as to the correct signatures of Seeley and Connolly?

MR. HACKETT: Messrs. Connolly, Seely, Burr and Perrine.

40 Q.—We know that, but beside that, I mean the official in your department? A.—Well, I could certify that that was Seely's and that was Perrine's. But I could not be sure, — I did not see Connolly sign these plans.

Q.—Did you see Seely sign these plans? A.—I have not seen him sign these. But I have seen him sign hundreds of other times. I don't know the signature of Burr. He was called in and consulted on this job.

William H. Bertram for plaintiff recalled (direct examination).

MR. COOK: You did not see these particular persons sign those, did you, in front of you?

THE WITNESS: I would not say whether I did or not. I have seen Seely sign so many, that I don't know which ones I have seen him sign.

10 MR. HACKETT: Was Burr in charge of this job?

THE WITNESS: No. He was called in as a consultant by the Borough President.

Q.—Now, here on Exhibit C-3, which was produced by you, appears also the signature of Frederick Seely, Maurice E. Connolly, and others. Will you look at these signatures and state if they are the signatures that appear to be there of Maurice E. Connolly and Frederick Seely?

20 MR. COOK: Same objection.

MR. HACKETT: I object to this evidence as not being the best available evidence.

Q.—To the best of your knowledge? A.—I would say that that is Seely's signature (indicating), and that is Perrine's (indicating). I believe that (indicating) to be Connolly's signature, but I did not see him sign it. I have seen Seely sign and Perrine sign hundreds of them.

30 Q.—This was for the 150th Avenue plan and profile. And do you recollect if Seely did sign this in your presence? A.—He signed most of them in my presence. When the job was finished, I would take to him all the designs and he would take a pen out and sign them.

40 Q.—But just to refresh your memory, Mr. Bertram, I asked you yesterday or the day previous, from whom you had received instructions to insert on the plans and profile for the 150th Avenue sewer these new plans and specifications concerning the monolithic system as regards waterproofing membrane, and if I recollect well you stated that you did receive instructions from Seely and forwarded instructions to the men under you in your office. A.—Well, there is the man on there.

Q.—Who would be there? A.—The instructions were given to the man who signed the drawing, J. S. Meacle.

MR. HACKETT: Do you remember that, or do you just say that because you have a document before you?

William H. Bertram for plaintiff recalled (direct examination).

THE WITNESS: I can tell that this was done by him.

Q.—I understand that these drawings were ordered by Seely to you and you transferred them to Meacle? A.—To Meacle.

Q.—And do you recollect when Seely handed you the plans or gave you instructions pertaining to the plans, if that was signed or not? A.—These were not signed until after all these were put on. This was the last operation.

Q.—Do you know who brought the plans to them? A.—I may have done it myself. There are so many of those I don't know about any particular one.

Q.—Now, you further, —

MR. COOK: Just a minute, Mr. Goudrault. The defendants make the same objection that has just been given with regard to the 150th Avenue which was made yesterday in regard to evidence by this witness, as to the signatures.

Q.—This plan and profile for the Hammels Boulevard is dated July 6th, 1923. Would you recollect on what date or about the month the construction was started, or would it appear in the record? A.—It would appear in the record, yes.

Q.—I mean on this plan and profile? A.—No.

Q.—It would not? A.—No.

Q.—Well, we may have to bring you back. A.—All the story is on that photostat that was put in evidence the other day; the record of the jobs.

Q.—We will come to that later. Now, we go back to this Exhibit C-3 for the 150th Avenue sewer, and to these plans and specifications of a waterproofing membrane in the barrel of the monolithic system. You told us that these plans and specifications were ordered to be put on the said plan and profile at the instance of Mr. Seely.

MR. COOK: What is that, please, Mr. Goudrault? I did not understand that. Did he?

MR. GOUDRAULT: Oh, yes.

MR. COOK: Pardon me. I did not understand that.

MR. GOUDRAULT: He stated it very distinctly. Oh, yes, we had him on that for about half an hour.

MR. HACKETT: The witness also stated that Mr. Seely had superior officers.

William H. Bertram for plaintiff recalled (direct examination).

MR. GOUDRAULT: Yes.

MR. HACKETT: And from which of the superior officers the instructions that were transmitted from Seely to the witness had emanated, he did not know.

10 MR. COOK: Mr. Goudrault, I want to get clear on this. I want to make an objection, because I understood this witness said he got his instructions from Mr. Rice.

MR. GOUDRAULT: Oh, no. From Mr. Seely. He said that very distinctly.

MR. COOK: All right. I just want to be right. I don't want Mr. Bertram to be wrong in his statement. Will you ask him that and clear that point up?

MR. GOUDRAULT: Oh, yes.

20 Q.—Did you receive instructions, or did you not receive instructions from Mr. Seely for the introducing of a waterproofing membrane on the plans and profiles for the 150th Avenue job?

MR. COOK: Wait a minute, now, Mr. Goudrault. I want to hear Mr. Bertram's answer.

THE WITNESS: The instructions for putting that waterproofing in were from Mr. Seely.

30 Q.—To you? A.—Yes.

Q.—And from you to the men working under you? A. Tracing, yes.

MR. HACKETT: You also stated that you didn't know which of Mr. Seely's superior officers had given them to him.

THE WITNESS: That is true. I don't know who gave Seely the orders.

40 MR. GOUDRAULT: Mr. Seely, he was the assistant engineer, Division of Sewers.

Q.—Well, now, to the best of your knowledge, would he be the one that would have to decide on such details and particulars as the introduction of a waterproofing membrane plan in the plan and profile? A.—All the designs on here are made at his direction.

William H. Bertram for plaintiff recalled (direct examination).

MR. HACKETT: In so far as you were concerned.

THE WITNESS: In so far as I was concerned.

Q.—But I mean to say, in his capacity as assistant engineer would he have the very power by himself to suggest such new improvement?

10 MR. COOK: I object to that as not being the best evidence.

MR. HACKETT: The witness is not competent —

MR. GOUDRAULT: We will let him come to his own qualifications.

20 MR. HACKETT: With the permission of Mr. Goudrault I would be glad of the opportunity to formulate an objection. Mr. Bertram has not shown, and I don't think has any desire, to qualify as a witness concerning the competency of his own superior to give him orders. He told us yesterday that he accepted orders. Whence they had taken their origin, he said he did not know. And I therefore object to questions which tend to elicit from the witness information which he has declared he did not possess.

30 MR. COOK: Yes. I would like to join in Mr. Hackett's objection, and I would also request my friend, Mr. Goudrault, to be kind enough not to lead his witness. Mr. Bertram is a highly competent expert witness and thoroughly able to answer questions, without any suggestion as to the answers. Mr. Goudrault, I must ask you to please be careful not to put leading questions to the witness.

MR. GOUDRAULT: As that is the first request, I presume that is the first leading question I have put.

MR. COOK: Oh, no.

40 THE COMMISSIONER: The answer of the witness will be taken subject to counsel's objection.

MR. GOUDRAULT: What is the question?

(Question read by Clerk).

Q.—All right. A.—All I know is that he ordered them put in there.

William H. Bertram for plaintiff recalled (direct examination).

Q.—Now, you have taken his position since he has been ousted, as you said yesterday, or the day before yesterday? A. Yes.

10 Q.—In your capacity of assistant engineer in the Division of Sewers of the Borough of Queens, did you have such power to give to one of your employes, designer or assistant designer, and make suggestions of this nature for the improvement of the works in the construction of sewers, improvement of the works, to the best of your knowledge of the question? A.—Well, I would consult with my superiors before I made any radical changes.

Q.—Radical changes, sure. But have you the power and authority with all the experience you have in the sewer construction business, to make and suggest certain improvements? A.—Yes.

20 Q.—I presume that Seely would have had the same power as you?

MR. COOK: Now, wait a minute.

MR. GOUDRAULT: Question withdrawn.

Q.—Now, to get another point clear, I understand that in all these sewers there were manholes and chambers? A.—Yes.

Q.—They would necessarily be monolithic, and I mean by that they would necessarily be concrete? A.—Yes.

30 Q.—I further understand, in order to save time, that whenever a sewer was constructed of the type A, monolithic, and when one would be constructed Type B, or with precast pipe, that in both of these there would be chambers and manholes, —

MR. COOK: One minute —

Q.—(Continuing)—according to said plans and profiles? A.—Yes.

MR. HACKETT: I object to the question as leading, as suggestive and irrelevant.

40 MR. COOK: Same objection.

MR. GOUDRAULT: Well, all right. Question withdrawn, and I will put another one.

Q.—Mr. Bertram, as regards manholes and chambers, would you state in a few words, if the plan and profile of your Exhibit C-3 comprise, — (Question withdrawn). Look at your

William H. Bertram for plaintiff recalled (direct examination).

Exhibit C-3, plan and profile for the 150th Avenue sewer, and tell us what you have to state as regards manholes and chambers, as regards the construction of same, in a very few words?

MR. HACKETT: The number or the depth?

MR. GOUDRAULT: No such thing. Just how were they constructed, with what material?

THE WITNESS: Well, chambers and manholes are constructed of re-enforced concrete and steel.

MR. GOUDRAULT: Right. Another question.

MR. COOK: Aren't you going to allow him to answer the question?

MR. GOUDRAULT: He has answered.

Q.—Is this whether or not the sewer is monolithic or with precast pipe? A.—Manholes are built with every sewer, yes.

Q.—Are they always monolithic or with re-enforced concrete? A.—Well, we make them out of brick, too.

Q.—Yes, but I mean to say this, — you make them of brick. Now, is there any special device concerning the waterproofing membrane for those manholes and chambers? A. There is in this plan.

Q.—You mean in the 150th Avenue sewer? A.—The 150th Avenue plans carry the waterproofing in the manholes.

Q.—But in the other plans as regards manholes and chambers? A.—You mean this job?

Q.—In other plans. (Question withdrawn). Now, will you kindly come back to this plan, Exhibit C-3? A.—Yes, sir.

Q.—Will you state to us what is meant by these designs which appear on sheet No. 1, and which I now show you? A. Referring to the sewer sections, it is the cross section of the sewer showing the concrete and positions and sizes of the re-enforcing rods and the waterproofing membrane.

Q.—Was this waterproofing membrane as required by these plans, the first time to your knowledge that is was requested to be put in?

MR. HACKETT: I object to the question again as leading.

MR. GOUDRAULT: Well, we must get somewhere.

William H. Bertram for plaintiff recalled (direct examination).

MR. COOK: We must, but where are we getting? Mr. Goudrault, what is all this for? What has it to do with the case?

MR. GOUDRAULT: The end of the story will tell.

10 MR. COOK: All right. I don't want to object, but here this will be three days, and we have to get on.

Q.—Answer the question, was it or was it not the first time? A.—I said before, I believe this is the first time that a waterproofing membrane was ever shown in a monolithic concrete sewer.

MR. COOK: We have had that a dozen times.

MR. GOUDRAULT: I know. That is why it is leading.

20 MR. COOK: A dozen times, that waterproofing membrane was shown for the first time. No doubt it is so, I don't know.

Q.—You are not expressing an opinion? A.—No.

Q.—You are not expressing an opinion; you have knowledge of all the plans that were prepared, plans and profiles that were prepared for sewer construction in the Borough of Queens, a thorough knowledge, for the last 10 or 15 years? A. I believe I have, yes.

30 Q.—And you had something or had you not something to do with the preparation of such plans and profiles? A.—Yes, I did.

Q.—You were an assistant to Seely? A.—I was.

Q.—Could I ask you this question: May I say that you have knowledge of all the plans and profiles that were prepared by your department for the construction of sewers, say between 1917 and 1928? A.—I believe I have. There may have been on or two prepared while I was on vacation, or something like that.

40 Q.—But otherwise you would have knowledge of practically all? A.—Practically all, yes.

Q.—Will you then, Mr. Bertram, to satisfy learned counsel for the defendants, look up the records of your department and state in a more emphatic way whether or not the plan and profile for the 150th Avenue sewer was the first plan and profile wherever such requirement for waterproofing membrane was inserted in the barrel of a sewer of the monolithic type?

William H. Bertram for plaintiff recalled (direct examination).

MR. HACKETT: Mr. Goudrault, before making any objection, if it is understood that the witness's testimony on this aspect of the question shall not avail until he has made the searches, I will make no objection, and we can go and make the matter up when he comes back.

10 MR. GOUDRAULT: That is what I said. Kindly searches and tell us.

MR. HACKETT: And his testimony until he has made these searches shall not avail on the record.

MR. GOUDRAULT: No, unless he knows and says very distinctly it is the first job.

MR. HACKETT: Yes.

20 Q.—Now, furthermore, will you, Mr. Bertram, look up —
A.—Wait a minute. I don't believe I could tell from the records whether this was the first or some other one was the first. I don't believe we ever kept records that way. The date on the plan might mean that this job was turned out first, but we may have started this thing on another job in the same locality. I don't believe I can say that this was the first or that that one was the first.

30 MR. HACKETT: You told us that the other day and you stated that there were hundreds of jobs going through and that you were human and could not give details.

THE WITNESS: No. We had 35 men in the room.

Q.—Mr. Bertram, isn't it a fact that you well know and are well positive that no such plan and profile was ever prepared in your department with such requirements for a water-proofing membrane in the monolithic system, before this one?

MR. HACKETT: I object —

40 THE WITNESS: That is the same question again. I won't say this is the first or some other one is the first.

Q.—All right. Will you therefore endeavor to the best of your ability, — would anybody else in your department know?

A.—I don't know, unless it was Seely himself would remember.

Q.—Oh, forget about Seely. He is far away. Anybody else in your department? You are assistant engineer? A. Well, may be Sommerfeld would know.

William H. Bertram for plaintiff recalled (direct examination).

Q.—Who? A.—May be Sommerfeld would know which was first.

Q.—In order to expedite matters, will you kindly ask Mr. Sommerfeld to make such searches, and kindly tell me. A.—Sommerfeld did the actual drafting on the original of these things, but he did not know what job he was doing it for.

10 Q.—I know, but my question was quite pertinent, and you know what I mean. A.—Well, Sommerfeld is to come over here tomorrow, I believe.

Q.—You remember testifying as to the questions I am putting you now, some time before? A.—Yes I remember those things.

MR. COOK: Now, Mr. Goudrault, I don't want to go on with this. You have asked the witness a question a dozen times and he was answered a dozen times.

20 MR. GOUDRAULT: I know.

Q.—Now, to clear out a point, whether the precast pipe is used or whether monolithic pipe is made in a ditch, are the chambers and manholes common to both types of sewer, Mr. Bertram? A.—Yes.

Q.—And what are they made of? A.—Concrete, steel, brick. You are talking about these, I believe. These were all made of concrete.

Q.—Oh, no. My question is clear enough. A.—Generally.

30 Q.—And whether the system of the sewer is type A or type B, that is to say, monolithic or precast, then I understand the chambers and manholes are always — A.—Common to both.

Q.—And what are they? A.—Concrete, steel and brick work.

Q.—These plans have a lot of instructions. Who ordered these instructions to be put on the plans? A.—They were all put on Seely's instruction.

40 BY MR. HACKETT:

Q.—And Mr. Seely, you said, was your superior officer? A.—Yes.

Q.—And had in turn many superior officers of his own? A.—He had four or five.

Q.—Yes. And from whom he got his instructions, you have already told us you did not know. A.—I don't know where he got his instructions.

William H. Bertram for plaintiff recalled (direct examination).

BY MR. GOUDRAULT:

Q.—Will you tell me as an engineer, whether you in your experience have ever seen a waterproofing membrane requirement in the barrel of a monolithic sewer such as that indicated here on plan C-3? A.—No. I had never seen such a membrane.

Q.—Never? A.—I had never seen it.

10 Q.—And you had seen all the plans and profiles of your department, you told us a few minutes ago, except a few that might have been made during your holidays; is that true? A. That is true.

Q.—And yet you never saw any such requirements for waterproofing membrane on such plans of this nature? A.—I never did.

20 MR. HACKETT: I think, Mr. Commissioner, that that question having been put several times and disposed of until Mr. Bertram has the opportunity of making further search, it might, with benefit to expedition, be allowed to remain in abeyance.

MR. GOUDRAULT: Yes.

THE COMMISSIONER: Do you consent to that, Mr. Goudrault?

MR. GOUDRAULT: I accept Mr. Hackett's suggestion.

30 MR. COOK: I would like to object to the previous question asked the witness.

(Question read by Clerk, as follows):

“Q.—Will you tell me as an engineer, whether you in your experience have ever seen a waterproofing membrane requirement in the barrel of a monolithic sewer such as that indicated here on plan C-3? A.—No, I had never seen such a membrane.”

40 MR. COOK: I object to the question on the ground that it is irrelevant to the issues herein. Further, it was agreed just a few minutes ago that no such testimony would be given until the witness had had an opportunity of verifying the plans in his office.

BY MR. GOUDRAULT:

Q.—That has nothing to do with the search we requested you to make, Mr. Bertram. You most emphatically state that

William H. Bertram for plaintiff recalled (direct examination).

you have never seen such requirements for waterproofing membrane in a monolithic sewer. Is that right?

MR. COOK: Same objection, being irrelevant.

10 Q.—What is your answer to that? A.—I never saw that membrane before this job was started. Whether it was this particular one or some other particular one, I don't know which one was first.

Q.—Do I understand you to say that there might be some other jobs where the same requirements for a waterproofing membrane in a monolithic sewer were called for? A.—There were other jobs where waterproofing membranes were called for.

MR. GOUDRAULT: I think it is my mistake, because we had quite a lot of trouble, and I do not understand your answer to my question.

20 Q.—Will you look at Exhibit C-7, plan and profile for the Hammels Boulevard sewer, dated July 6th, 1923, and tell us if there do appear such requirements for waterproofing membrane in the monolithic system? A.—No.

MR. HACKETT: I object to the question —

MR. GOUDRAULT: Leading?

MR. HACKETT: Inasmuch as the documents speaks for itself.

30 MR. GOUDRAULT: I know, but we are getting explanations from the witness.

Q.—Does it or does it not contain a waterproofing membrane? A.—It does not contain a waterproofing membrane.

Q.—It does not? A.—No.

Q.—You said a minute ago that you did not consider this waterproofing membrane necessary in this monolithic sewer. Is that right?

40 MR. COOK: One minute. Oh, no, —

MR. GOUDRAULT: Question withdrawn.

Q.—Did I or did I not ask you if in your experience as an engineer, and your further experience in the Sewer Bureau, such a waterproofing membrane requirement was necessary for

William H. Bertram for plaintiff recalled (direct examination).

the construction of a good sewer? Did I ask you that question or not?

MR. COOK: Well, —

MR. GOUDRAULT: Question withdrawn. Mr. Schultz, wil you kindly read my ten last questions and answers?

10 (Questions and answers read as requested).

Q.—You are the assistant engineer, you said, of that Sewer Bureau, Sewer Department, of the Borough of Queens?

A.—Yes.

Q.—And therefore you have a thorough knowledge of sewer construction? A.—Yes. I believe I have, anyway.

Q.—Now, will you tell me whether in your experience in the Sewer Bureau and an engineer for the construction of sewers, such a waterproofing membrane requirement as that appearing
20 on Exhibit C-3 is necessary for the construction of a good sewer?

MR. HACKETT: Just a minute.

(Counsel for defendants confer).

MR. HACKETT: I have no objection.

MR. COOK: I will object to that question as irrelevant, illegal and having no bearing on the issues.

THE COMMISSIONER: I will take the answer subject to counsel's objection.

Q.—Will you answer? A.—I don't believe the water-proofing membrane is necessary.

Q.—That is your judgment? A.—Yes.

Q.—Would you have used it yourself? A.—No.

If it was to be used in monolithic sewers, according to the plans there, do you know of any reason why it should not also be used in the precast sewer? A.—No. If it was necessary in one, I should say it would be necessary in the other.

40 Q.—And do the plans, Exhibit C-3, do they call for a waterproofing membrane on the precast sewer? A.—No; except that the manholes and chambers are common to both.

MR. GOUDRAULT: You said that, yes.

MR. COOK: Let him say that again. Excepting what?

William H. Bertram for plaintiff recalled (direct examination).

THE WITNESS: Excepting that the manholes and chambers were common to both, and the manholes are drawn and to be used on either type.

BY MR. GOUDRAULT:

10 Q.—Either type A or type B? A.—Either type A or type B.

Q.—Monolithic or precast? A.—Monolithic or precast.

Q.—That is, where manholes and chambers are made of re-enforced concrete, whether they are of type A or type B or waterproofed, in both systems? A.—In this particular type it calls for waterproofing in manholes and chambers.

Q.—But in this particular plan and profile, Exhibit C-3, the waterproofing membrane was required only for the said type A, or monolithic system of sewers. Is that right? A.—You mean the sewer itself?

20 Q.—In the sewer barrel. A.—Yes.

Q.—Sure. Now, you told us a minute ago that in your experience this waterproofing membrane was not necessary in a monolithic system and that you would not have used it your own self. Now, could you tell us, Sir, first of all if this Sheet No. 1, which is the one out of eleven that you succeeded in finding, if it is not, —

MR. COOK: Exhibit what? Identify it.

30 MR. GOUDRAULT: Exhibit C-3.

Q.—Is the sheet which refers to the waterproofing membrane in the barrel of the monolithic system? A.—Yes, that is the sheet that carries the waterproofing membrane in the monolithic sewer.

Q.—That is the sheet? A.—That is the sheet, yes.

Q.—Now, seeing that you have been unable to find the missing sheets, —

MR. COOK: He has not testified to that, has he?

40 MR. GOUDRAULT: He has, yesterday. And if you want me to, I will repeat half a dozen questions of this kind and then I will make him come to this.

MR. COOK: Don't bother.

Q.—You have yesterday produced, as Exhibit C-6, the plan and profile for the same avenue, which is the 150th Avenue, in

William H. Bertram for plaintiff recalled (direct examination).

a photostatic form, and to the best of your ability and knowledge I think you stated to us that those would be the plans and profile in their entirety. Am I not right?

MR. COOK: Defendants reiterate the objection which was made yesterday with regard to this exhibit, and further, that question is leading.

10 MR. GOUDRAULT: Leading?

MR. COOK: Yes.

MR. GOUDRAULT: I can put it in another way. This is just to save time.

MR. COOK: All right, put it any way you want to.

20 THE WITNESS: To my knowledge and belief, this is a copy of photostat of the eleven sheets of the original.

MR. HACKETT: I believe you told us that you have not seen the originals for many moons, or many years.

THE WITNESS: No, I have not seen them in a good many years.

MR. HACKETT: Yes.

30 MR. GOUDRAULT: He has had it in hand since yesterday, though, and you had it at the Buckner trial.

THE WITNESS: Yes.

BY MR. HACKETT:

Q.—You told us yesterday, Mr. Bertram, that sheets 1, 5 and 10 had been found? A.—Yes. They are right here.

Q.—And that other sheets were missing? A.—They are missing.

40 MR. HACKETT: And you have not seen those other sheets for many years.

MR. GOUDRAULT: Have you or have you not? That is what he means.

THE WITNESS: I have not seen them for quite some time. I don't know just how long.

William H. Bertram for plaintiff recalled (direct examination).

BY MR. GOUDRAULT: Would it be years or months?

A.—It would be a couple of years anyway.

Q.—But do you or do you not know these plans for the 150th Avenue?

MR. COOK: Same objection.

10 Q.—You have worked on them? A.—Yes.

Q.—And in the way you said, on Seely's instructions. I wish you now, for the purpose of enlightening the Commissioner and the Court, to examine rapidly Exhibit C-6, and tell us if in the said exhibit there are any sheets but the first where anything refers to waterproofing membrane plans to be inserted into the monolithic system or type A sewer?

MR. COOK: Same objection; and furthermore, the plans speak for themselves.

20 A.—The only reference to waterproofing membrane in the barrel of the sewer is on sheet 1.

Q.—So you found the original of sheet 1 and you produced it as an exhibit? A.—Yes.

Q.—Thank you very much. Do you mean or do you not mean to say that the other sheets missing of the original have no bearing or have a bearing on these additional requirements for waterproofing membrane?

30 MR. COOK: Same objection.

Q.—Did you get that question? Do you want me to put it clearer? A.—Yes. Confine yourself to the section, and I will answer it.

Q.—Mr. Bertram, then as you have stated, the only sheet in this plan and profile for the 150th Avenue sewer that refers to requirements to put in waterproofing membrane in the monolithic sewer, is the only sheet where such a reference to a waterproofing membrane is made or traced or designed, and I am always speaking of the waterproofing membrane in the sewer itself. Then the other sheets that are missing have no bearing — have they or have they not any bearing on the first sheet?

40

MR. HACKETT: I object, —

MR. GOUDRAULT: Question withdrawn. I will get it in some other way.

William H. Bertram for plaintiff recalled (direct examination).

Q.—Instead of making all searches that I have requested you to make, Mr. Bertram, in your official records, unless counsel for the defense insist on that, I would only ask you to make such searches as are necessary to establish whether there is any plan and profile that were prepared by your department between the Hammels Boulevard and the 150th Avenue sewer? A.—You mean in the two districts?

10 Q.—Yes. A.—In the Jamaica district.

Q.—Yes, or else in the Borough of Queens, in your department. A.—All right.

Q.—Now, coming to this plan and profile for the 150th Avenue sewer, and to this waterproofing membrane, would you state as briefly as possible, in order to qualify your opinion, why you as an engineer, and in your experience in charge of the Sewer Bureau of the Borough of Queens, you would have not used or instructed to use such a waterproofing membrane in the barrel of the monolithic sewers. Tell us the reason why, shortly. A.—With concrete as dense as that, made the way that was supposed to be made, we did not need the waterproofing.

MR. COOK: That is your own opinion.

THE WITNESS: That is my opinion, yes.

MR. GOUDRAULT: That is what I asked.

Q.—That is one of your first objections. Would you have any other objections? A.—Well, it would be a very costly operation to put that in.

Q.—Fine. Now, would you, from reading from the plan and with that good experience that you have, thorough experience that you have told us, tell us the operation for the construction of this waterproofing membrane in the monolithic system? A.—(Witness examines plan).

Q.—Will it take a long time, Mr. Bertram? A.—Yes. The requirements are given here.

Q.—The requirements are given here? A.—No waterproofing is to be placed until the concrete in invert and side walls has been set seven days and is thoroughly dry.

Q.—Now, there are some arch forms in there, aren't there? A.—Well, those forms, yes. The second operation is the placing of this waterproofing.

Q.—Go on with the operation. A.—The first operation would be to cast the invert around the form. Then place your waterproofing in there in three separate layers. But before you placed the waterproofing you had to leave this set seven days.

William H. Bertram for plaintiff recalled (direct examination).

Q.—Yes, which means —

MR. HACKETT: A week.

THE WITNESS: A week, of course, before you could put your pitch on there, and if it was wet you could not place it on the wet concrete, which meant a lot of time.

X
10 Q.—That is what I meant to say when I said “which”. It meant a lot of time. How much time? A.—Well, this sewer was constructed in an extremely wet trench, and I don’t know how they would ever get the concrete dry.

Q.—By the fact that it takes such a long time, does that increase the cost? A.—Of course it does, because he has to keep that much trench open.

Q.—Considerably or not? A.—Considerably longer, Yes.

X
20 Q.—No. But the cost, a much larger figure of cost, by way of labor or otherwise? Did you get my question? A.—Yes. I am trying to figure it out. It might take five times as long to build this sewer as it would if he cast it in a normal way.

Q.—You mean on account of requirements of waterproofing membrane in the barrel of the sewer? A.—On account of the waterproofing, yes.

Q.—Now, these instructions and notes which appear on the plan, and from which you are reading, and which helped you to give your opinion, they form part of the plan and profile? A.—Of the specifications, yes.

30 Q.—They have to be followed? A.—They must be, yes.

Q.—I see here “arch forms to be kept in place 21 days.” A.—Yes, that is on the plan.

MR. COOK: I object to this line of evidence, Mr Commissioner. It is entirely irrelevant, illegal and improper. The engineers and those in charge of the work considered this as proper.

MR. GOUDRAULT: All right.

40 Q.—And I understand once more that these plans were prepared by your employes and after you had received instructions from Seely. A.—That is correct.

Q.—You stated the time you were there in the sewer department. Now, during the period of time which runs from 1917 to 1928, was Mr. Seely the assistant engineer in charge of the Sewer Bureau in the Borough of Queens, to your knowledge,

William H. Bertram for plaintiff recalled (direct examination).

Mr. Bertram? A.—He was. He signed himself so, and they accepted his signature.

Q.—And were you or were you not in daily contact with him during that period of time? A.—In daily contact.

Q.—Previous to that also? A.—I was appointed in 1914. He was the head then.

Q.—He was the head then. And you became his successor?
10 A.—Yes.

Q.—Just exactly what is meant, Mr. Bertram, by “arch forms to be kept in place 21 days”? A.—The arch forms, the arch, the upper half of the sewer, and they build the form either of wood or steel, on which concrete is poured, and according to the instructions that form must stay there for 21 days before they can remove it.

Q.—I see. How long does the concrete take to dry up in the monolithic system? A.—To properly set, I guess. It does not dry up.

Q.—I don't mean dry up. “Set”, that is the word. A. Well, normally 48 hours.

Q.—Normally 48 hours, all right. And so when it is set the arch forms are taken away, aren't they? A.—Normally, Yes.

Q.—Normally. A.—We leave that to the field engineers.

MR. HACKETT: There are conditions in which it takes longer.

30 THE WITNESS: Yes, if a fellow gets cement that takes a little longer to set. There is a difference in cement. Some cement is set in a few hours.

Q.—Which is the extreme case, the longest delay that may possibly take? A.—Some may set up in an hour.

Q.—No. The longest time to set up? A.—I should say four or five days would be the outside.

MR. COOK: Does that relate to precast pipe?

40 MR. GOUDRAULT: Monolithic system.

Q.—Necessarily a conclusion to your previous answer would be, therefore, that this would delay the work, if the arch forms are to be kept 21 days.

MR. HACKETT: I object to the form of the question, Mr. Commissioner.

William H. Bertram for plaintiff recalled (direct examination).

MR. GOUDRAULT: Question withdrawn.

Q.—A minute ago you spoke about work which had to be interrupted or set for seven days. Is that right? I may have misunderstood your answer. Explain to us. A.—The cement must be set seven days and thoroughly dry before the waterproofing is applied. Here it is, (indicating).

10 Q.—Oh, yes. The notes and instructions read that “No waterproofing to be placed until concrete in invert and size walls has been set seven days and thoroughly dry. Waterproofing to be placed in separate layers.” So by stating briefly how the contractor would have executed the plans for the 150th Avenue, will you give us the delays that it would have taken? Explain the operation, in one word. A.—I can’t do that in one word.

20 Q.—I mean in a few words. A.—The bottom section would have to be cast, forms would have to be built on both sides of the walls, and that would have to set seven days before he took his forms away. And then his waterproofing would be applied in three separate layers here, (indicating).

Q.—Three separate layers. A.—And then he would build the other section of the invert around the forms. That would take another seven days.

30 Q.—Yes; and then? A.—And finally he would set his arch forms and pour his concrete, and he had to leave that set 21 days. And that had to be all thoroughly dry before any waterproofing is applied, according to the specifications, and another layer of waterproofing here, (indicating).

Q.—And then there would be another layer of concrete over the waterproofing? A.—No. The waterproofing was the final surface there, at the top.

(Recess from 1.00 p. m. to 2.00 p. m.)

Fred R. Curran for plaintiff (direct examination).

AFTER RECESS. 2.00 p. m.

DEPOSITION OF FRED R. CURRAN.

FRED R. CURRAN, age 38; 3533 87th Street, Jackson Heights, New York, Queens County; occupation, newspaper reporter, a witness produced, sworn and examined on the part
10 and behalf of the People of the State of New York, the plaintiff, deposes and saith as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—Did you know John M. Phillips in his lifetime? A. Yes, sir.

Q.—How long did you know John M. Phillips before his death? A.—Probably ten years.

20 Q.—Did you or do you know Maurice E. Connolly? A. Yes.

Q.—How long have you known Mr. Connolly? A.—Well, I have known Mr. Connolly for about 10 or 12 years. He was a public figure. I knew him.

Q.—You knew him personally? A.—Yes, I knew him personally.

Q.—You had met him? A.—Yes, sir.

Q.—On several occasions? A.—Oh, yes.

30 Q.—Where? A.—I met him in the course of my work, Borough Hall, and different parts of Queens County.

Q.—Do I understand that you have been a reporter or journalist for many years, Mr. Curran? A.—About 20 years.

Q.—Do you know Mr. Frederick Seely? A.—Yes, sir.

Q.—Did you have occasion to meet him? A.—To meet him?

Q.—Yes. A.—Yes, sir.

Q.—Quite often or not? A.—Not so often, no.

Q.—Were you ever employed by John M. Phillips? A.—Yes, sir.

40 Q.—In what capacity? A.—Secretary.

Q.—Were you at the same time a journalist and reporter although being secretary to Mr. Phillips? A.—No, sir. I left the reporting business when I became secretary to Mr. Phillips.

Q.—And when did you begin working for Mr. Phillips as his secretary? A.—About May, 1925.

Q.—And how long did you continue in that capacity? A. About 3 years, up until the time of his death.

Fred R. Curran for plaintiff (direct examination).

Q.—Do you mean to say that you continued to be his secretary until his death? A.—Yes, sir.

Q.—Before you began working for Mr. Phillips as his secretary, did you see much of him? A.—Oh, yes. Before I entered his employ?

Q.—Yes. A.—Well, off and on I met him. Being in the newspaper game, a lot of reporters met Phillips in Queens
10 County.

Q.—Well, tell us your duties as Secretary to Mr. Phillips from May of 1925 up to the time of his death? A.—I attended to his correspondence, what it was; did some office work for him.

Q.—Anything else? A.—That covers it, about.

Q.—Did you do any publicity work for him? A.—Yes, sir.

Q.—Besides being his secretary, were you a friend of Phillips? A.—Yes, sir.

Q.—Did you have anything to do with his business? A. As his secretary, I did as I was directed. I took instructions
20 from him in the conduct of his office.

Q.—What was his business from, — what was Mr. John M. Phillips' business from 1925 to 1928? A.—Manufacturing of sewer pipes.

Q.—Do you know the kind of sewer pipe? A.—Cement sewer pipe.

Q.—Do you mean would it be re-enforced precast pipe? A.—Re-enforced precast sewer pipe.

Q.—That very specialty of pipe was the precast pipe? A. That is all he manufactured while I knew him, precast pipe.
30

Q.—And where were you working? A.—His office was at 49 Jackson Avenue, and it was afterwards at 42 Jackson Avenue. I was employed in both places.

Q.—Did you handle any of the business pertaining to the manufacturing of pipe, of precast pipe? A.—I didn't, no.

Q.—You didn't? A.—Not with the actual construction of the pipe.

Q.—Did you have anything to do with the contracts or pipe prices, or anything of that kind? A.—No, sir, I typed
40 contracts, but I had nothing to do with prices.

Q.—Where was Mr. Phillips' office when you went to work for him in May, 1925? A.—At 49 Jackson Avenue, Long Island City, County of Queens.

Q.—Do you know Andrew Zorn? A.—Yes, sir.

Q.—You have known him for long? A.—About the same time as Phillips. He was a former assemblyman, a public figure.

Fred R. Curran for plaintiff (direct examination).

Q.—Who introduced Mr. Zorn to you, do you recollect or not? A.—I don't recall.

Q.—You don't? A.—No.

Q.—Who else beside Mr. Phillips had an office at 49 Jackson Avenue, Long Island City? A.—Mr. Zorn's son-in-law, Thomas B. Caldicott.

10 Q.—That was Mr. Zorn's son-in-law? A.—Son-in-law, yes.

Q.—Who else? A.—Nobody else had offices there, except Phillips and Caldicott.

Q.—Just those two? A.—Those two.

Q.—Did you often see Zorn at 49 Jackson Avenue while you were acting as secretary to Mr. Phillips? A.—Yes.

Q.—Often? A.—Quite frequently, yes.

Q.—Did Zorn have any office desk there at 49 Jackson Avenue? A.—Anybody used the desks. There was no particular — nobody had any particular desk.

20 Q.—Who was the lessee there, or tenant? A.—I think Caldicott was. I am not certain of that.

Q.—Caldicott was? A.—Yes.

Q.—And that would be in Mr. Phillips' office also? A. Yes.

Q.—Do you know of a Mr. Campbell? A.—Yes.

Q.—Who is he, or who was he at the time? A.—Peter P. Campbell?

Q.—Yes. A.—He was with Mr. Phillips, an employe also.

30 Q.—What was his occupation, what was his job? A. Office manager.

Q.—And where would he stay? A.—At 49 Jackson Avenue, and also later at 42 Jackson Avenue.

Q.—Who else besides yourself and Mr. Campbell was in the office? A.—Campbell, Zorn, Phillips, myself, Caldicott.

Q.—How many desks were there in there? A.—In 49, as I recall, there were three desks. That would include a high desk, a large high desk to the rear of the office; one room office on the ground floor, store.

40 Q.—Was Mr. Caldicott, the tenant, in any way connected with Mr. Phillips? A.—Not that I know of.

Q.—What was Mr. Caldicott's business? A.—He was in the bonding business.

Q.—I understood you to say that Mr. Phillips had a desk in the office? A.—Yes, sir.

Q.—Did he pay any rent? A.—I couldn't tell you that.

Q.—Do you know or do you not know? A.—I don't know.

Q.—He had his name on the door? A.—Phillips, no.

Fred R. Curran for plaintiff (direct examination).

Q.—Name in the telephone book while he had his office there? A.—I don't think Phillips did, no.

Q.—At the time you went in as Secretary to Mr. Phillips in 1925, was Mr. Zorn on the payroll of Mr. Phillips? A.—Yes.

Q.—What were Mr. Zorn's duties? A.—Why, I can't very clearly define them. He was with Mr. Phillips at all times. As I understand it, he was a confident of Mr. Phillips, and really I
10 couldn't tell you what his duties were.

Q.—Did you have a bank account to your name, Mr. Curran? A.—Yes, sir.

MR. COOK: Mr. Commissioner, I don't see how Mr. Curran's bank account is relevant. I don't want to object unnecessarily, but it seems a little irrelevant.

Q.—Well, did you put from time to time in your bank account, money that Phillips gave you, as an accommodation, for Phillips? A.—Yes, sir.
20

Q.—And this money was for matter in which you had no personal interest? A.—That is right.

Q.—If Phillips' money was put into your bank account, what did you do with it? A.—I would draw checks on it by instruction from Phillips.

Q.—Did you keep any account of that? A.—Only in the check-book. It wasn't very complete, I don't think, as I recall.

Q.—Did you have a special account for it, or just put it in your own account? A.—Personal account.

Q.—Personal account. How could you tell whether you were square or not with Phillips? A.—Phillips always trusted me in those matters.
30

Q.—Did he ever ask your to account? A.—No, sir.

Q.—How could you keep matters straight, how much was yours and how much was Mr. Phillips' money? A.—Oh, it wasn't very hard for me to know what was my end of it.

Q.—Did Mr. Phillips ever ask you to account? A.—No, sir.

Q.—Did the account ever run short? A.—No, sir. Not
40 that I remember. I don't recall it running short.

Q.—What was your salary? A.—At the time of his death?

Q.—At the time you were working for Mr. Phillips as Secretary? A.—My last salary \$500 a month.

Q.—Did Phillips ever give you any money besides that \$500 a month? A.—Yes, sir.

Fred R. Curran for plaintiff (direct examination).

Q.—He did? How much? A.—I couldn't estimate it now. He gave me some at different times.

Q.—Did he give you a sum for a particular purpose? A. Yes.

Q.—For what? A.—He gave me money to purchase my home.

10 Q.—How much was it that he gave you, then? A.—Approximately \$17,000. I think it was something like that.

Q.—Would it be to your knowledge a custom or a habit of Mr. Phillips to carry a large amount of currency in his pocket? A.—At times he did, yes.

Q.—What would be the approximate amount? A.—During the racing season he might have large sums, running into the thousands of dollars.

Q.—Any larger amount? A.—Well, I couldn't state any definite amount.

20 Q.—You were with him daily, practically, when you were his secretary? A.—Practically daily, yes.

Q.—And you stated that he had at certain times money, currency money, in his pockets running into the thousands. Is that right? A.—Yes.

Q.—Could you state how many thousands? A.—No, I couldn't.

Q.—Is it to your knowledge or is it not that he may have carried at times as much as \$50,000 in currency in his pocket? A.—I have heard that said.

30 Q.—Oh, well, we don't want that. Do you know personally? A.—No, I don't know.

Q.—To refresh your memory, you have been called upon previously to make a statement as regards the same facts that you are now questioned on?

MR. HACKETT: Just a minute, Mr. Goudrault.

MR. GOUDRAULT: Question withdrawn. Is that satisfactory? I won't put the question.

40 MR. HACKETT: All right.

Q.—Now, from the time you went with him as Secretary in May, 1925, until the end of your term of office as Secretary, how much cash would you say, either checks or cash, you paid to your account that really belonged to Phillips, and which you later returned to Phillips or paid? A.—Well, that would be Phillips' money that he turned over to me?

Fred R. Curran for plaintiff (direct examination).

Q.—Yes. Give us an approximate figure. A.—\$200,000, about.

Q.—Mr. Phillips never kept any books at all, did he? A.—No. You couldn't call them books.

Q.—Now, in the Maurice E. Connolly campaign for re-election as President of the Borough of Queens in 1925, did you spend any money?

10

MR. HACKETT: Just a minute, please.

Q.—(Continuing) In that campaign, at Mr. Phillips' request, at your employer's request?

MR. GOUDRAULT: That is my question.

20

MR. HACKETT: I will object to that, Mr. Commissioner. This action has taken definite form. There are paragraphs setting forth certain charges against the deceased, Mr. Phillips, but how they could be stretched to include the question which is now asked and which pertains to elections in or about the City of New York, and expenditures that may have been made at that time, seems to me illegal and remote. For these reasons I ask that my objection to the question be maintained.

MR. COOK: I very strongly associate myself with Mr. Hackett on this objection. It is going far beyond all previous —

30

MR. GOUDRAULT: Referring to paragraph 9 of Plaintiff's declaration and other allegations set forth in the declaration, I want the answer put in subject to the ruling of the Commissioner, and have it left to the Judge, if the Commissioner so wishes.

THE COMMISSIONER: The answer will be allowed subject to counsel's reservation and objection.

MR. COOK: Exception to the ruling.

MR. GOUDRAULT: Read the question.

40

(Question read by Clerk).

A.—I did, for the Democratic ticket.

Q.—We have an admission here that Mr. Maurice E. Connolly was a candidate for the election of 1925, and that he was re-elected. Is that right? A.—He was.

Q.—On what ticket was it? A.—On the Democratic ticket.

Fred R. Curran for plaintiff (direct examination).

Q.—He was running — A.—As candidate for Borough President.

Q.—And he was elected? A.—Re-elected. He was elected.

Q.—What was the nature of those expenditures that you expended at Phillips' request? A.—Advertising; newspaper advertising.

10 Q.—How much did you spend, approximately, in that campaign? A.—I couldn't say now. I have stated that amount, but the amount doesn't occur to me now.

Q.—Try to remember and state to the best of your recollection. A.—It might be about \$30,000.

Q.—Could it be more than that? A.—It could be, yes.

Q.—Could it be less than that, I mean? As a matter of fact, do you recollect or do you not? A.—I don't recall, no.

Q.—No. So if you do not recall, why did you state a figure? A.—I don't recall the exact amount. Really, I can say positively.

20

MR. HACKETT: One of the reasons is that you were asked to state to the best of your recollection.

MR. GOUDRAULT: Yes; but I am trying to get his best recollection.

Q.—Is that your best recollection? A.—Yes, sir.

Q.—That was at the request of Phillips that these moneys were paid? A.—At the request of Mr. Phillips.

30

Q.—Did you or Mr. Phillips to your knowledge, make any report of these campaign expenditures? A.—I believe, — wait a minute. I don't think I made a report. No, sir, I did not make any report.

Q.—Do you know whether Phillips ever did? A.—I don't think so. I don't know of any report that was made.

Q.—Do you know, — you stated to us that you knew Mr. Frederick Seely? A.—Yes, sir, I know him.

Q.—Did you ever see him in John M. Phillips' office? A. No, sir.

40

Q.—Did you ever see him at 49 Jackson Avenue? A.—No, sir.

Q.—Are you sure about that? A.—I don't recall seeing him there.

Q.—Did he ever go in there to see you? A.—Who is that?

Q.—Mr. Seely? Just in order that you may recollect if he did or not really, unless you are positive that he didn't.

Fred R. Curran for plaintiff (direct examination).

MR. COOK: He just has sworn a moment ago that he never saw him there. How can he answer the question whether he had ever seen him there when he said he was not there?

MR. GOUDRAULT: Question withdrawn.

Q.—You told us a minute ago that you knew Mr. Seely.
A.—Yes, sir.

10 Q.—You have met him often or not? A.—I met Seely quite frequently, yes.

Q.—Where? A.—In Borough Hall.

Q.—I see. A.—I have know Seely for probably 10 or 12 years. I met him as a newspaper man.

Q.—I wish to refresh your memory as regards that. Just think. I will give you time to think about this office at 49 Jackson Avenue. I understand from 49 Jackson Avenue you went to 42 Jackson Avenue? A.—42 Jackson Avenue, yes.

20 Q.—In either office did you see Mr. Seely there during your occupancy of office as Secretary to Mr. Phillips? A.—No, sir; I don't remember seeing him in either office.

Q.—Mr. Curran, you said a minute ago that you did recollect that to the best of your recollection the amount spent in the 1925 campaign was — A.—I think I said \$30,000, about.

Q.—About \$30,000. And do you remember how much of that amount was for publicity? A.—No, sir, I couldn't state that.

30 Q.—Could you state a certain figure? A.—That would cover both newspaper advertising and publicity. I wouldn't be able to say how it was divided.

Q.—To whom did you pay for publicity purposes, to what newspaper for publicity purposes, in 1925?

MR. HACKETT: Just a moment. I will object to that, —

MR. GOUDRAULT; Question withdrawn.

40 MR. HACKETT: Just a moment. Let me put my objection. Don't interrupt me every time I speak. I can not believe, Mr. Commissioner, that we are going to investigate the electoral practices of the different boroughs that constitute the City of New York. And I object to this evidence because of its utter irrelevancy; not only to the last question, but the general trend.

MR. COOK: I would add, Mr. Commissioner, that up to the present I have no objected to this evidence of Mr. Curran's, because I presumed it was preliminary and would lead to something, but as far as I can see it is leading to nothing that is

Fred R. Curran for plaintiff (direct examination).

relevant at all. And I think we must have some limit on the evidence which we are taking here.

MR. GOUDRAULT: The purpose of my last question, gentlemen, is that I want to gather from the witness, if possible, the exact amount that he would have paid at the instance of John M. Phillips.

10 MR. COOK: He has already said that he paid \$30,000. He said it a dozen times. Why go on to it again?

MR. GOUDRAULT: Not again. I am satisfied, but I want to know where he spent it; I mean to say as regards publicity and advertising. He remembers paying big amounts of money, large sums, and so he may tell us to whom that money was paid.

THE COMMISSIONER: Well, ask him a question.

20 Q.—How much was paid, — who would be the advertising company to whom you gave, — or companies, to whom you have paid some of that money?

MR. HACKETT: Just a moment, sir. That was the question which my learned friend withdrew, and I will renew my objection to it in the terms already stated, as absolutely irrelevant.

MR. GOUDRAULT: I gave you the purpose.

30 MR. HACKETT: What bearing can moneys paid to a newspaper for publicity in an election campaign, have upon the claim of the City against Phillips?

MR. COOK: Same objection.

40 MR. GOUDRAULT: This bearing, Mr. Hackett, that Phillips and Connolly are named in our action as having conspired to defraud the City and people of the State of New York of a huge sum of money, and I want to show by figures the interest that Phillips had in the re-election of Mr. Connolly as President of the Borough of Queens. That is the relationship of my question with our action and declaration.

Q.—Will you answer now, under reserve?

MR. HACKETT: Just a minute.

THE COMMISSIONER: I will allow the witness to answer under counsel's objection.

Fred R. Curran for plaintiff (cross-examination).

A.—Well, various newspapers. I can't recall now. I have no records. It happened five years ago.

Q.—To various newspapers. And then to advertising firms? A.—I don't know whether, — we did use an advertising firm, it might have been the 1925 campaign. If it was the firm I have in mind, it is Capothart-Carey.

10 Q.—Where is their office? A.—Their office at that time was in the Times Building, at Times Square.

Q.—Do you recollect the figure that you might have paid that firm for advertising? A.—No, sir.

MR. COOK: I object to the question, Mr. Commissioner, inasmuch as it tends to contradict the plaintiff's own witness. He stated he did not know.

20 MR. GOUDRAULT: Oh, no. He told us that he did not know the amount that he had disbursed, but now I am trying to get from him the amount he paid the advertising firm.

THE COMMISSIONER: Proceed with your answer. It will be taken subject to counsel's objection.

Q.—Do you recollect to figure that you paid for publicity purposes to the various newspapers? A.—No, sir.

Q.—I presume that if you could add those two figures together, if you did remember them, it would practically give the amount that you spent for the campaign? A.—It should, yes, sir.

30 Q.—Did you keep any account of such disbursements? A. No formal accounts; just memorandums, checks.

Q.—You have no memorandum with you? A.—I have not, no. No checks, either.

MR. GOUDRAULT: Your witness.

CROSS-EXAMINATION BY MR. COOK:

40 Q.—Mr. Phillips was a very generous man, was he not? A.—He was, yes, sir.

Q.—And he attended the race courses, I suppose? A.—He was quite a lover of racing.

Q.—Agreat lover of horses? A.—Of horses.

Q.—And during those times he naturally, being rich man, would have a great deal of money on his person, carry around with him a good deal of money? A.—Well, if he did not carry it, he knew where he could have it.

Fred R. Curran for plaintiff (cross-examination).

Q.—He knew where he could get it and he would have it available? A.—Yes.

Q.—And I understand he treated everybody who was in his employ and came in contact with him, in a very fair manner?

A.—He did, yes, sir.

Q.—Very proper way? A.—Yes.

10 Q.—He placed money in your bank account and relied upon you to disburse that money properly for his account, and to see that it was properly spent? A.—He did, yes, sir.

Q.—Now, when you speak of the money that was placed by Mr. Phillips in your bank account during this period of years that you were associated together in this way, you mentioned, I understood, some \$200,000, you thought, — it might have amounted to that. It might have been less than that, could it not? A. It was approximately \$200,000.

Q.—Approximately \$200,000? A.—Yes.

20 Q.—And it was out of this money that you paid these expenses, you contributed to these election expenses that you have spoken of? A.—I paid election bills out of that account, out of those moneys.

Q.—The election expenses that you said amounted to approximately \$30,000. A.—In that particular year.

Q.—In that year, yes, 1925. You paid those into the party funds, did you not? A.—I did not.

Q.—You paid those for election expenses? A.—Not into the Party funds.

30 Q.—Not into the Party funds. A.—My personal checks paid for that advertising, direct to the newspapers or to the advertising agencies.

Q.—I see. There were a number of newspapers interested? A.—All the Metropolitan newspapers; some of the foreign language papers.

Q.—I see. They were for the general Democratic? A.—For the ticket, yes, sir.

Q.—For the general Democratic ticket? A.—For the Democratic ticket.

40 Q.—Not for any candidate in particular? A.—Not for any particular candidate.

Q.—So that although Mr. Connolly was elected as the President of the Borough of Queens — A.—He just happened to be on the ticket.

Q.—He just happened to be on the ticket. But the subscription was not for Connolly's benefit alone? A.—No, sir.

Fred R. Curran for plaintiff (cross-examination).

Q.—For the benefit of everybody who was on the ticket?

A.—From the Mayor down.

Q.—From the Mayor down to everybody else who was on the ticket? A.—Yes.

Q.—Now, Mr. Curran, \$30,000 is not a very large amount for a subscription of that sort, is it? A.—That was for a local campaign.

10 Q.—For a local campaign? A.—Yes.

BY MR. GOUDRAULT:

Q.—What do you mean, local campaign? A.—Local officers in the borough.

Q.—What borough? A.—Queens.

Q.—What —

MR. COOK: Wait a minute, Mr. Goudrault. Don't —

20 MR. GOUDRAULT: All due apologies to Mr. Hackett and Mr. Cook.

BY MR. COOK:

Q.—Mr. Curran, this money that you are speaking of, this \$30,000 was spent, was it not, in the primary elections chiefly? A.—Well, there would be an expenditure in the primary election, and also the general election.

30 Q.—The primary, — you are referring to the elections at which Mr. Hylan ran against Mayor Walker? A.—Yes. Hylan ran that year for Mayor.

Q.—Now, whom was Connolly supporting in those elections, do you remember? A.—He supported the Hylan City ticket.

Q.—He supported Mr. Hylan? A.—Yes.

Q.—And whom was Phillips supporting? A.—Walker.

Q.—So Phillips and Connolly on that occasion were in opposite camps, as it were, at all events, as far as their sympathies were concerned? A.—You would think so, yes.

40 Q.—Yes. But, Mr. Curran, this money that you speak of was spent for the general purposes of the Democratic Party? A.—Yes, sir.

Q.—That is correct, for the general purposes of the party? A.—General purposes, by that you mean, — I am confining myself to advertising.

Q.—Of course, surely. For the benefit of the Democratic Party generally. A.—Yes, sir.

Fred R. Curran for plaintiff (cross-examination).

Q.—Throughout the whole City? A.—The City ticket, yes, sir.

MR. COOK: That is all right. Thank you, Mr. Curran. Now, Mr. Hackett, do you want to ask him any questions?

MR. HACKETT: Yes, I think I will.

10 CROSS EXAMINATION BY MR. HACKETT:

Q.—Mr. Curran, you have told us that Mr. Phillips either had large sums of money on his person or immediately available to his person during the racing season? A.—Yes, sir.

Q.—I suppose that the logical inference to be drawn from that is that Mr. Phillips was fond of racing and played the pines. A.—That is right.

Q.—As has many another good man. And I take it from what you have said that Mr. Phillips did bet heavily on the races? 20 A.—Very heavily.

Q.—And sometimes, and not frequently, he won large sums on the races? A.—He did.

Q.—Running into the hundreds of thousands of dollars? A.—Yes.

Q.—And these were, to your knowledge, opportunities and occasions for great generosity to his family and friends? A. Yes, sir.

MR. HACKETT: That is all. Thank you, Mr. Curran.

30 MR. GOUDRAULT: That is all, Mr. Curran; thank you.

MR. COOK: Thank you very much, Mr. Curran.

William H. Bertram for plaintiff recalled (direct examination).

DEPOSITION OF WILLIAM H. BERTRAM.
(recalled)

WILLIAM H. BERTRAM was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposeth and saith as follows:

10

DIRECT EXAMINATION BY MR. GOUDRAULT:
(Resumed):

Q.—Do you know, Mr. Bertram, of any sewer of the monolithic type, or type A, being built with a waterproofing membrane such as called for in the plan and profile of the 150th Avenue?

2
A.—No. No sewers were ever built with that membrane, in Queens.

20

Q.—This morning we were trying to get from you, and we did get from you, details as to the construction of these sewers with these waterproofing membranes, concerning more especially the constructions that were accompanying the plan and profile? A.—Yes, sir.

Q.—And you stated to us that the costs for the construction of such sewer would be considerably increased, owing to the conditions and stipulations stated on the plans and profiles, did you not? A.—I did.

30

Q.—I now ask you to tell me in an approximate figure what difference in prices there would be for the construction of such a monolithic sewer, one having the waterproofing membrane and the other sewer having not such waterproofing membrane? A.—That is shown by the plan.

Q.—I know. But could you tell me the difference in price? A.—Well, on snap judgment, I would say about three times as much as a section without waterproofing.

X
X
40

Q.—To clear out one other fact, you stated that you did not remember if this plan for the 150th Avenue sewer was the first plan in which such requirements for a waterproofing membrane was made, and you stated that it was one of the first, but you could not tell if it was the first? A.—Yes.

Q.—Now, previous to that sewer I understand was the Hammels Boulevard sewer? A.—Yes, sir.

Q.—You have produced, as Exhibit C-7, the complete plan and profile and details for the construction of the said Hammels Boulevard sewer. A.—Those are the originals, yes, sir.

Q.—And will you look at it and state if there is any such requirement in the said plans and profile, for a waterproofing

William H. Bertram for plaintiff recalled (direct examination).

X membrane in the barrel of the sewer, of the monolithic sewer?
A.—There is no waterproofing membrane in the Hammels Boulevard plans.

X
10 Q.—Would you kindly look at this exhibit, C-7, and tell us if this is the signature of Frederick Seely and of Maurice E. Connolly that appear there? A.—I will say that that is Seely's signature, and Perrine's signature. And I believe it is Connolly's signature.

Q.—Are these the originals? A.—These are the originals, yes, seven sheets.

Q.—Is it to your knowledge that — have you inspected the Hammels Boulevard sewer after its completion? A.—No. I was there during the progress of the work, two or three times, just to look the work over.

X
20 Q.—Do you recollect who did the job? A.—I do. Patrick McGovern, Inc.

Q.—In your Department, did you ever hear of any complaint against the Hammels Boulevard sewer? A.—I never heard of any.

Q.—Do you know if any was ever made?

MR. COOK: He never heard of any, he said.

THE WITNESS: I never heard of any, I said.

MR. GOUDRAULT: He never heard of any. There was none — that is my conclusion.

30 Q.—With whom does the actual preparation of plan and profile for the construction of sewers start, in your department?

A.—You mean now or then?

Q.—I mean to say then? A.—They began with Mr. Seely.

Q.—Do you remember the month that you took Mr. Seely's place as assistant engineer in the Sewer Bureau? A.—My appointment dated May 1st.

Q.—What year? A.—1928. He was dismissed some time prior to that. And I was acting, from the time he left I was acting, until the present time.

40 Q.—Now, yesterday you were called upon to produce and you did produce as Exhibit C-1, a tabulation containing the data for the construction of sewers in the Borough of Queens, and you told us that you had this tabulation prepared by your employes and under your supervision?

MR. COOK: What is your question?

William H. Bertram for plaintiff recalled (direct examination).

MR. GOUDRAULT: It is finished.

MR. COOK: I object to that question inasmuch as the tabulation C-1 is not an original document, and the witness has never produced any original document prepared under his supervision or with his knowledge and approval. Exhibit C-1, which is now produced, does not purport to be an original document,
10 and should not be considered as such.

MR. HACKETT: Moreover, the witness stated that he had never compared the information given on his C-1 with the original document. And I avail myself of Mr. Cook's objection.

MR. COOK: And I would ask also that the witness be not allowed to refresh his memory from a document of this character which he did not himself prepare.

MR. GOUDRAULT: He is not going to be called upon
20 to do that. I just want to explain the production.

MR. COOK: Wait till the Commissioner rules, Mr. Goudrault.

THE COMMISSIONER: I will allow the question to be answered subject to the reservation of counsel's objection.

Q.—And your answer is — A.—I did produce it, yes.

Q.—Now, have you looked to find the original tabulation from which this photostatic copy, Exhibit C-1, was made? A.
30 I looked in all the places I thought it might be.

Q.—Did you cause anybody else to look? A.—Yes. I had Mr. Pearson search also.

Q.—And could you find the original? A.—I wasn't able to find the original.

MR. GOUDRAULT: Mr. Commissioner, I have no more questions to ask this witness, but I want to reserve my right to produce the witness for redirect examination when I will be in a position to produce the documents that I have endeavored
40 to produce yesterday.

THE COMMISSIONER: You mean you have not finished with the witness?

MR. GOUDRAULT: I have not finished with the witness. And in an action of this kind, Mr. Commissioner, there is no doubt that Mr. Bertram being the successor to Mr. Seely, and being at the head of the construction of sewers in the Borough

of Queens, and with the borough knowledge that he has, I may be called upon to produce several plans and profiles of which he is not, I would say, the official guardian but which he has in his possession more or less and which are a part of his records, and therefore I may have to call him in again, I may state very distinctly, not for any particular matter and not to take the time of this Commission uselessly, and I will make it with him as short as possible. I think I have been extensive enough, and I don't see that I will need him for any particular facts, except
10 that yesterday I was under this handicap that the Comptroller's department did not want to part with exhibits, and unfortunately, — that is not the defendants' fault, I understand, — but I was unfortunately obliged to show these documents and not file them. And I have examined him briefly on the said two documents, and I therefore refer to the contract for the Collins Avenue sewer and the Hull Avenue sewer, and I wish that my request to you, Mr. Commissioner, be entered, that I may have the right to examine the witness on those matters.

20 THE COMMISSIONER: Further?

MR. GOUDRAULT: Further, yes.

MR. HACKETT: You see, Mr. Commissioner, I am ready to cross-examine the witness, but we don't want to continue a game of battledore and shuttlecock. I don't want to examine him and cross-examine him, and then have his redirect opened up on the same line again. Otherwise, we will never finish.

30 THE COMMISSIONER: I think when Mr. Goudrault used the word "redirect", he did not use it in the technical sense. He meant on new matter.

MR. GOUDRAULT: Mr. Commissioner, I do not wish to examine this gentleman on new matter.

MR. HACKETT: That is what I am afraid.

40 MR. GOUDRAULT: No. I will bind myself to limit myself to an examination concerning the document that I was unable to produce yesterday, and on which I have examined him.

MR. COOK: We don't know what they are.

MR. GOUDRAULT: They were not legally filed, Mr. Cook, you know that, because I could not.

MR. COOK: We don't know what you have in your mind. We want to examine Mr. Bertram, and to get ahead, but we can not do it until you finish.

THE COMMISSIONER: You wish to cross-examine him on all at the same time?

MR. COOK: And to have finished with him, yes.

MR. HACKETT: I think we better excuse him.

THE COMMISSIONER: We better excuse him and have him return on a subsequent date for further examination and subject to cross-examination. Mr. Bertram, you are directed to
10 return here within a reasonable time for further examination, and to bring such papers with you as Plaintiff's attorney may require.

MR. COOK: Mr. Commissioner, I understand Mr. Goudrault to say that he has all of these papers today.

MR. GOUDRAULT: I have not.

MR. COOK: I beg your pardon. I thought you said you
20 had.

MR. GOUDRAULT: I had the originals, Mr. Cook, but I can not produce them today.

MR. COOK: What good is an adjournment going to do us?

MR. GOUDRAULT: Well, I will manage to produce legally these documents on which I wish to examine Mr. Bertram. I am very sorry that this takes your time, but we will have to adjourn until tomorrow morning. I have no other witnesses.

MR. HACKETT: You have no other witnesses this after-
30 noon?

MR. GOUDRAULT: No. They have been excused.

THE COMMISSIONER: Well, gentlemen, what do you wish to do this afternoon? Do you wish to adjourn until tomorrow, or do you wish to proceed with partial cross-examination?

MR. HACKETT: Well, I would ask, Mr. Commissioner,
40 that some inquiry be made as to why a roomful of witnesses who were here under your direction, and on your summons, should be sent away without advice or instruction.

THE COMMISSIONER: Mr. Goudrault, through the Attorney General and others are here using the authority of the Commission and the authority granted under the Civil Practice Act, and it is up to the plaintiff's attorney to carry on his case.

MR. GOUDRAULT: And we are most anxious to carry it on, and we will be in a position to expedite matters. But this is just the situation that is arising. I think we did fairly well the first two days.

MR. COOK: Mr. Commissioner, it is quite impossible for us — I am speaking for myself, and I am sure Mr. Hackett agree with me — to cross-examine Mr. Bertram until his examination-in-chief shall have been finished. Now, if Mr. Goudrault will make any suggestion whereby we can proceed with this examination, both Mr. Hackett and myself will be delighted. Our whole anxiety is to get through and to get finished, and on the other hand we don't want to inconvenience Mr. Bertram, but we think that he should be summoned back for a definite time, a definite date fixed. I don't know when he will be ready to get what he has been asked to produce, but at all events it should be definitely understood that he will be here at a certain specific time when, if Mr. Goudrault is not ready to proceed, his examination-in-chief will be declared closed, and Mr. Hackett and myself will have the right to cross examine. I suggest that 24 hours is ample time, but there again I bow to your decision in the matter.

THE COMMISSIONER: Well, this time I should not wish to take any such drastic stand; but I do hope, Mr. Goudrault, that you will —

MR. GOUDRAULT: Certainly do my very utmost.

THE COMMISSIONER: —Do your utmost to have the witness here at some suitable and reasonable time so that we may proceed with his examination with despatch.

MR. GOUDRAULT: And I was hoping that the time will be tomorrow at 11.00. I am not sure.

MR. HACKETT: Will Mr. Goudrault state if witnesses will be available tomorrow morning at eleven?

MR. GOUDRAULT: Yes.

THE COMMISSIONER: Will you have witnesses here tomorrow so that we may go on from 11.00 to 4.00, with the usual hour for lunch?

MR. GOUDRAULT: Certainly.

(Whereupon, at 3.20 o'clock p. m. an adjournment was taken to tomorrow, Thursday, January 22, 1931, at 11.00 o'clock a. m.)

Depositions of witnesses, sworn and examined on the 22nd day of January in the year of Our Lord one thousand nine hundred and thirty-one, at eleven o'clock in the forenoon, in the office of DeCoursey Fales, 40 Wall Street, in the County of New York, State of New York, United States of America, by virtue of this commission issued out of His Majesty's said Superior Court, to us DeCoursey Fales, a lawyer, of 40 Wall Street, City and State of New York, directed for the examination of witnesses in a cause therein pending between The People of the State of New York, plaintiff and Heirs of the late John M. Phillips, et al., Defendants: — I, the commissioner acting under the said commission, and also the clerk by me employed in taking, writing down, transcribing and engrossing the said depositions, having first duly taken the oaths annexed to the said commission, according to the tenor and effect thereof and as thereby directed heard the following depositions:

20 MR. GOUDRAULT: I think we could call the witnesses who have been subpoenaed for today, and enter the defaults and dismiss.

MR. HACKETT: I am going to make a further suggestion, Mr. Commissioner, and that is that counsel do not take upon himself the whole burden of dismissing witnesses without consultation with counsel, and without approval of the Commissioner.

30 MR. GOUDRAULT: I have no statement to make on the remarks of Mr. Hackett, just at this present moment.

40 MR. COOK: Mr. Commissioner, there is one statement that I would like to make in a very friendly way, and that is that we have been proceeding now for four days, — three days, we have proceeded for three days. No contracts have been produced. The witnesses have been examined by my friend, Mr. Goudrault, in a way that I think is entirely illegal and improper in regard to contracts and written documents of various sorts, and I would ask my friend to proceed with a little more regularity in regard to the evidence, because it is objectionable both to Mr. Hackett and myself to continually enter objections to questions which, in our view, are obviously illegal and improper.

I would ask Mr. Goudrault, if he has to examine regarding contracts, to first have his contracts properly established and placed in the record. I would ask him to be careful, — and I

am sure he will be, because I know that Mr. Goudrault would not willingly proceed otherwise, — to be careful not to put leading questions to his own witnesses, or to ask questions which necessitate continuous objections on the part of counsel for the defense.

MR. GOUDRAULT: I wish to state, —

10 MR. COOK: I am making this suggestion in a very friendly way, in order that we may avoid the trouble of constantly taking objections to Mr. Goudrault's questions.

MR. HACKETT: I associate myself with that statement.

20 MR. GOUDRAULT: I thank Mr. Cook for his very good advice, but I am satisfied with my ways of proceeding, and whether or not my ways are illegal will be decided by the proper court at the proper moment. But I do take note that the learned counsel, acting for the defendants, will shorten their objections and make them a little less numerous so that we will be able to proceed with a little more speed.

THE COMMISSIONER: All right, Mr. Goudrault. Let us proceed.

MR. GOUDRAULT: Call the witnesses in.

(Witnesses enter room).

30 MR. GOUDRAULT: Mr. Bertram is here, Mr. Creem is present, Mr. Pearson, Mr. Harrington, Mr. Sommerfeld, Mr. McInnes, Mr. Welch.

THE COMMISSIONER: Gentlemen, you being in attendance in obedience to the subpoenas, as required by Mr. Goudrault, Mr. Goudrault, you give them such instructions as you wish.

40 MR. GOUDRAULT: Mr. Commissioner, I wish the witnesses remain in the room there and be available for examination as soon as possible.

THE COMMISSIONER: Yes.

(The said witnesses, with the exception of Mr. Bertram, retired to the adjoining room).

William H. Bertram for plaintiff recalled (direct examination).

DEPOSITION OF WILLIAM H. BERTRAM
(recalled)

WILLIAM H. BERTRAM was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposeth and saith as follows:

10

DIRECT EXAMINATION (RESUMED) BY MR. GOUDRAULT:

Q. Mr. Bertram, you remember testifying as to vitrified clay pipe and machine made cement pipe sewers? A.—Yes. There was some question about that, yes, sir.

20

Q.—And do you know if any changes were made in the Queens Borough specifications concerning the changes in said specifications for this vitrified clay pipe and machine made cement pipe?

MR. COOK: Wait a minute.

MR. GOUDRAULT: Is that leading?

30

MR. COOK: No. Mr. Commissioner, if Mr. Goudrault and the plaintiff in this case intend examining this witness or any other witness on specifications, contracts, agreements, all of which are of record, — all of which are in existence, I mean to say, they should have these documents present and not testify as to documents which are not before the Court. Consequently, I object to this line of evidence very strongly.

MR. GOUDRAULT: If he tells me that there was, I will let you have it.

THE COMMISSIONER: I will take the answer subject to counsel's objections and reservations.

MR. HACKETT: I associate myself with that objection.

40

MR. GOUDRAULT: What is the question?

(Question read by Clerk).

MR. HACKETT: I object to any evidence concerning specifications or changes in them until the best evidence of the specifications and any possible change are brought before the Court.

William H. Bertram for plaintiff recalled (direct examination).

MR. GOUDRAULT: Question withdrawn.

10 Q.—Did you receive any verbal instructions, or is it to your knowledge that any instructions were given in the Sewer Bureau of the Borough of Queens concerning said changes to be made in specifications regarding the use of vitrified clay pipe and machine made cement pipe in the construction of monolithic or precast sewers?

MR. HACKETT: I object to any evidence concerning changes or modifications or specifications, until the specifications themselves and the modifications, if any, are made available in evidence.

MR. COOK: Same objection.

20 THE COMMISSIONERS: The answer will be allowed, subject to counsel's objection.

Q.—Did you receive any such verbal instructions? A.—Yes.

Q.—From whom? A.—Seely.

Q.—Did you receive any written instruction— A.—No.
Verbal

Q.—Verbal. In what year? A.—I don't know the year, even. It was probably 1924 or 1925.

Q.—Do you or do you not recollect? A.—I don't recollect the year, no.

Q.—Would you tell us in a few words what were those instructions from Seely? A.—Well, vitrified pipe always was in the specifications. We used that, — as long as I have been there, vitrified pipe has been used; but the specifications were altered to allow the use of cement pipe, small size cement pipe.

Q.—And you received those instructions from Seely? A.—Yes.

Q.—Did you transfer your instructions when received, to your proper employes under you? A.—I did.

40 Q.—Did you have occasion to see if your instructions were carried out? A.—Yes.

Q.—And were they carried out, to the best of your knowledge? A.—They were carried out, yes.

Q.—As far as the specifications for the construction of sewers in the Borough of Queens were concerned, how many types of construction were there? A.—Well, the vitrified pipe,

William H. Bertram for plaintiff recalled (direct examination).

cement pipe, precast concrete pipe, and monolithic concrete pipe, monolithic flat section concrete sewer.

Q.—You have so far described, if I am right, the four first of these pipes? A.—I believe I have.

Q.—Yes. But you have not spoken to us yet of the last pipe there? A.—Well, that is usually a large size sewer which could not be built with a circular section, because of conditions.

Q.—What do you mean? A.—It is like a box, square.

Q.—And that last type was monolithic or not? A.—Monolithic, yes.

Q.—Could it be precast? A.—No. Could not make them precast.

Q.—Now, how many classes of sewers in Queens Borough as respecting size? A.—You want me to enumerate all the sizes?

20 Q.—No. Just the three classes, the classes, I mean. A.— Well, the smallest we built was 8 inch, 8 inch circular size, of vitrified pipe or of cement pipe. And the largest size built, I think built as a pipe was 8 feet in diameter. If that is what you mean.

Q.—I will get to that. Now, you have already told us what was a vitrified pipe, and a manufactured cement pipe. I understand that these pipes were connected with the monolithic or the precast, were they not? A.—Well, the specifications were so arranged that the vitrified pipe is used in the monolithic sewers, and the cement pipe is used with the precast pipe.

30

MR. HACKETT: I suppose, Mr. Commissioner, that the objection avails for all of this testimony. We have no specifications, plans or modifications.

MR. GOUDRAULT: We have not come to that yet.

40 MR. HACKETT: (Continuing) Before the Commissioner, and we are not only discussing them, but the changes in them. And while I understand the ruling of the Commissioner, I want to be quite sure that counsel will not be held to acquiesce in this method of proceeding.

MR. GOUDRAULT: No.

THE COMMISSIONER: You may make such an objection and it will be noted on the record.

William H. Bertram for plaintiff recalled (direct examination).

MR. HACKETT: I will ask that it be noted and registered.

MR. COOK: Same objection.

MR. HACKETT: And that will avail.

10 THE COMMISSIONER: And that will avail to all this line of testimony until Mr. Goudrault embarks on another.

MR. GOUDRAULT: Yes.

THE COMMISSIONER: The evidence will be taken subject to the reservation and counsel's objection.

Q.—I understand you told us that you received verbal instructions from Seely, the assistant engineer, which instructions you transferred to your employes? A.—Yes, indeed.

20 Q.—And tell us exactly the nature of those instructions you received and transferred, what they were? A.—Well, he had the changes typewritten, and he handed them to me.

MR. HACKETT: Mr. Seely had the changes typewritten?

THE WITNESS: They were made up on a slip paper, typewritten.

30 MR. HACKETT: Yes. So therefore they were in writing and not verbal.

THE WITNESS: The instructions to put this in the specifications, that was not a letter written to me instructing me to do his. He told me to put that in the specifications.

Q.—Now, you are speaking of a writing. Have you got that writing? A.—No, I have not got the writing now.

Q.—Was it just a memo.? A.—Just in the form of a memo. It was a form.

40 Q.—What was it? A.—It was to be used generally in all the specifications.

MR. COOK: Were those the very words of Seely?

THE WITNESS: He said "Here, Bert, put this in the specifications"; that is about the way he said it.

William H. Bertram for plaintiff recalled (direct examination).

Q.—When he said that, did you know what was meant by that? A.—I was able to read it, yes, and understand it, if that is what you mean.

Q.—Yes. But what kind of paper was it that he handed you and said “Here, Bert, have this put in the specifications?”

A.—As I remember, it was an ordinary piece of typewriting paper. I don’t know the quality or kind.

10 Q.—Would you have that paper in your files? A.—No. That’s gone long ago.

Q.—Gone long ago. Are you positive of that? A.—Certainly.

Q.—All right. Tell us what you understood, or what the said paper contained, in a few words. A.—It contained the specifications for cement, small size cement pipe, to agree with the tests of the American Society for Testing Materials. It was a copy of their specifications. There are plenty of them in the specification books. I can identify any of them, if you want me to.

20

MR. HACKETT: Tests of the American Society of what?

THE WITNESS: American Society for Testing Materials, — A. S. T. M. — American Society for Testing Materials.

MR. HACKETT: That is a very high standard, is it?

THE WITNESS: It is a good standard, recognized standard, yes.

30

MR. HACKETT: Recognized throughout the country?

THE WITNESS: Yes.

Q.—Did you receive instructions from Seely on a piece of paper, to have certain changes made in the Queens Borough specifications for the construction of sewers?

MR. COOK: Are you referring now to the 150th Avenue sewer?

40

MR. GOUDRAULT: No sewer whatever; general instructions.

Q.—You lost that writing? A.—We did not make any attempt to keep it. We merely had it mimeographed, and.

Q.—Now, tell us in a few words the substance of those instructions?

William H. Bertram for plaintiff recalled (direct examination).

MR. HACKETT: He has answered that unless you want it to go in again.

MR. GOUDRAULT: That is not what I want; I want the facts; what were the instructions?

10 THE WITNESS: He told me to put that in the specifications.

Q.—Put what in the specifications? A.—The requirement for small size cement pipe. The specifications which he handed me were typewritten and he asked me to put them in the books, the specifications.

Q.—I see. Small cement pipe? A.—Yes.

Q.—Before that, were you using small cement pipe for the same purpose? A.—No. We used only the vitrified.

20 Q.—Was that in all classes of sewers, or in special classes or sewers that you were ordered to put in small cement pipe instead of vitrified? A.—In all types of sewers.

Q.—All types of sewers? A.—Yes.

Q.—Were you in the Department prior to 1917? A.—I was appointed in 1914.

Q.—Were you in the Department in 1923 and on? A.—Right straight through until today.

30 Q.—I see. Will you give us the main classes of sewers with respect to size, by diameter, that were being constructed in your borough? A.—Sewers, circular sewers were being constructed from 8 inch size up to 8 feet.

Q.—Was that the maximum, 8 feet? A.—We did build a tunnel that was 13 foot 6, but that was cast iron.

Q.—Cast iron? A.—Cast steel, I should have said.

MR. HACKETT: 13 foot 6?

THE WITNESS: 13 foot 6. And other tunnels not quite as big as 13-6. I have forgotten what the dimensions were; 11 or 12 feet.

40 MR. HACKETT: Was that circular?

THE WITNESS: Circular, yes.

Q.—Do you know as a matter of fact, from the knowledge of the records of your department, when it was that the pre-cast type of sewer, or Type B, came in the specifications? A.—

William H. Bertram for plaintiff recalled (direct examination).

X I think I testified to that before, didn't I? In 1916 or 1917, something like that.

Q.—Was that for all kinds of sewers, all sizes of sewers?

A.—Well, the precast concrete pipe was only used between the sizes of 24 inches and I think 8 feet.

10 Q.—Do you know at whose instance did you receive any verbal instructions concerning these changes to be allowed in the specifications, allowing you or your department — ordering you or any member of your department, to your knowledge, and in your presence, that in the future the precast pipe would be put in the specifications together with monolithic pipe?

X MR. HACKETT: I must object to the form of the question, Mr. Commissioner.

20 Q.—Withdrawn. You told us a minute ago that to the best of your recollection, the precast pipe as an alternative for sewers of the dimensions of 2 feet to 8 feet, were put in the specifications first in 1917 or 1916? A.—Yes.

Q.—Now, will you tell us from whom you received verbal instructions to that effect? A.—It must have been Seely. I don't remember quite.

MR. COOK: One moment. The witness has not said that he got such instructions.

MR. GOUDRAULT: He said it a minute ago.

30 MR. COOK: That is an altogether different proposition.

MR. GOUDRAULT: Now, read that question and answer referring to this precast pipe, when it was first allowed, and tell me if he did not tell us that he received instructions, and we will get from whom he got the instructions.

(Question and answer read by clerk).

40 Q.—Did you get instructions? A.—I don't remember. I don't believe I got instructions in that case.

Q.—Do you know of anybody receiving instructions in your presence? A.—Well, I know the man that made up, — that did the actual work on the books.

Q.—Who was he? A.—The name is Thomas.

Q.—And were you there when Mr. Thomas received the instructions? A.—I was in the room. I suppose I was, I don't remember when he got them or what day he got them.

William H. Bertram for plaintiff recalled (direct examination).

Q.—I see. You have a thorough knowledge of that department; you are now the assistant engineer and you took Seely's place? A.—That is right.

Q.—Whose job was it to give such instructions? A.—It was Seely's job. He was in charge of the room, and things were done as he said.

10 MR. COOK: He in turn under the advice and direction of his superior officers?

THE WITNESS: I suppose so. He had superiors.

MR. HACKETT: When you refer to books, I suppose you mean the books containing the specifications?

THE WITNESS: Red books that are called specifications and contracts. Those are the books, between the red binders (indicating).

20 Q.—Have you any personal knowledge of the approximate date when this system, these systems were termed Type A and Type B? A.—Well, when the precast pipe was put in the specifications, then we had Type A and Type B, from then on, whenever that was.

Q.—I see. Well, you know whenever it was, you said. A. 1916 or 1917.

Q.—Fine. Before that you only had the Type A? A.—No type at all. We advertised so many feet or sewer.

30 Q.—That was. A.—What do you mean "that was"?

Q.—In type? A.—Well, it wasn't Type A or Type B. It simply called for so many feet of either concrete sewer or vitrified pipe sewer.

Q.—Yes, in the small size sewer. But in the big, large one? A.—It was all monolithic standard section.

Q.—And solely monolithic? A.—Solely monolithic, yes.

Q.—Prior to May, 1927, sewers from 6 inches to 20 inches in diameter, how could they be built, of what could they be built?

40 A.—Well, in 1927 — I don't know how to fix that date now.

Q.—No, I don't want the date. Prior to May, 1927, could you use.

MR. HACKETT: I object to the form of the question.

MR. GOUDRAULT: Yes, all right.

William H. Bertram for plaintiff recalled (direct examination).

Q.—Prior to May, 1927, you had to build sewers, I presume, from 6 inches to 22 inches? A.—Yes, all sizes.

Q.—In a special way. I mean in a special size, classified size, 6 to 22 inches? A.—Well, yes. We built between 6 and 22, except that the 6-inches is not regarded by us as a sewer. 6 inches is what we call a house connection, between the house and the sewer.

10 Q.—That is what I am trying to get at. And that is made of what? A.—You mean now?

Q.—At the time. A.—I don't know whether we were using two types at that time, or not. I don't remember the date that the small size cement pipe came into use.

Q.—Well, you are in no position, then, to tell me if it was vitrified clay pipe or small cement manufactured pipe, I presume, prior to 1927? A.—Not at this time, no.

20 Q.—Especially in sewers, as I stated, from 6 to 22 inches? A.—Right.

Q.—I don't mean sewers; I mean small house connections. A.—The house connection was 6 inches.

Q.—But 6 to 22 inches, what was that? Was there any size of that kind? A.—There were sizes of 6 to 22.

Q.—What were they? A.—6 inches was not, but 8-inch was, and everything above 8 was a sewer. That is not the way we regarded it; we don't regard 6 as a sewer. That is an appurtenance.

30 Q.—In what size did precast pipe come in? A.—Precast pipe was built in sizes ranging from 24 inches to 8 feet.

Q.—Did precast pipe come in in sizes under 24 inches? A.—No. When you talk about precast pipe, you mean the re-enforced precast pipe?

Q.—Exactly; used for Type B sewers. A.—The stuff we talk of as cement pipe was in smaller sizes.

MR. GOUDRAULT: Sure.

40 MR. COOK: What is the relevancy of all this, Mr. Goudrault? I object. I can not follow this thing at all.

MR. GOUDRAULT: Well, we will come to that, Mr. Cook.

MR. COOK: It is very interesting, and very irrelevant.

Q.—Do you recollect concrete tunnel blocks being introduced in specifications for the construction of sewers in your

William H. Bertram for plaintiff recalled (direct examination).

Borough, Mr. Bertram? A.—We built one tunnel of concrete blocks.

MR. COOK: Same objection, not being the best evidence.

10 Q.—Do you remember receiving instructions pertaining to that? A.—That is a bit hazy in my mind. I don't remember the specifications of that.

Q.—Do you remember the specifications for that? A.—I remember they built a tunnel of that kind.

Q.—Where was that? A.—It was built in Flushing, I think. A man by the name of Rourke built the tunnel.

Q.—Fine. That is just what I want to know. Was machine made cement pipe used as an alternative to vitrified clay pipe in sewers from 6 inches to 22 inches, in Queens?

20 MR. HACKETT: I object to the form of the question.

MR. GOUDRAULT: Answer under the reserve. What is the question?

(Question read by clerk).

A.—Yes.

Q.—Do you recollect the facts of this change being introduced in the specifications?

30 MR. COOK: The specifications speak for themselves. That is objected to as not the best evidence.

Q.—In a general way. A.—Yes. That is what I said before.

Q.—Have you with you a file of documents, and will you tell us in a word what it is? A.—This package contains.

MR. COOK: One moment. Look at it.

40 MR. GOUDRAULT: I am just speaking about the package.

Q.—You have a package? A.—Yes.

Q.—What does the package contain? A.—The original drawings for a sewer in 158th Street.

Q.—It is the original drawing? A.—Original drawing, whole set.

Eugene J. Tully for plaintiff recalled. (direct examination).

THE COMMISSIONER: The answer seems to be yes, to that.

MR. COOK: What is the answer?

MR. GOUDRAULT: He wants to make sure that they are here. I will ask you another question.

10 MR. COOK: Are we to examine these documents or not, Mr. Goudrault? We must know where we are. This gentleman is to be questioned on a large file, that neither Mr. Hackett nor I know anything about.

MR. GOUDRAULT: May be I did not understand Mr. Hackett's question. I want to know whether he means originals when produced, or before? That is the reason I did not want to commit myself. I may have 150 documents, and I may produce ten. If there are ten produced they are the property of the Commissioner and the attorneys for the defendants. So, I did not
20 understand his question.

MR. HACKETT: Mr. Commissioner, I merely wish to be assured that all original documents concerning which my friend will examine his witnesses, and to which he will refer, will be available to the Commissioner and counsel during the sittings of the Commissioner.

30 THE COMMISSIONER: I understand those offered in evidence will be.

MR. HACKETT: But I am not limiting myself to those offered in evidence. It is my request that documents to which reference is made, and, Mr. Commissioner, you will find reference to half a dozen contracts here, that those contracts be available to counsel during the sittings of the Commission.

MR. GOUDRAULT: When they are referred to they will be properly filed, therefore they will be part of the commission.

40 THE COMMISSIONER: Any contracts offered in evidence should be available both to the Commissioner and to counsel. Further than that, I am not prepared to go.

MR. HACKETT: There have been a number of contracts referred to.

Eugene J. Tully for plaintiff recalled. (direct examination).

• THE COMMISSIONER: I should say contracts offered in evidence for identification should likewise be available for examination.

MR. GOUDRAULT: Certainly.

10 THE COMMISSIONER: Further than that, I would not like to go at this time.

(The question was repeated by the Clerk).

20 THE WITNESS: This is a contract awarded to Joseph L. Sigretto & Company by the City of New York. The contract is dated April 23, 1917. The contract was awarded April 10, 1917. It is for the construction of a sewer and appurtenances in Hull Avenue from Maurice Avenue to Willow Avenue, Willow Avenue from Jay Avenue to Grand Street, etc., of the Borough of Queens.

MR. COOK: I object to the contract as irrelevant.

MR. GOUDRAULT: I offer in evidence said contract, as Exhibit C-8.

THE COMMISSIONER: It will be received in evidence subject to objections of counsel.

30 (The contract was received and marked Plaintiff's Exhibit C-8, of this date).

MR. COOK: It is objected to as irrelevant.

THE COMMISSIONER: It will be so noted on the record. Counsel's objections will be noted on the record.

BY MR. GOUDRAULT:

40 Q.—Do you know, Mr. Tully, would you tell us just for purposes of information, what is, generally, contained in this contract, which speaks for itself, but for the parties concerned to know, once and for all, what is contained in these contracts?
A.—It contains the general terms of the contract and the specifications and also any communications that might be had between the Borough office and the Comptroller's office would be attached to this particular contract, if it pertained to this particular improvement.

Q.—And naturally enough, the contracting parties would sign? A.—Yes, sir.

Eugene J. Tully for plaintiff recalled (cross-examination).

Q.—May I ask if all contracts of this nature are practically one and the same, as regards form? A.—Yes, the form is about the same.

10 Q.—Will you now look at this file paper bearing the number 47,340, and tell us what it is? A.—This is contract No. 47,340 awarded to Joseph L. Sigretto & Company. The contract is dated April 23, 1917; the date of award is April 10, 1917. The contract is for the construction of a sewer and appurtenances in Collins Avenue, etc., of the Borough of Queens.

MR. COOK: Mr. Commissioner, I object to the production of this file and to any evidence in regard to it as irrelevant and immaterial.

MR. HACKETT: I associate myself with that objection.

20 THE COMMISSIONER: I accept the evidence subject to counsel's reservation.

MR. GOUDRAULT: I finally produce this file paper as the Commissioner's Exhibit C-9.

MR. COOK: In like manner as to contract 47,339, I would ask that all evidence in regard to this contract file No. 47,340 be taken subject to the objection I have made.

MR. HACKETT: I associate myself with that objection.

30 THE COMMISSIONER: Your objections will be noted on the record.

(The document referred to was received in evidence and marked Exhibit C-9, of this date).

MR. GOUDRAULT: Your witness, counsel; but I will ask Mr. Tully to remain because there are other documents to be produced.

CROSS EXAMINATION BY MR. HACKETT:

40 Q.—Mr. Tully, when you were question by me, on page 62 and others of the proceedings; in which you told us how these files bearing given contract numbers were made up, I would like to make a reference to that evidence because it is pertinent here, and will save cross-examination: What you then said is true? A.—Oh, yes, of course, surely.

MR. GOUDRAULT: I call Mr. William H. Bertram.

William H. Bertram for plaintiff recalled (direct examination).

DEPOSITION OF WILLIAM H. BERTRAM
(recalled)

WILLIAM H. BERTRAM was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposed and saith as follows:

10

DIRECT EXAMINATION BY MR. GOUDRAULT: (Resumed):

20

Q.—Mr. Bertram, will you look at Exhibit C-8, which is a contract already filed, for the construction of the Hull Avenue sewer, which is dated, the date of award is the 10th of April, 1917, and state to us what it contains as regards the type of sewer to be constructed? A.—The type of sewer to be constructed was Type B sewer, which means the reenforced concrete pipe, precast.

MR. COOK: I renew my objection to the irrelevance of this evidence.

BY MR. GOUDRAULT:

Q.—Do you mean to say it was for a sewer of the precast pipe? A.—Yes.

Q.—Type B sewer? A.—Yes.

30

Q.—Yet, does the contract contain any reference to specifications for Type A sewer? A.—Yes.

Q.—And you gather from the file or from the exhibit that the Hull Avenue sewer was a precast type sewer? A.—A precast type.

Q.—Now, will you look at Plaintiff's Exhibit C-9, which is a contract for the construction of a sewer at Collins Avenue sewer, awarded the 10th of April, 1917, to Joseph L. Sigretto & Company.

40

MR COOK: The same objection to this.

MR. HACKETT: I associate myself with that objection.

Q.—(Continuing) — and state to us if the specifications therein contained are for the Type A and Type B sewers, and tell us by the same answer what type of sewer was constructed by Joseph L. Sigretto at Collins Avenue, in accordance with

William H. Bertram for plaintiff recalled (direct examination).

that contract? A.—The specifications provide for Type A and Type B, in the alternative, and Type B was built.

Q.—You have a thorough knowledge of the files of your department of April, 1917? A.—I believe I have.

Q.—You know this job at Hull and Collins Avenue? A. Yes.

10 Q.—You knew that it was being made? A.—I would have to refresh my memory on the dates.

Q.—It was in 1917? A.—Yes.

Q.—You were then in the Department? A.—I was in the Department when it was done, yes.

Q.—Do you know if it was the first time when precast or Type B sewer was constructed in the Borough of Queens, and by a sewer I mean a sanitary sewer? A.—In the first place it was not a sanitary sewer.

20 Q.—Well, leave the sanitary sewer out; just stick to Type A and Type B, was this the first time, to the best of your knowledge, and according to your files that Type B sewer was constructed in the Borough of Queens?

MR. COOK: Ask him when?

MR. GOUDRAULT: If I did ask him that, would you not tell me the document speaks for itself?

MR. COOK: No, I would not.

30 BY MR. GOUDRAULT:

Q.—When was the contract for the construction of the Hull Avenue sewer awarded, what date? Look at the exhibit and tell us. A.—It was awarded April 10, 1917.

MR. GOUDRAULT: Mr. Cook asked me to ask you that question, Mr. Witness.

MR. COOK: No, no; pardon me: when the first was constructed.

40 BY MR. GOUDRAULT:

Q.—Do you know when the first sewer of the precast pipe sewer or Type B, was constructed in the Borough of Queens? A.—I do not know which was the first constructed.

Q.—You do not know that? A.—No.

Q.—You remember the year? A.—I do not remember the year the first sewer was constructed.

William H. Bertram for plaintiff recalled (direct examination).

Q.—Do you remember when the precast sewer or Type B was used in Queens County? A.—I testified, I think, that the specifications were made in 1916 or 1917, and included Type A and Type B.

Q.—For the first time? A.—The first time.

Q.—Surely. A.—Whether this was the first under that scheme, I do not know.

10

Q.—In this Exhibit C-1, which is the tabulation of the sewers constructed in the Borough of Queens, was this prepared by you and under your supervision?

MR. COOK: I object again to this, on the ground that the witness has not stated that he made this document, and therefore he can not refresh his memory from a document which he did not himself prepare, and it is not an original document.

20

MR. GOUDRAULT: Mr. Cook has given me friendly advice; please wait until I put the question, before making the objection.

MR. COOK: And do not answer for the witness.

THE COMMISSIONER: Proceed, Mr. Goudrault.

BY MR. GOUDRAULT:

30

Q.—Mr. Cook objects to your examination upon this Exhibit C-1, which is a tabulation of sewers constructed in the Borough of Queens; will you kindly, therefore, give us the circumstances under which the said tabulation was prepared by you?

MR. COOK: I object to that as an endeavor to contradict counsel's own witness. He has already testified and said he had nothing personally to do with that.

MR. GOUDRAULT: Then, Mr. Commissioner, I ask that all the evidence referring to.

40

THE COMMISSIONER: I shall allow the witness to answer the question, subject to counsel's reservation.

MR. GOUDRAULT: In order to save time, may I suggest that Mr. Marshall read us the evidence pertaining to the preparation of this tabulation, Exhibit C-1, owing to Mr. Cook's objection? Said evidence appearing in the notes.

William H. Bertram for plaintiff recalled (direct examination).

MR. COOK: To save time I will reiterate the objections made yesterday as to document C-1.

THE COMMISSIONER: I will accept the answer, subject to objection.

10 MR. HACKETT: I would like to avail myself of the objection on pages 24, 25 and following, of the proceedings, concerning the production of Exhibit C-1.

MR. COOK: And the same for us.

BY MR. GOUDRAULT:

Q.—Mr. Bertram, I understand that this Exhibit C-1, tabulation of sewers, was made under your supervision? A.—Yes, sir.

20 Q.—They were made from the official records of the Sewers Bureau of Queens? A.—Yes, sir.

Q.—Is it to your knowledge that they are public documents, or private documents? A.—They are public documents.

Q.—They are the property of the City of New York? A.—Of the City of New York.

Q.—And the City of New York exists by virtue of statutes of the State of New York?

MR. COOK: He is not the best witness to prove that.

30 BY MR. GOUDRAULT:

Q.—Now, was this work, this tabulation, a difficult proposition when it was put up to you? A.—It was a long-winded thing, it took a long time to do; it was not specially difficult.

Q.—And therefore if it was so difficult, did you do it alone? A.—No.

Q.—Who made it? A.—A number of men under my supervision.

40 Q.—Did you have control over those men? A.—I was in charge of those men, yes.

Q.—Did you have faith in those men? A.—I did.

EXAMINATION BY MR. HACKETT:

Q.—Mr. Bertram, you have already told us on a number of occasions you did not check the documents yourself? A.—Personally I did not.

William H. Bertram for plaintiff recalled (direct examination).

Q.—You had nothing to do with it? A.—No, but it was checked by men under me.

Q.—You may have been told that, that is as far as you can go? A.—I assigned the work; when one man or two men finished, I had it gone over and checked it.

BY MR. COOK:

10

Q.—That is not the original document, to which you are referring; that is merely a copy of it? A.—Yes, I can not testify whether any change has been made in that, or not.

BY MR. GOUDRAULT:—

Q.—Concerning the other men working under your supervision, Mr. Bertram, did you ever have a complaint that the work was not being done properly? A.—None at all.

20

Q.—Before delivering the document to the party who had prayed for it, did you satisfy yourself that it was or that it was not a correct document? A.—I believed it was reasonably correct, that is, to the best of my information.

Q.—Therefore will you now look at this Exhibit C-1 and tell us if you can state from the said exhibit when the precast sewer or Type B was introduced and constructed in the Borough of Queens?

30

MR. HACKETT: I reiterate my objection, Mr. Commissioner, that the authenticity of the document not having been established, it is not competent of the witness to refresh his memory therefrom, or to testify after having done so.

MR. COOK: We associate with that objection.

(The question was repeated by the clerk).

A.—I do not know which one of these jobs this type was used in first. There are two jobs here where it was not specified; in this one it was.

40

Q.—Will you look at the two last lines on this page and tell us for what contract they were, or what contracts are there detailed? Just tell us the number of the contracts. A.—No. 47,340 and 47,339.

Q.—Well, would it be the Hull Avenue and the Collins Avenue work? A.—The Hull Avenue and Collins Avenue jobs.

Q.—What is it appearing there on that sheet? A.—The date the bids were opened was the 4th of April, 1917.

William H. Bertram for plaintiff recalled (direct examination).

Q.—The date of award?

MR. HACKETT: The award in the Collins Avenue job was on the 10th of April, 1917, and in the Hall Avenue on the 10th of April, 1917.

10 MR. GOUDRAULT: I would kindly ask that the answers be put in by the witness, and my learned confrere will see the reason why.

MR. COOK: That is what we have been trying to have done.

THE WITNESS: Both contracts were signed the 23rd of April, 1917.

Q.—Both? A.—Yes.

20 Q.—Good. Now will you look, you have looked at these exhibits C-8 and C-9, which are the contracts referred to by you, and which appear at the bottom of this page, and will you kindly tell us if the information therein contained is the information which comes from these records? A.—Yes.

Q.—Are you satisfied A.—Wait a moment, not from these, these particular books were not available, these were Comptroller's copies over in New York. The duplicates are in our files. From those we took the information.

30 MR. HACKETT: So duplicates of No. 47,339 and 47,340 are in the Borough files?

THE WITNESS: In the Borough of Queens files; but they are not noted by those numbers, of course, those are the Comptroller's numbers. We know them by the name.

BY MR. GOUDRAULT:

40 Q.—Will you therefore look at Exhibits C-8 and C-9, as quickly as possible, and tell us if the information contained in this page 3 of C-1 Exhibit, is practically the information you can get from these exhibits C-8 and C-9, as regards the information which would be controlled by the heading of this page, Mr. Bertram, as to date, type, specifications, etc., are you satisfied that the information on C-1 is in accordance with the details contained in C-8 and C-9? A.—Yes, I am satisfied that the information here is; it may not be all that is on here; the date of the opening of bids does not seem to appear; the date of

Albert A. Sommerfeld for plaintiff (direct examination).

award and the date the contract was signed is all available here, the prices paid and the type specified is all here.

Q.—And is that correct? A.—Do you want me to verify it?

10 MR. GOUDRAULT: I have the great pleasure of telling you I am finished with this witness, unless I may require him to file certain papers, but the examination is finished, as far as I am concerned.

THE COMMISSIONER: We will take a recess, it now being ten minutes to one, until ten minutes to two, this afternoon.

(Recess from 12:50 to 1:50 p. m.)

20 AFTER RECESS. 1:50 p. m.

DEPOSITION OF ALBERT A. SOMMERFELD.

ALBERT A. SOMMERFELD, AGE 55; residence, 112-31 208th Street, Bellaire, Long Island, County of Queens; occupation, assistant engineer, a witness produced, sworn and examined on the part and behalf of the People of the State of New York, the plaintiff, deposeseth and saith as follows:

30 DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—By whom are you employed as assistant engineer?

A.—City of New York, Borough of Queens; President of the Borough of Queens.

Q.—As an assistant engineer? A.—Yes, sir.

Q.—Is that in Mr. Bertram's department? A.—No. I am no longer in Mr. Bertram's department.

Q.—Were you in Mr. Bertram's department from 1917 to 1928? A.—I think Mr. Seely had charge of that.

40 Q.—Mr. Seely had charge of that department? A.—Yes, sir.

Q.—That was what Bureau? A.—That was Bureau of Designs, Construction.

Q.—Construction of what? A.—Sewers.

Q.—Sewers. So during that period of time from 1917 to 1928, do I understand you to say that you were in the Sewers Bureau of the Queens Borough? A.—Yes, sir.

Albert A. Sommerfeld for plaintiff (direct examination).

Q.—Who was your immediate superior in that office, at the time? A.—Mr. Seely.

Q.—What was the occupation of Mr. Seely? A.—He had charge of designs.

Q.—Were you a draftsman then? A.—I was a draftsman, yes, sir.

10 Q.—You know Mr. Bertram? A.—Yes, sir.

Q.—You knew him at the time? A.—Yes.

Q.—How long have you been employed by the Borough of Queens? A.—Since 1907.

Q.—Since how long have you been in the Sewer Department? A.—I think it was in 1910 I was brought down there with several others, in the Sewer Department. I was there from 1907 till 1910, in the Topographical Bureau, and then I was brought down in the Sewer Department.

Q.—As draftsman? A.—Yes, sir.

20 Q.—What did you do? A.—I made details for sewers and appurtenances.

Q.—At whose orders did you make the drawings? A.—Mr. Seely's.

Q.—I now hand you sheet 1 of plan and profile for 150th Avenue, which has been filed as Plaintiff's Exhibit C-3.

30 MR. COOK: I make the formal objection again to evidence in regard to the Exhibit C-3 which the witness has in his hand, on the ground that only a portion of it had been produced, and on the other grounds previously stated.

MR. HACKETT: I associate myself with that objection.

Q.—And I call your attention to the drawings of sections of manhole and sewer construction with waterproofing membrane required in the inside of the concrete, and I ask you who drew those? A.—I believe I drew those. That is, not on this thing. On the detail paper. On the detail paper I made the original of that.

40 Q.—From whom did you receive instructions to make those drawings? A.—Mr. Seely.

Q.—And you executed his instructions? A.—Yes, sir.

Q.—And what was done after? A.—What do you mean, what was done after?

Q.—With your work, your part of the work in connection with this? A.—Well, I made them on papers, and then they were traced on the tracing cloth after I finished.

Albert A. Sommerfeld for plaintiff (direct examination).

Q.—Will you look at this signature? (Indicating). A.—
Yes.

Q.—Do you know this signature? A.—Well, I have seen
it before, I guess. It looks like Mr. Seely's signature.

Q.—Do you know it?

MR. HACKETT: I object to that as not being the best
10 proof.

Q.—Do you know it? A.—I believe it is his. I did not see
him sign it. But it looks like his signature.

Q.—Have you seen many of these documents signed by
Mr. Seely? A.—Oh, sure.

Q.—Many of them? A.—Every plan was signed by him.

Q.—And were there many of those plans being made while
you were in that department? A.—Millions of dollars of them,
20 yes.

Q.—And you have seen that signature several times? A.
Many times.

Q.—What would you mean by "many", Mr. Sommerfeld?
A.—Every plan that was sent out was signed by him.

Q.—How many times did you see Mr. Seely's signature?
A.—I wouldn't say how many times I saw it. I would only re-
cognize the signature.

Q.—I see. Do you recognize this signature (indicating)?
A.—Yes.

MR. COOK: Same objection, as not the best evidence.
30

Q.—That is the signature of whom? A.—The Borough
President, Connolly.

Q.—Now, do you know this plan well? A.—Well, the
plan itself, — I wouldn't be interested in that so much as the
paper drawing. I make it on paper drawing, as far as that goes.

Q.—What did you do with your paper drawings? A.—
They are handed to Mr. Bertram and he hands them out to
draftsmen to trace.

Q.—Yes. But at the time when this was made, whom did
40 you hand your drawings to? A.—I cannot be sure who I handed
it to. But I know it is given to draftsmen to trace. I don't know
what drawings Mr. Bertram might have taken out and handed
to certain draftsmen to trace.

Q.—I see. Once your drawings are completed, they are
handed over to Mr. Bertram for him to give to draftsmen? A.—
Yes.

Albert A. Sommerfeld for plaintiff (direct examination).

Q.—You draw an original plan? A.—Yes, sir; that's it.

Q.—Will you look at this name, J. S. Meacle? A.—Yes.

MR. COOK: Same objection.

Q.—What do you think that would mean? A.—That he traced it.

10 Q.—Do you know about these instructions also? A.—I was not interested in those things.

Q.—You were interested in what part? A.—Just the drawings.

Q.—Drawings of what? A.—Of the sewers, manholes, junction chambers, and such.

Q.—Did you make the original drawings of these? A.—Well, from Mr. Seely's instructions. He would give me a sketch on paper, and then I would draw it up.

20 Q.—I see. Who would prepare the sketch? A.—He gave me the sketch. He told me what he wanted and I would draw it. He would probably make a little sketch on paper and say "This is what I want".

Q.—But in this particular instance? A.—He, I guess.

MR. HACKETT: You would work out the details?

THE WITNESS: I would just draw it up according to his instruction.

30 Q.—Who gave orders for all the plans that were drawn by you in the drafting room? A.—Mr. Seely.

MR. COOK: Isn't that somewhat indefinite? Shouldn't it be limited a bit?

Q.—From whom did you take orders in the drawing room? A.—Mr. Seely.

40 Q.—Do you remember whether you ever drew any plans for that waterproofing membrane in reference to monolithic sewer before this plan and profile for the 150th Avenue was prepared? A.—I couldn't tell you from dates. I wouldn't know from dates, because those things that interested me — I was told to make a certain detail, and I would do it. I would not follow it up with the date or anything else. I wouldn't be connected with the date.

MR. COOK: You would not know for what job?

Albert A. Sommerfeld for plaintiff (cross-examination).

THE WITNESS: No.

Q.—This is on the 150th Avenue job, and it is dated December 8, 1924. A.—Yes, sir.

Q.—That is all in evidence. A.—Yes.

10 Q.—Would you recollect if that was the first time that you ever received any instructions in connection with the preparation of this plan from Mr. Seely for such a waterproofing membrane? A.—I don't know whether that is the first one I did, or not. I think there was one in Rockaway. I don't know whether it was previous to that or not.

Q.—And was that for, — this waterproofing membrane was it for the type, — do you know what the Type A and Type B are? A.—Type A and Type B?

Q.—Yes. Do you know what that is? A.—Yes. Monolithic and precast pipe.

20 Q.—Were these waterproofing membranes that you drew there for the monolithic or Type B sewer? A.—They were for the Type A.

Q.—Or monolithic? A.—Yes.

MR. GOUDRAULT: No other question. Your witness.

CROSS EXAMINATION BY MR. HACKETT:

30 Q.—Mr. Sommerfeld, you have told us that you are the President of the Borough of Queens? A.—Oh, no; hardly. I am an employe, yes, but not the President of the Borough of Queens.

Q.—That is what I understood you to say. A.—Oh, no. He asked me whose signature that was, and I said that is the Borough President's signature. He is a former president. I guess he is over on Welfare Island, somewhere around there.

Q.—Was Mr. Bertram at any time your superior officer in the service of the Borough of Queens? A.—Well, after Mr. Seely left, yes.

40 Q.—And before Mr. Seely left? A.—Well, I'll tell you. He got my work, but there seemed to be a difference of opinion whether he was my superior or not. You see, I worked directly with Mr. Seely.

Q.—I understand that Mr. Bertram is not a qualified engineer.

MR. GOUDRAULT: Objected to.

Albert A. Sommerfeld for plaintiff (cross-examination).

A.—I don't know whether he is qualified or not; but there seemed to be a difference of opinion as to who was my superior. I worked for Mr. Seely, see?

Q.—Yes. A.—And Mr. Bertram really had charge of the room there, handing out these things, but I got my orders direct from Mr. Seely. So I did not consider Mr. Bertram at that time my superior.

10 Q.—But you are a qualified engineer, I understand? A. I have got my license.

Q.—Yes. How were you styled in the civil service? A.—At that time?

Q.—Yes. A.—Topographical draftsman.

Q.—Just how was the department divided? Was there a difference between the department which operated the sewers after they were constructed and the department which inquired into the necessity of building sewers and did construct them?

20 A.—Yes. You see, the construction department, that was separate. After the plans were made, they were turned over to the construction department and they built the sewers.

Q.—Yes. And it was part of the work of the topographical department to put on paper the layout of the land and indicate where sewers might properly be put in? A.—No. The topographical department, they furnish us with maps, and then from those maps they take and locate them, get the information, they send one of their own men out with a party to locate any obstructions in the street, and any kind of condition there that might interfere with the laying of the sewer, and then from that survey they lay down the sewer on a plan.

30 Q.—You were in the topographical department up till 1907? A.—No. From 1907 to 1910 I was in the topographical department.

Q.—And from 1910? A.—Up to the present time, I have been working there in the design department.

Q.—What are you doing now? A.—I am in the drainage department.

40 MR. HACKETT: That is all, as far as I am concerned.

MR. GOUDRAULT: Mr. Bertram is your superior since the departure of Mr. Seely?

THE WITNESS: Yes, he was.

MR. COOK: One moment, Mr. Goudrault. He is our witness.

Albert A. Sommerfeld for plaintiff (cross-examination).

THE WITNESS: Yes, Mr. Bertram became in charge of that room, and then I was under him.

MR. COOK: Are you through, Mr. Hackett?

MR. HACKETT: Yes.

CROSS EXAMINATION BY MR. COOK:

10

Q.—And Mr. Bertram was in charge of the room before that, as a matter of fact? A.—He was in charge, but not in charge of me. I did not consider it that way, because I took my orders from Seely.

Q.—But you worked in the room where Bertram was in charge? A.—Yes. And when Bertram wanted anything I would say “See Mr. Seely about it”, and then he gave me the orders.

Q.—Mr. Sommerfeld, I understand that Mr. Seely was the assistant engineer of the Sewer Division when you were there. 20 That is correct, is it? A.—Yes.

Q.—And Mr. Seely was under Mr. Rice? A.—Yes.

Q.—Who was the engineer in charge of the Bureau. A.— Yes.

Q.—And Mr. Rice would give his orders to Mr. Seely and Mr. Seely would transmit them to you and to Mr. Bertram who has testified this morning? A.—Yes, that is right.

Q.—And if Mr. Rice was not present or not available, Mr. Perrine would be in charge over Mr. Seely; is that right? A.— 30 Well, he might be in charge. I guess that is right.

Q.—I merely want to get the personnel. A.—Yes, technically Mr. Perrine was over Seely; technically.

Q.—Mr. Perrine was over Seely, and Mr. Rice was over Seely? A.—Yes.

Q.—And you were over Mr. Bertram? A.—No. I wasn't over anybody.

Q.—Perrine was Engineer of Sewers? A.—That's it, yes.

Q.—So that the order in which these gentlemen came was 40 Mr. Perrine, Mr. Rice, Mr. Seely, Mr. Bertram and yourself? A.—Yes.

Q.—You have no idea of what the drawings would eventually be used for, that you were handed by Mr. Seely? A.— Only for sewer construction. I did not know the reason for those things. I did not question them, because I was too busy.

Albert A. Sommerfeld for plaintiff (redirect examination).

Q.—You had nothing to do with that? A.—Nothing at all. I was kept going as fast as I could work there to turn out those drawings.

MR. COOK: Thank you, Mr. Sommerfeld.

REDIRECT EXAMINATION BY MR. GOUDRAULT:

10 Q.—Could you tell us in what form Mr. Seely gave you instructions for the preparation of the drawings which led to the preparation by you of this plan, Exhibit C-3?

MR. COOK: On behalf of the defendants we make the objection that was made yesterday, which was this: That as the recipient of the instructions Mr. Sommerfeld's evidence is not the best evidence, and that he should not be examined on this point until Mr. Seely has been examined as having given the instructions.

20

THE COMMISSIONER: The answers will be taken subject to counsel's objections and reservations.

MR. GOUDRAULT: What is the question?

(Question read by Clerk).

A.—In relation to that particular section?

Q.—Yes. A.—Paper sketch.

30 Q.—Paper sketch? A.—Yes.

Q.—Have you got that paper sketch with you? A.—No. It would just be scribbled on there and say "I want this"; a little piece of scribbled paper.

Q.—Scribbled on by whom? A.—Mr. Seely.

Q.—Was the paper destroyed after you did the work? A.—Yes. That is the way he gave us orders. He would just give us a sketch and say "That is what I want. Draw it up."

MR. GOUDRAULT: That is all. Thank you, Mr. Sommerfeld.

40

MR. COOK: That is all, Mr. Sommerfeld.

Rodman J. Pearson for plaintiff (direct examination).

DEPOSITION OF RODMAN J. PEARSON.

RODMAN J. PEARSON; age, 55; residence, 25 Grover Avenue, Yonkers, Westchester County; occupation, title of draftsman, Topographical Draftsman, a witness produced, sworn and examined on the part and behalf of the People of the State of New York, the plaintiff, deposes and saith as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—What is your occupation? A.—Topographical draftsman.

Q.—Where, Mr. Pearson? A.—In Borough Hall, Long Island City.

Q.—That is in the Borough of Queens? A.—Borough of Queens.

Q.—How long have you been connected with that Department? A.—23 years.

Q.—Did you know John M. Phillips in his lifetime? A.—I did.

Q.—How long had you known him until his death? A.—I couldn't tell you that. I would say off hand I knew him during the period he was active over there.

Q.—Over where? A.—That was probably 6 or 7 years, probably. I couldn't tell you.

Q.—Six or seven years? A.—Yes, I would say, offhand.

Q.—Do you remember the year he died? A.—No, I don't. I remember when he died, I remember his death, but I don't remember the year. Was it last year or the year before?

Q.—Approximately. A.—Yes.

Q.—How many years do you think? A.—The year before last.

Q.—That would be 1929? A.—1929 or 1928. Just after the trial or during the trial. I don't remember.

Q.—So you knew him, you said, seven or eight years before he died, is that right? A.—Yes. I had seen him off and on. I was not a companion of his, by any means.

Q.—No. Where did you see him? A.—In the office, mostly.

Q.—Often? A.—Yes, quite often.

Q.—How often during that period of time? A.—At some periods it would be once a day. Sometimes it would be twice a week.

Rodman J. Pearson for plaintiff (direct examination).

Q.—And when did it come that you did not see him as often? A.—Why, that is about all I can say. I mean to say that my seeing him was purely as a draftsman sitting there doing my work and seeing him come in and go out. It might have been sometimes twice a day, sometimes one a day.

Q.—In what room? A.—The drafting room in which I was working.

10 Q.—And when did the time come that you did not see him every day? About when? A.—Well, that happened some time during the Meyer Investigating Committee. There was quite some fuss raised about his appearance in the building, and he did not appear there any more after that and we did not see him again.

MR. HACKETT: I object to any testimony by this witness concerning the Meyer Investigation, or of any ruling that may have been given, or of any comment that may have been made by it.

20 THE COMMISSIONER: It will remain in the record subject to counsel's objection.

MR. COOK: I wish to associate myself with Mr. Hackett in that objection, Mr. Commissioner.

THE COMMISSIONER: Same ruling.

30 Q.—Mr. Pearson, if you caught well the sense of my question, I did not want you to speak of the Meyer Investigation Committee. I only wanted to ask you the date, and I think that your answer states that it was at the time of the Meyer Investigation Committee. Well, you may be sure that I won't put you any questions about the Meyer Investigation Committee. So the objections are useless on this. Do you remember the year that Mr. Phillips ceased making his daily visits in your drafting room?

MR. HACKETT: I draw to the attention of counsel, Mr. Commissioner, that the witness did not say that the man made daily visits.

40 Q.—Did you or did you not say that you saw Mr. Phillips every day, or mostly every day. Just recollect what you said a few minutes ago. A.—For how long a period? I saw Mr. Phillips in there at periods, every day. I saw Mr. Phillips there at periods of twice and three times a day. And at other times I did not see Mr. Phillips for may be a week at a time.

Rodman J. Pearson for plaintiff (direct examination).

Q.—That's enough. You mentioned a certain investigation committee a minute ago. For the purpose of recollecting the year, would you tell us now the year that Mr. Phillips ceased going to your office? A.—No. If I could tell you that year offhand, I would have said so when I mentioned the committee.

10 Q.—On what floor of the Borough Hall was the drafting room? A.—It was the third floor.

Q.—Third floor? A.—Yes.

Q.—What was Mr. Phillips doing in your drafting room? A.—He did not seem to be doing anything, except walking about. He usually had his hat and coat on. He talked sometimes to Mr. Seely, sometimes to one of the boys. He might address a remark to me of some description.

Q.—Did you ever see him use the telephone in there? A.—Yes.

Q.—From time to time? A.—Yes.

20 Q.—Or just once? A.—Oh, no. I have seen him use it quite a number of times.

Q.—Well, now, I wouldn't like to suggest, but can you tell me a little more what he was doing? A.—No, I can't, because he just about hung around, and that is about all I can say he did. You remember, I was a draftsman there, who was occupied with my own work. I would probably look up and see him there.

Q.—Did you see people come in there and meet him and talk to him? A.—Yes. Well, come in there and talk to him?

30 Q.—Yes. A.—I saw him talking with the occupants of the room. May be someone would come from an outside office and talk to him.

Q.—But other people not doing any office work in the Borough Hall, coming in? A.—Well, I can't positively swear to that. There may have been one party, I have a faint recollection.

Q.—Who is that party? A.—Andrew Zorn.

40 Q.—Andrew Zorn. Do you know Andrew Zorn? A.—No, just by sight. I was speaking to him occasionally when he was around the Borough Hall, too.

Q.—How long have you known Andrew Zorn? A.—About the same time that I knew Mr. Phillips.

Q.—That is seven or eight years? A.—Yes, I think so.

Q.—After the fall of 1921, did you see Zorn in the Borough Hall?

MR. HACKETT: I object to the question as suggestive and leading and illegal.

Rodman J. Pearson for plaintiff (direct examination).

MR. GOUDRAULT: Question withdrawn.

Q.—You have not told us how often you saw Mr. Zorn in the Sewer Bureau, or Drafting Room of the Borough of Queens. Would you recollect? A.—Mr. Zorn came in to the drafting room, I would say, almost as frequently as Mr. Phillips did, but not till after Mr. Phillips ceased coming into the
10 drafting room. I mean by that that Mr. Phillips, I told you a moment ago, ceased to come in the drafting room any more, and we did not see him again. But after that period, from then on, Mr. Zorn came in.

Q.—I see. A.—I used to see him quite frequently.

Q.—And what would Andrew Zorn be doing there?

MR. COOK: What has Andrew Zorn to do with this case?

20 MR. GOUDRAULT: It will be shown later. He is a witness, Mr. Cook.

MR. COOK: I know, but the time is going on, Mr. Goudrault. We must show it now. We are here to get the truth, but not to be kept indefinitely.

MR. GOUDRAULT: I forget the question, but we will get to that.

30 MR. COOK: Mr. Pearson might have seen you in the place some day, perhaps, for all I know. That would not make me come to the conclusion that you should pay me three and a half million dollars. I think this entire evidence is irrelevant, and I object to it on that ground.

MR. GOUDRAULT: What is the question, please?

(Question read by Clerk).

THE WITNESS: Do you wish an answer?

40 Q.—Yes, surely. A.—He conferred with Mr. Seely principally. That is about all. He wasn't very popular among us.

Q.—Do you know personally why he was not popular amongst you?

MR. COOK: Now.

MR. GOUDRAULT: Question withdrawn.

Rodman J. Pearson for plaintiff (direct examination).

Q.—Can you state how often you would have seen him between the fall of 1921 and 1927?

MR. COOK: Seen whom?

MR. GOUDRAULT: Andrew Zorn.

MR. COOK: Same objection.

10

THE WITNESS: Can I state how often I had seen him between that period?

Q.—Would you kindly state how often you had seen him? A.—1921, — did I say that was the time?

Q.—You did not give any date. You spoke of a certain Investigating Committee, instead of a date. A.—Well, he appeared there after that period. I would say he appeared there once a day, on an average.

20

Q.—Will you tell us, if you remember, the circumstances under which you first got acquainted with Mr. John M. Phillips?

MR. HACKETT: I object to that as tending to adduce testimony which is irrelevant and consequently illegal.

MR. COOK: I join in the objection.

Q.—What is your answer? A.—Why, I met Phillips through Mr. Seely, in a general way, in a general introduction, as the man who could do something for him. What I did was to make a poster.

30

Q.—A poster for whom?

MR. COOK: We object to that.

A.—The poster was for Mr. Connolly, but it was being done for Mr. Phillips. I did it for Mr. Phillips, but the poster was for Connolly.

Q.—Mr. Connolly, the President of the Borough? A.—The President of the Borough, yes.

40

Q.—At whose request was the poster made? A.—At whose request?

Q.—Yes. The poster was made by you? A.—By me. I made the poster at Mr. Phillips' request and Mr. Seely's permission, who was my immediate superior.

Q.—Do you remember that time? A.—I don't remember the year, no. That was a long while ago, before the trial.

Rodman J. Pearson for plaintiff (cross-examination).

Q.—Mr. Pearson, you are still employed with the Department? A.—Yes.

Q.—Did you personally make any searches in order to find out certain papers and documents? A.—Yes.

10 MR. COOK: If it is your intention to produce any documents, I would ask that they be shown to counsel for the defense before they are shown to the witness.

MR. GOUDRAULT: They have been produced, Mr. Cook.

MR. COOK: Oh, I beg your pardon. I thought you were producing something new.

MR. GOUDRAULT: No.

20 Q.—Three exhibits were produced yesterday. They are part of the plan and profile of the 150th Avenue. Will you look at these three sheets, Exhibits C-3, C-4 and C-5, and state if you have made any searches in order to try and recover in your department or elsewhere, the remaining sheets? A.—Yes. I have. I took the matter up with Mr. Buckner's office this morning and they produced a receipt from us showing they had returned those eight sheets.

Q.—To whom? A.—To Mr. Thomas Gaffney.

Q.—Of what department? A.—Of the Audits and Accounts Department.

30 Q.—In the Borough of Queens? A.—In the Borough Hall, yes, Borough of Queens.

Q.—Well, will you kindly, Mr. Pearson, follow that and see if you can get those eight, — endeavor to do your utmost to get those eight original pages? A.—I will.

MR. GOUDRAULT: This gentleman is now your witness.

CROSS EXAMINATION BY MR. HACKETT:

40 Q.—I understand that the growth of population in the Borough of Queens was very, very rapid at one time; is that correct? A.—I understand the same thing, yes.

Q.—Yes. And as a consequence, it behooved the municipal authorities to provide sewers for the large number of homes and buildings as well as for surface water in that division?

MR. GOUDRAULT: I wish to object to this question as not derived from the direct examination, — examination in

Rodman J. Pearson for plaintiff (cross-examination).

chief, and furthermore, on the ground that the witness is not the best witness, or a sufficiently competent witness to testify on that question, which is a very technical question.

THE COMMISSIONER: I will take the answer subject to the objection of counsel.

10 Q.—When was the period of most rapid development as reflected by the period of greatest activity in the Department of Sewers, of the Borough? A.—Well, I would prefer not to answer the question, because I feel incompetent to answer it.

Q.—Well, you have told us, Mr. Pearson, that you have been in the Department of Sewers for a number of years? A.—Yes.

Q.—You recall that at some times the work of that Department has been more arduous and rushed than at other times? A.—Yes.

20 Q.—And the reason of the greater activity was the greater demand for sewers resulting from increase in population? A.—Well, was it?

Q.—Well, it behooves you to say. You have told us a great many things, and your memory was very detailed about some insignificant details, and when we get you on a big fact, we want a big answer. If not, tell us that you can't remember very well. A.—You are trying to make me say.

30 Q.—I am trying to make you say nothing, sir. I am asking you to remember. A.—It looks to me that way, and I am trying my best to answer you in a truthful way. I don't wish to antagonize you in any form or way at all. But what I can answer, I will. And I was going to try to tell you the best I know. But I simply don't know anything about that question.

Q.—You don't remember at what times between 1917 and 1928 there was the greatest volume of sewer construction going on, under the department of which you were an important officer? A.—I do, yes.

40 Q.—Well, will you state what time? A.—That was just prior — it was the time of the letting of the 28 — odd contracts that we had out in Jamaica. And that was just, — oh, probably a year or two or three years, maybe, preceding the Connolly trial, whatever year that may be.

Q.—The development was progressive in the Borough of Queens, was it not? A.—Yes.

Q.—The construction of sewers was becoming greater all the time from 1917 onwards? A.—Yes.

Rodman J. Pearson for plaintiff (cross-examination).

Q.—And millions of dollars, to your knowledge, were spent for that purpose annually? A.—Yes, that is right.

Q.—What was the number of employes in the office in which you carried on your daily work? A.—I don't remember the exact number.

10 Q.—About? A.—About, I think we had probably between 10 and 25, probably, at different periods. They came and went.

Q.—Yes. And was it from that office that information was given to men who were interested in the construction of sewers, to enable them to bid for contracts? A.—Will you repeat that question, please?

(Question read by clerk).

20 A.—Well, anybody who wished to bid on contracts did so from the advertising for bidding. I don't know just what you mean, was it from that office that information was given to men?

Q.—Is it to your knowledge that contractors, suppliers of material, engineers, quantity clerks and surveyors came to the Borough Hall on business arising out of contracts either let or to be let for the construction of sewers?

30 MR. GOUDRAULT: Objected to as not derived from the direct examination of the witness; and furthermore, on the ground that this witness is not the competent man to testify on the facts which are asked from him by counsel for defendants.

THE COMMISSIONER: The answer will be taken, subject to counsel's objection and reservation.

A.—I don't know.

40 Q.—It does not seem to me that is a matter which requires so much consideration for a man who has such a perfect memory as you. A.—You are trying to pin me down to a specific instance and I can not tell. I saw men come in and out of the office right along, conferring with Mr. Seely. What they said to Mr. Seely, or anyone else in the office, had nothing to do with me. They may have conferred on just questions as you say.

Q.—I put it to you, Mr. Pearson, that you know that men went to that office daily, and in numbers, on business arising out of the construction of sewers? A.—Yes, of course.

Q.—Of course. That is one of the reasons the office was there? A.—Yes.

Q.—And you knew a Mr. Cox, did you not? A.—Yes.

Rodman J. Pearson for plaintiff (cross-examination).

Q.—What were Mr. Cox's duties? A.—Mr. Cox was.

Q.—Possibly I can help you. He was charged with the issue of plans or blueprints of plans to the public who was interested in the construction of sewers? A.—Yes.

Q.—You knew that? A.—But Mr. Cox was not in the room in which I work.

10 Q.—He was in an outer room? A.—He was in an outer room.

Q.—And you went from the inner to the outer room frequently in the course of the day? A.—Yes.

Q.—And the Borough Hall, like most municipal halls, was thronged with politicians and job getters, and sundry other of the same ilk? A.—Not in our office.

20 Q.—Not in your office? A.—Not in the drafting room in which I worked, or the room in which Mr. Cox worked. People came in to Cox for plans, contractors; and that is as far as I know. I may have seen him hand them a plan. I don't remember; but that was one of his duties, yes.

Q.—But as a draftsman, you knew that where so much work was being let, it was a matter of interest to suppliers of material, for instance? A.—Yes.

30 Q.—And it was a matter of interest to the technical men who were in the employ either of suppliers of material or of prospective contractors? A.—No, not the men in our room, because we were purely and simply draftsmen. We made up the plans and profiles for the construction of a sewer in a certain street. Outside of that we did not care anything about supplies, or quantity of concrete, or anything else, except in the estimating room.

Q.—But the contractors were interested in these plans? A.—Oh, yes.

Q.—And in any modification of them? A.—Oh, yes.

Q.—And for that reason they came to your office from time to time? A.—Perhaps to see Mr. Seely, but not to me.

40 Q.—No. But what I am trying to get at is that Seely was the head man in your room, and anybody who came to your room nine times out of ten, if not 99 out of 100, came to see Seely? A.—Yes, quite right.

Q.—Yes. So when Phillips came he was like everybody else. He came to see Seely, who was in charge of the room? A.—That is right.

Q.—And so did Zorn? A.—That is right.

Rodman J. Pearson for plaintiff (cross-examination).

Q.—And so did other men whose names you have not given? A.—I have testified so.

Q.—So there really was nothing very remarkable in the visits of either Zorn or Phillips to Seely? A.—How should I know what they talked about?

10 Q.—Because there was an insinuation in your testimony, which I hope you did not intend, that there was something insidious, something underhand, something that smacked of a mystery in the interviews between Seely and Zorn and Phillips, because you did not mention, when you gave the testimony, that other men came to see this chief official. A.—Because I was not asked if other men came to see this official.

Q.—But other men did come to see him? A.—Surely. Other visitors, but these other visitors were not there once a day or two or three times a day.

20 Q.—Then you think there was something insidious in the visits of Zorn? A.—Why not? Every man in the room thought so.

Q.—Oh, I see. It is strange how keen you are on matters of this type when you can not tell when the big business of your department was being carried on. A.—I was not interested in the big business to the extent.

Q.—You were interested in the small business.

30 MR. GOUDRAULT: Let the witness answer. It is now my chance to ask you that favor; not that favor; but that right.

Q.—Do you know why Zorn went to see Seely? A.—No.

Q.—Do you know why Phillips went to see Seely? A.—I do not.

Q.—It was a matter of no personal importance to you? A.—Absolutely not.

Q.—You kept no record of it? A.—No, sir.

Q.—That was 8 or 10 years ago? A.—Yes, sir.

40 Q.—You won't pledge your oath as to the frequency of these visits for any one week in the calendar of any one year? A.—I would not. It is impressional entirely.

Q.—And casual? A.—Yes, I would say casual, because it was a casual thing that I saw the men there, casually noted, casually seen.

Q.—Yes; and casually testified to?

MR. GOUDRAULT: That last remark.

MR. HACKETT: I am asking him.

Rodman J. Pearson for plaintiff (cross-examination).

MR. GOUDRAULT: Is it a question?

MR. HACKETT: It is a question, yes.

MR. GOUDRAULT: It is a funny question.

THE WITNESS: Casually answered.

10 Q.—Did you at any time say before a tribunal before which you appeared as a witness, that Zorn would use the phone occasionally and occasionally he would talk to Mr. Seely? A.—Yes; I probably testified to that.

Q.—Yes. And that is what you wanted to say here today?

A.—What happens.

Q.—And nothing more? A.—Nothing more.

MR. GOUDRAULT: Nothing more than what you said.

20 THE WITNESS: Nothing more than what I said; what I answered.

MR. HACKETT: Now, let us be sure.

MR. GOUDRAULT: We will be sure, yes.

30 Q.—Do you wish the Commissioner to understand that where you said that Zorn would occasionally speak to Mr. Seely and occasionally he would talk to somebody in the outer office who happened to come into the drafting room, that that is and was an accurate statement of your recollection of the relationship between Seely and Zorn? A.—Yes.

Q.—And you stick to that today? A.—I stick to that, yes.

Q.—Now, coming again to the first person or whom you spoke about whom you spoke, that is, Mr. Phillips, your recollection of his visits is not as vivid, is it, as it is of Zorn, whom I know you said you did not like? A.—Yes, it is; in a general way.

Q.—Yes. A.—This is some time ago.

40 Q.—It is some time ago. A.—You can not pin me down to specific things.

Q.—Just why I would like you to say if the testimony which you appear to have given two or three years ago, in which you said, using the same language, “he”, Phillips, “occasionally would talk to Seely, and occasionally he would talk to somebody else”, was and is your best recollection of the relationship bet-

Rodman J. Pearson for plaintiff (redirect examination).

ween Phillips and Seely? A.—The best recollection of which I have any positive knowledge, yes.

Q.—Yes. And you don't wish your testimony today to be different from what it was some years ago when you uttered the words which I have read to you? A.—No, I wouldn't say so.

MR. HACKETT: That is all.

10

MR. GOUDRAULT: That is not all.

MR. COOK: No cross.

REDIRECT EXAMINATION BY MR. GOUDRAULT:

20

Q.—I understand that Mr. Hackett, the attorney for the defendant, has just read or taken a summary of your declaration previously made by you before a certain tribunal concerning a Mr. Zorn, of which you have already spoken to us in your direct examination, to the effect that the said Zorn would have, to the best of your recollection, occasionally used the phone and occasionally speak to Mr. Seely. But do you remember if you stated in the same tribunal and under the same circumstances, facts pertaining to the visits of Mr. Phillips and Mr. Zorn in the office? Do you get my question right? A.—It is involved. I did not get it.

30

Q.—It is involved. Just a second. I will get it right. At the same investigation, before the same tribunal, you testified that Mr. Zorn would be in almost daily?

MR. COOK: One moment.

Q.—Did you or did you not state so?

40

MR. HACKETT: Just a moment. I object to it, Mr. Commissioner, and I am going to ask you in this instance to consider whether this is not a case for ruling. In cross-examination it is competent, I submit, for counsel to refer to testimony given by the witness on another occasion. But it is not competent, under our rule, for counsel examining in chief, unless his witness be hostile, to refer to such testimony. And I submit that is not competent for Mr. Goudrault to take previous testimony of the witness and read it into the record. Otherwise we would go through this whole previous trial.

MR. GOUDRAULT: I may state that the reason of my question was that in cross-examination of Mr. Pearson by Mr.

Rodman J. Pearson for plaintiff (redirect examination).

Hackett, Mr. Hackett only referred to a very few questions and answers of Mr. Pearson, the witness, at this previous trial. The answers now given by Mr. Pearson in direct examination are no contradiction of what this witness has previously said.

MR. HACKETT: You can not bring that in, or we would be trying that case over again.

10 THE COMMISSIONER: I will take the answer subject to counsel's objection.

MR. GOUDRAULT: Will you read my question?

(Question read by clerk).

A.—Yes, I did.

Q.—Did you also state that after a certain investigation Mr. Phillips' visits ceased? A.—Yes.

20 Q.—And that Mr. Zorn continued his visits in the draftsmen's room?

MR. COOK: Defendants object to this line of questioning on the ground that it can do nothing but tend to contradict the plaintiff's own witness, who has already testified on the points about which he is now being examined.

30 MR. GOUDRAULT: My question has no purpose to have this witness contradict himself. It is just to emphasize what he already has said.

THE COMMISSIONER: I will take the answer subject to counsel's objection.

MR. GOUDRAULT: Will you read the question?

(Question read by clerk).

A.—Yes.

40 Q.—You told Mr. Hackett that you had no plans and specifications to show to contractors, did you not? A.—That I had personally none. Is that what you mean?

Q.—Yes. A.—Yes.

MR. GOUDRAULT: I am through with this witness.

MR. COOK: One minute. Are you finished?

MR. GOUDRAULT: Yes.

Rodman J. Pearson for plaintiff (recross-examination).

RE CROSS EXAMINATION BY MR. COOK:

Q.—I assume that prior to the investigation a great number of visitors came and went to the office in which you were occupied, a great number of visitors, were there not? A.—No. I would not say there were. My room, in which I worked and in which Mr. Seely was, was the drafting room, and visitors were not encouraged in that room. The only time they would come would be to see Mr. Seely and consult on something about the work. But there would not be a great many as you say. There might have been that many out in the outer office.

Q.—In the outer office there might have been that many?

A.—Yes. But not in the drafting room.

Q.—But after this investigation, no further contracts were let for some time?

MR. GOUDRAULT: Objected to. This witness is not a competent witness on that.

Q.—Do you remember that? A.—I can not recall that.

Q.—You can not recall that. Did the activities cease in your department for a time? A.—After the investigation?

Q.—Yes. A.—I don't recall that, either. It recall a period of depression, but I don't remember just when it was. I couldn't tell you that.

Q.—You say that there was a depression, but you don't remember when the depression started. A.—That's the idea.

Q.—That's the idea. Your memory is not very good on that, you can not recall it? A.—In some things it is poor. In other things it is very good.

MR. COOK: Thank you. That is all.

BY MR. GOUDRAULT:

Q.—In others it is very good? A.—Yes.

William H. Bertram for plaintiff recalled (direct examination).

DEPOSITION OF WILLIAM H. BERTRAM
(recalled)

10 WILLIAM H. BERTRAM was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposeth and saidth as follows:

MR. HACKETT: Is Mr. Bertram ready for cross-examination?

MR. COOK: We better finish his examination in chief.

MR. GOUDRAULT: Yes. There may be just one question or two.

BY MR. GOUDRAULT:

20 Q.—Will you look at.

MR. COOK; Before we proceed, Mr. Goudrault, I would ask if you are going on further with Mr. Bertram. We were told before lunch that you had finished, and that he was our witness, and now you are reopening his examination in chief.

MR. GOUDRAULT: Not reopening. Just filing document proof, and one word on said document, not more.

30 Q.—Will you look at this document and state in very few words what it is?

MR. COOK: This is a new document, is it?

MR. GOUDRAULT: Yes.

MR. COOK: Well, let us see it before Mr. Bertram puts it in.

MR. GOUDRAULT: Before he puts his answer in. All right.

40 MR. COOK: Put your question, and then we will see the document.

Q.—You were asked to look at this filed paper and tell us in a word the description. A.—Original plan, profiles and details for the construction of a sanitary sewer and appurtenances in 158th Street from 150th Avenue to Boynton Street, and to forth.

William H. Bertram for plaintiff recalled (direct examination).

MR. GOUDRAULT: I now offer, to complete my record, in evidence, the plan and profile and details, comprising 16 sheets, as Exhibit C-10.

(The said plans were thereupon received and marked Plaintiff's Exhibit C-10, of this date, consisting of 16 sheets).

10

Q.—By examining said Exhibit C-10, would you kindly tell us if the plans do contain requirements for a waterproofing membrane for the monolithic sewer the same as in the plans for the 150th Avenue sewer?

MR. COOK: I object to the production of these plans as being illegal and irrelevant; and I also object to any evidence in regard thereto.

20

THE COMMISSIONER: They will be taken in evidence, but they will be received, and the evidence in regard thereto, subject to counsel's objection.

Q.—What is your answer? A.—These sections do contain a waterproofing membrane similar to that shown on the plans for the 150th Avenue.

30

Q.—The said plans, do they contain similar instructions regarding the arch forms to be kept in place? A.—Arch forms are to be kept in place 21 days, similar to the requirements for the 150th Avenue. The concrete is the same. They are practically the same as the requirements for 150th Avenue.

Q.—Now, do I understand, — I suppose that the sewers for 158th Street were constructed by your department? A.—Yes.

Q.—Would you have the same objections in your mind as an engineer.

MR. COOK: Well.

MR. GOUDRAULT: Question withdrawn.

40

Q.—You already told us for the 150th Avenue sewer that you thought that these plans and specifications requiring a waterproofing membrane in the barrel of the monolithic sewer were, in your estimation, of no use, or you would not recommend them.

MR. COOK: One minute. Is that your question?

William H. Bertram for plaintiff recalled (direct examination).

MR. GOUDRAULT: Yes.

MR. COOK: I object most strenuously to this. In the first place, I don't agree that the witness made any such statement. In the second place, he was not the engineer in charge at this time, and the question is entirely irrelevant and illegal, Mr. Commissioner.

10

MR. GOUDRAULT: Question withdrawn.

Q.—Do you recollect the statements you made concerning these waterproofing membranes for a monolithic sewer as regards the plan and profile for the 150th Avenue sewer? A.—I believe I do.

Q.—What statement would you make as regards the same requirement regarding this waterproofing membrane for the 158th Street sewer?

20

MR. COOK: Objected to, inasmuch as the opinion of this witness is entirely irrelevant.

Q.—What is your answer, under reserve? A.—I would have the same objections I had before.

Q.—For what reason? A.—Well, it is too costly an operation, and not necessary.

MR. COOK: The same objection to that last question and answer.

30

Q.—Now, you are the superior of Mr. Sommerfeld since your appointment to Mr. Seely's — A.—He has been transferred to another department. I have not jurisdiction over him now.

Q.—I see. What are exactly your qualifications, Mr. Bertram? A.—You mean whether I have a license?

Q.—Yes. A.—I have passed a few civil service examinations.

Q.—You went through them? A.—Yes.

40 Q.—You have a license? A.—I have a license from the State of New York as a professional engineer; and I have got the Degree of C. E., civil engineer.

MR. HACKETT: Where does that come from, Mr. Bertram?

THE WITNESS: Cooper Union.

MR. GOUDRAULT: That is all. I have finished.

William H. Bertram for plaintiff recalled (cross-examination).

MR. COOK: Your examination is declared closed?

MR. GOUDRAULT: Yes. But inasmuch as I told you this morning, I may have to see some more of Mr. Bertram in reference to other sewers.

10 MR. COOK: But it is understood that anything in regard to which he has been examined to date, is finished and closed.

MR. GOUDRAULT: Yes.

MR. COOK: Mr. Hackett, will you take the cross-examination, under reserve of the defendants' various objections.

MR. HACKETT: Yes. I will be glad to.

CROSS EXAMINATION BY MR. HACKETT:

20 Q.—I would like to get a little information from you as preliminary to your cross-examination, upon the organization of the different municipal bodies with which you were associated. Some reference has been made to Connolly, the President of the Borough. Over what did he preside?

30 MR. GOUDRAULT: Just a minute. I wish to put a general objection, Mr. Commissioner, to all preliminary evidence that Mr. Hackett wants to make through this witness, for the following reason: First, the witness, although he may have a fair knowledge of the organization of the Boroughs, and more especially of his department, is not the competent witness to testify on the whole municipal or borough organization of the Borough of Queens, and more especially on the powers and rights and duties of the President of the said Borough; and secondly because it is the first time that I hear of a witness produced by plaintiffs being examined in a preliminary way in cross examination.

40 MR. HACKETT: Will you read the question, please.

(Question read by clerk).

A.—He was the Borough President and had charge of all public works. Well, mainly in charge of public works.

Q.—What was the Board over which he presided? Who was on it? A.—He didn't preside over a Board. He was a member of the Board of Estimate.

William H. Bertram for plaintiff recalled (cross-examination).

Q.—Yes. But you made some reference to a Commissioner of Public Works, and an Assistant Commissioner of Public Works, and to a consulting engineer. A.—I don't believe I did.

Q.—And I would like to get these men sorted out, in my mind. A.—Well, the Commissioner of Public Works is Acting Borough President in the absence of the President, and then the Assistant Commissioner of Public Works would be assistant to
10 1917 to 1928, I understood you to say that Connolly was the President and the Commissioner of Public Works.

Q.—And the consulting engineer? Well, the consulting engineer is there for the advice of the President. The Borough President would call him and consult him, I suppose, on different phases of work.

Q.—During the period which has been under review from 1917 to 1928, I understood you to say that Connolly was the President all that time. A.—I don't think I said so, but I believe
20 he was.

Q.—Who was the consulting engineer during that time? A.—Well, I can't remember the man's name in 1917. But the better part of the time a man named Moore, Clifford Moore, was in charge. The other name escapes me for the minute.

Q.—Now, under the jurisdiction of the President of the Borough, there were a number of departments? A.—Certainly, yes.

Q.—And one of them was the Sewer Department? A.—
30 Correct.

Q.—And the Sewer Department was divided, or came under two heads; one having to do with the operation and administration of sewers which were constructed, and the other having to do with the plans preliminary to and contracts for the construction of sewers? A.—That's right.

Q.—That's right. A.—One, the Construction Division, and the other we call the Maintenance Division.

Q.—Now, there was a Bureau of Sewers which had to do with maintenance, is that right? A.—Yes.

Q.—Then there was the Bureau of Engineering Construction? A.—Right.
40

Q.—And that was subdivided into roads and sewers? A.—No. Roads and pavements were an entirely different department. There was a Highway Department separately.

Q.—Yes. But did they not both come under the heading of Bureau of Engineering Construction? A.—Yes. Bureau of Engineering Construction.

William H. Bertram for plaintiff recalled (cross-examination).

Q.—So there was an engineer who had to do with and supervise construction that had to do with the construction of highways? A.—Yes.

Q.—With which we are not concerned. And one who had to do with the construction of sewers, with which, unfortunately, we are concerned. A.—Yes.

10 Q.—Do you recall who was in charge as engineer in chief of the Bureau of Engineering Construction? A.—Mr. James Rice, most of the time.

Q.—Yes. We are speaking roughly of the period 1917 to 1928. A.—Well, before Rice was appointed, the consulting engineer, whose name I can't think of now, was the head.

Q.—We can probably find it from some of the plans. A. Some of the older plans.

Q.—But that is not material for my purpose. How did you describe the subdivision of the Bureau of Engineering Construction which had to do with the construction of sewers? A.—Well, 20 that was in two. They functioned separately. The field work, the actual construction in the field was separate from the work in the office.

Q.—And each had a chief? A.—Part of the time, yes. And then the office force were both under Mr. Perrine.

Q.—But before Perrine consolidated the field force and the office staff, do you recall the name of the chief of the field force? A.—The man in charge of the field force, his name was Pine, William Pine.

30 Q.—He was an engineer? A.—Engineer in charge of the field work.

Q.—Then who preceded Mr. Perrin as engineer in charge of the office staff? A.—Mr. Harold Tait.

Q.—Harold Tait. Into which division did the topographical work fit? A.—I don't just exactly get your question.

Q.—I understand that when this rapidly growing area was taken over, it had to be mapped and plotted. In other words, a topographical map had to be prepared. A.—That is an entirely 40 separate department, in another building altogether.

Q.—Yes. Who was in charge of that? A.—Charles U. Powell.

Q.—He was an engineer? A.—Yes. And he is still in charge.

Q.—I understand that in the City of New York there are five boroughs of which Queens is one? A.—Right.

William H. Bertram for plaintiff recalled (cross-examination).

Q.—And that it has an autonomous government, and sends one or more delegates to a federal city government? A.—Yes.

Q.—Now, the president of each borough goes to or has a place on the Board of Estimate and Apportionment? A.—That is correct.

10 Q.—And there are eight members on that Board, including the five Borough members and three members elected at large, who are the Mayor, the Comptroller, and the President of the Board of Aldermen. A.—That is correct.

MR. GOUDRAULT: May it please the Commissioner, it would perhaps be shorter if we could use the charter of the City of New York.

MR. HACKETT: It might be, yes.

20 Q.—The Board of Estimate and Apportionment sits as a Board and as a Committee of the Whole? A.—Yes.

Q.—I think we have now about all of the bodies which have to pass upon the plans and specifications and the preliminaries thereto which are embodied in any contract for a sewer in the Borough of Queens, have we not?

30 MR. GOUDRAULT: May I point out to the Commissioner that all these questions are in themselves answered, inasmuch as Mr. Hackett is testifying. For the last 10 or 15 questions the witness has said nothing but yes; and of course if it was in cross-examination, I understand that any such questions may be put by attorneys for the defendants, but I think we are simply having the evidence of Mr. Hackett as the expert on the City of New York, if we do take all those questions.

Q.—You have been in the employ of the Borough, you have told us, for many years? A.—In the Borough of Queens I have been since 1907. In the Sewer Department since 1914.

40 Q.—Yes. And you have worked up from the lower rungs of the service to the position of assistant engineer, is that what you are called now? A.—Assistant engineer in charge of the Bureau of Designs.

Q.—And while you have been in office, the population of Queens, of the Borough of Queens, has increased from a couple of hundred thousand to something like a million and a half? A.—The last figure was a million and eighty-one thousand.

William H. Bertram for plaintiff recalled (cross-examination).

Q.—A million and eighty-one thousand. And as a consequence of this rapid growth there has been tremendous development in the sewers of the Borough? A.—Yes.

Q.—And you have seen this system develop from the stage of, I was going to say swaddling clothes, to that of maturity, which it is now attaining? A.—Yes. We built more sewers in one year than were built in all the time previous.

10

BY MR. GOUDRAULT:

Q.—What year? A.—This year we built more than we ever did before. But we did build as high as 17 miles in one year during this period.

Q.—This period? A.—This period that is under investigation now.

BY MR. HACKETT:

20

Q.—1917 to 1928. The Borough is divided superficially into drainage areas, is it not? A.—That all depends on the contour of the land. Water has got to run downhill.

Q.—And some of these areas contain 2,000 acres, and Jamaica contains 14,000 acres, I believe, approximately? A.—Well, the system of Jamaica comprises 24,000.

Q.—24,000 acres. And the sewers are sanitary sewers and street sewers. Are they separate on the area? A.—Well, in the same territory we built what were called combined sewers; in other words, a sewer that takes everything. And when we began in Jamaica proper, we separated the sanitary from the storm sewers.

30

Q.—Is it correct to say that the construction came upon you with such a rush, and the emergency for immediate sewer service was so great, that in all instances the topographical maps and, preliminary surveys were not completed? A.—Well, studies were made of the area a considerable time before we began to build any sewers. And when we got down to the production of these maps, we were handicapped by the lack of topographical maps; that is, complete maps.

40

Q.—Yes. Your population was growing so rapidly you had to put in sewers and give them relief for purposes of health, for reasons of health, even though your preliminary surveys were not quite complete? A.—Well.

MR. GOUDRAULT: Did you get that question right?

William H. Bertram for plaintiff recalled (cross-examination).

THE WITNESS: It is in such a way that I don't quite know what he is driving at. The maps were complete, that is, the streets were laid out on paper if they were not on the ground.

Q.—They were on paper? A.—In a good many cases they were only on paper.

10 Q.—And it frequently happened that the information requisite to a complete knowledge of the surface of any drainage area was not available when you had to build a sewer through it? A.—No.

MR. GOUDRAULT: Excuse me. Don't answer it. Will you read the question?

(Question and answer read by the clerk).

20 THE WITNESS: We had to make our own surveys before we built. Each map we prepared we turned over to the field party, and located every tree, water hydrant, and house. We had to do it that way. We always had to do it that way.

BY MR. HACKETT:

Q.—But the whole area had not been topographically surveyed, and the information was not available? A.—It had not been finally mapped.

30 MR. GOUDRAULT: Excuse me. This is still the preliminary examination, not cross-examination. I am using your own words.

MR. HACKETT: This is the cross-examination of the witness.

MR. GOUDRAULT: All these questions do not arise.

MR. HACKETT: Of course they do. You bring a man here and tell us the whole story and keep us for a week, and you are not going to let us find out under whom he is working?

40

BY MR. HACKETT:

Q.—I would like now to have you trace from the very beginning the movements which might culminate in a sewer. First there would have to be a petition? A.—Well, antedating all that, there would have to be a study of the drainage district, to know the streets and the size he was going to put there. He could not begin at the outset with a small pipe.

William H. Bertram for plaintiff recalled (cross-examination).

MR. GOUDRAULT: I would like to have Mr. Creem come in.

(Mr. Creem entered and conferred with Mr. Goudrault.)

THE COMMISSIONER: All right, Mr. Creem, you will be here at eleven tomorrow morning.

10 BY MR. HACKETT:

Q.—There is a petition by the rate payers to the Borough President? A.—Petition to what we call a Local Board.

Q.—The petition is to the Local Board, but the Borough President has to certify the petition to the Local Board, has he not? A.—The Borough President?

Q.—Yes. A.—Why, he is a member ex officio of that Board.

20 Q.—Yes. And the Local Board is made up of the Alderman. A.—From the adjoining district.

Q.—Wait a minute. Of the Alderman in whose district the improvement is to be made, and also of Aldermen in contiguous districts. A.—That is right.

Q.—And the petition is to the Local Board so constituted. A.—Yes.

Q.—And before it can go to the Local Board it has to be certified to by the Borough President. Is that not true?

30 MR. GOUDRAULT: Before you answer. Mr. Commissioner, I will not put too many objections, because I don't want to stop the proceedings from going as rapidly as possible. But I object to all this line of evidence.

The witness was never examined in his direct examination on these points, and these questions are not questions but simply an explanation given by the attorney for the defendant, Mr. Hackett, on the actual, I may say, administration of the City of New York, that I do not think the witness is a sufficiently competent witness on.

40 THE COMMISSIONER: I will take the answers subject to your objections, which will be noted on the record.

BY MR. HACKETT:

Q.—And a notice has to be given of the meeting of the Local Board to the rate payers? A.—Yes, Notices are sent to them.

William H. Bertram for plaintiff recalled (cross-examination).

Q.—And that is the task of the office of the Borough President? A.—Yes. The Local Board maintains an office in the Borough President's building.

Q.—And it is necessary that at least 50 per cent., or something more, of the ratepayers affected assent to the petition?

MR. GOUDRAULT: I still object to the questions.

10

A.—Less than 50 per cent. is acceptable, if there are no objections.

Q.—If there are no objections. Then, after the petition has been approved by the Local Board and has the approval of the ratepayers, it is forwarded to the Board of Estimate and Apportionment? A.—Yes, sir.

Q.—And is considered by that Board of eight? A.—By the Board of Estimate, yes.

20

Q.—And the Board of Estimate has a Board of Engineers and technical people who can and do examine the merits of the petition? A.—Yes. The Board of Estimate engineers examine those things.

Q.—And the Board of Estimate and Apportionment sit as a Committee of the Whole, in which formality is broken down, and the question is studied from the point of view of its practicability, and technically from the point of view of the engineers of the Board? A.—Yes.

30

Q.—And the report of the engineer of the Board and the financial advisers of the Board comes back to the Board and ultimately the principle of the proposal is accepted or rejected? A.—Right.

Q.—And if it is accepted, it goes back to the Borough with an intimation that the project as to principle is approved? A.—Yes.

Q.—And that moneys will be available. A.—Yes.

Q.—Then the details of it have to be worked out? A.—Yes. These plans that you have seen.

40

Q.—These plans. Now, we are getting back into your own back yard where you know from experience what happens. When the Board of Estimate and Apportionment has approved of the principle, the President of the Borough then puts his men at work. A.—Right.

Q.—And the work goes to the department which I believe we called Engineering Construction? A.—Right. That is in the case of a sewer.

William H. Bertram for plaintiff recalled (cross-examination).

Q.—Yes, in the case of a sewer. And it has passed through the Chief Engineer of the Borough President's office and goes to this Bureau of Engineering Construction, and then ultimately comes to the engineer in charge of what? A.—Engineer of sewers.

10 Q.—Engineer of sewers. And just tell us what is done from there on, will you? A.—Well, then plans are prepared and a survey is made of the conditions.

Q.—By whom are they prepared? By the staff, I suppose? A.—By the staff.

MR. GOUDRAULT: Do not answer it, Mr. Bertram, please.

(To Mr. Hackett): Ask him a question now.

20 THE WITNESS: In my case, if you talk about myself, why, I order a survey made as soon as the thing is approved; survey of the conditions on the ground.

Q.—Yes. And taking your office now, you have 20 or 25 engineers? A.—I have 26.

Q.—26. That includes draftsmen and engineers and technical men? A.—Yes.

Q.—And the plans are prepared and the specifications are prepared? A.—Yes.

30 Q.—What else has to be done before bids are called for? A.—Well, the plans are resubmitted to the engineers of the Board of Estimate; or at least sent to the Board of Estimate.

Q.—Yes. A.—The engineers examine them.

Q.—Yes. Just let us make that clear, Mr. Bertram. After your project has been approved by the Board of Estimate and Apportionment, it goes back to the Borough that the details may be worked out? A.—Right.

Q.—And when the plans and specifications have been prepared, the whole project is again submitted to the Board of Estimate and Apportionment? A.—Not the specifications.

40 Q.—Not the specifications. A.—Only the plans themselves.

Q.—Only the plans? A.—And mainly only the plan and profile. They are not concerned with the details.

Q.—And that has to go first before the Board of Estimate and Apportionment, and then it goes to a Committee of the Board, and then it goes to the technical people, and comes back through the same channel? A.—That is the plan and profile.

William H. Bertram for plaintiff recalled (cross-examination).

Q.—The plan and profile. So no contract can be let until the project has been twice approved by the Board of Estimate and Apportionment, and by the technical people, both engineering and financial, on its staff?

10 MR. GOUDRAULT: Don't answer. I wish to renew my objection to this line of preliminary examination on the ground that all these questions are not questions but answers, and the evidence therefore given by the attorney for the defendant himself, and they are not derived from the direct examination of the witness. And thirdly, the witness is not the competent man to testify, except when you reach his department, which is that of the assistant engineer of the Sewers Bureau of the Borough of Queens.

MR. HACKETT: Will you read the question to Mr. Bertram?

20 (Question read by clerk).

THE COMMISSIONER: I will take the answer subject to counsel's objections and reservations.

30 A.—The Board of Estimate engineers never see the details. They see the plan and profile. By that I mean representing the surface and the elevation and the slope the sewer has. They don't care what kind of a sewer we put in there, whether we put a rubber one in or a brick one in, or anything else. Those things are left to the Borough President. We figure the estimate of the costs for the local board, and the taxpayers are told that the project will cost so much. That is the preliminary figure, made with the best information we have in the office. We don't make a survey to get that information. So that by the time we finally finish the drawings we are in a position then to make a more accurate estimate. And those estimates may vary up or down from the preliminary.

BY MR. HACKETT:

Q.—And they are submitted to the Board of Estimate?

40 A.—They get both the preliminary and the final estimate.

Q.—So they do have the benefit of your estimate of the cost of the project? A.—Yes.

Q.—And base their findings upon that information? A. Yes.

Q.—And all this is a matter of daily life to you and has been for a good many years? A.—Yes, it is the same thing over and over again.

William H. Bertram for plaintiff recalled (cross-examination).

Q.—And you know it from your 15 years' experience?
A.—Yes.

Q.—Now, the engineers and the financiers surely don't transact all this important business without giving the poor lawyer a chance to look in somewhere, do they? A.—You did not ask about the specifications. They go to the Corporation Counsel for approval.

10 Q.—I thought he would have a look-in. So the specifications have to go to the Corporation Counsel? A.—To the Corporation Counsel for his approval as to form.

Q.—And be passed upon and initialled, before they can be incorporated in the subject matter of any bid? A.—Yes.

Q.—So after the project has run the gauntlet of these half a dozen different public boards, and board of engineers and financiers and lawyers, you have the information necessary to call for tenders? A.—We are then in a position to accept bids.

20 Q.—To accept bids? A.—Yes.

Q.—Or, to be more accurate, you are then in a position to call for bids? A.—Yes.

Q.—And you do that by publishing the requirements in newspapers? A.—In the City Record.

Q.—The City Record? A.—The official paper, the City Record.

Q.—And then the bidders come to the City Hall and get the documents necessary to make their bids, to get the information necessary upon which to base their estimates, and ultimately, I suppose, to lodge their bids with the Borough? A.—
30 I will explain it. It must be advertised for ten days in the City Record. At 11:00 o'clock in the morning of the eleventh day, the bids must be in. No bids are accepted after eleven o'clock. That was Mr. Reilly's job, to handle the acceptance of bids and that sort of thing. The plans are available from the day they are advertised. Contractors can get blueprints and get all these things and take them away with them and figure out what it is going to cost. On the 11th day, the bids must be in by eleven
40 o'clock.

Q.—Was there any uniformity in the contract form throughout the five boroughs? A.—The specifications for each borough varies greatly, yes.

MR. GOUDRAULT: We are interested only in one borough by this action and in the examination of witnesses, the Borough of Queens.

Q.—The contract itself, was that used in all the boroughs,

William H. Bertram for plaintiff recalled (cross-examination).

the contract form? A.—I am not in a position to say about the form of contract.

Q.—You don't know? A.—I don't know what happened to the form of contract in Brooklyn or New York.

Q.—There was a representative of the Board of Estimate and Apportionment in your borough, at the Borough Hall?

10 A.—The Borough President was a member of the Board of Estimate.

Q.—Yes. But apart from him, there was somebody of the Board of Estimate who was present when the bids were opened? A.—Yes, the Commissioner of Public Works usually officiated at these openings, and read the figures as presented on the bid blanks.

Q.—And had the Commissioner of Public Works any relation to the Board of Estimate and Apportionment? A.—He took the place of the President in his absence; in the absence
20 of the Borough President.

Q.—Was he a representative of the Comptroller's Office? A.—No; he was a representative of the Borough President. There was a representative of the Comptroller's office there who also took the figures down.

MR. GOUDRAULT: The Commissioner who opens the bid and reads them out, he is an appointee of whom?

THE WITNESS: The Borough President.

BY MR. HACKETT:

30 Q.—And he has to read them in the presence of a representative of the Comptroller? A.—A clerk from the Comptroller's office comes over and takes the bids down, the same as I do.

Q.—Yes. And takes the information away with him? A.—He takes those figures that are read, away.

BY MR. GOUDRAULT:

Q.—The same as you do? A.—The same as I do.

BY MR. HACKETT:

40 Q.—And that information concerning the bids was made available to the Comptroller? A.—To the Comptroller, yes.

Q.—In all the details? A.—Yes. They had all that stuff available.

(Whereupon, at 4:00 o'clock p. m. an adjournment was taken to tomorrow, Friday, January 23, 1931, at 11:00 o'clock a. m.)

Depositions of witnesses, sworn and examined on the 23rd day of January in the year of Our Lord one thousand nine hundred and thirty-one, at eleven o'clock in the forenoon, in the office of DeCoursey Fales, 40 Wall Street, in the County of New York, State of New York, United States of America, by virtue of this commission issued out of His Majesty's said Superior Court, to us DeCoursey Fales, a lawyer, of 40 Wall Street, City and State of New York, directed for the examination of witnesses
10 in a cause therein pending between The People of the State of New York, plaintiff and Heirs of the late John M. Phillips, et al., Defendants: — I, the commissioner acting under the said commission, and also the clerk by me employed in taking, writing down, transcribing and engrossing the said depositions, having first duly taken the oaths annexed to the said commission, according to the tenor and effect thereof and as thereby directed heard the following depositions:

20 MR. GOUDRAULT: I wish, Mr. Commissioner, that all witnesses called for today, be asked to come into the room here.

(The following witnesses appeared): William H. Bertram, George A. Everett, John J. Creem, James F. Richardson.

THE COMMISSIONER: Gentlemen, you are here in attendance as witnesses in certain depositions to be taken. Mr. Goudrault will advise you, on my behalf, when you are to return and how long you are to stay here.
30

MR. GOUDRAULT: They are not to stay here.

THE COMMISSIONER: You will wait on Mr. Goudrault's pleasure, gentlemen, if you will be so kind. Messrs. Everett, Creem and Richardson are present and in attendance, and Mr. Bertram in the witness chair.

MR. GOUDRAULT: Now, as regards Mr. Richardson and Mr. Everett, would you gentlemen kindly report Tuesday morning at 11 o'clock, unless otherwise notified?
40

THE COMMISSIONER: Tuesday morning.

MR. GOUDRAULT: Mr. Commissioner, I wish to state that the following witnesses have been subpoenaed and are in default: Mr. Arthur F. Holmes, Mr. William A. Hastings, Mr. James L. Carey, Mr. Joseph J. Elkin, Mr. William Goldsmith, Mr. Daniel Enright, and Mr. John F. Faber.

William H. Bertram for plaintiff recalled (cross-examination).

MR. COOK: May we now proceed with Mr. Bertram?

MR. GOUDRAULT: Yes.

10

DEPOSITION OF WILLIAM H. BERTRAM
(recalled)

WILLIAM H. BERTRAM was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposeth and saith as follows:

CROSS EXAMINATION BY MR. HACKETT: (Resumed):

20 Q.—During the 20-odd years you have been in the employ of the Borough of Queens, have you not seen several modifications in the method of constructing sewers? A.—It is not 20 years in the Borough of Queens, if that makes any difference.

Q.—Did you not enter the employ about 1907? A.—Yes, not the Borough of Queens. I entered in 1905, in Brooklyn.

Q.—In Brooklyn? A.—In the Sewer Department, in 1914.

30 Q.—Well, since you have been engaged in work incident to the construction of sewers, has there been any modification in the method of construction? A.—The specifications have been altered from time to time, to follow the best practice.

Q.—Changes in method as well as in material. A.—Yes.

Q.—(Continuing) have been made from time to time, in an effort to improve the sewer system? A.—That's correct.

Q.—Some of these modifications have proved useful and have been continued? A.—Yes.

Q.—And some have proved less useful and have been discontinued? A.—That is correct.

40 Q.—When you were first associated with this work, monolithic sewers were the only kind constructed? A.—That statement isn't just correct. Monolithic concrete sewers were built in sizes from 27 inches upward. With all that we used the vitrified pipe for the small sizes.

Q.—At a date which I think you have roughly fixed at 1917, the specifications were so modified that a precast pipe came into general use? A.—Precast pipe, yes.

Q.—Precast concrete pipe? A.—Yes.

William H. Bertram for plaintiff recalled (cross-examination).

Q.—And it is to your knowledge, is it not, that in other parts of the city and country about that time a precast concrete pipe was introduced into the construction of sewers as a competitor of the monolithic type? A.—I know this precast concrete pipe for a time previous to 1917. It has been used throughout the country in a number of works.

10 Q.—Yes. A.—It did not begin in 1917. It has been on the market — it was on the market for quite a while before then.

Q.—It has been used in sewer construction and is still used in sewer construction? A.—Yes. We are using it today.

Q.—You told us yesterday that the building program of the Borough of Queens was not yet complete, and that you are still actively engaged in the construction of sewers? A.—Yes.

Q.—And in this work you are using precast concrete pipe? A.—Correct.

20 Q.—But so far as your knowledge goes, precast concrete pipe had been excluded from the Borough of Queens until about 1917? A.—That's correct.

Q.—The smaller sized concrete pipe, which I think you have sometimes called the machine-made? A.—We talk of that as cement pipe.

Q.—Cement pipe, was used in sewer construction throughout the country before 1917? A.—I don't know when that small sized cement pipe came into use. But it was a later date, I believe, than the precast concrete pipe with the re-enforcement.

30 Q.—It is a good pipe? A.—We are still using it.

Q.—Yes. All this carries out what you said a moment ago, that your department was constantly striving to improve its methods and the materials that entered into construction, and that entailed a certain amount of experimentation? A.—Yes.

Q.—Do you still use some vitrified pipe? A.—Oh, yes. use quite a lot of it.

Q.—Do you still use the monolithic type for the larger sizes? A.—We do.

40 Q.—And I suppose some sewers can be constructed to better advantage in the monolithic type, and some to better advantage in the precast concrete? A.—Yes.

Q.—And while the reasons may not be as obvious, yet there are reasons for preferring vitrified clay to cement pipe in the smaller sizes? A.—Well, at the present time they are in competition.

William H. Bertram for plaintiff recalled (cross-examination).

Q.—They are in competition? A.—We use either one, at the option of the contractor.

Q.—During the period of intense activity in the construction of sewers in the Borough of Queens, there were times when many contracts were being executed at once, were there not? A. Why, yes. Many contracts are being executed even today.

10 Q.—And when you advertised for tenders, contractors came in rather large numbers with their bids? A.—Well, yes. They came in to the contract clerk and left bids with him on the specified days, yes.

Q.—And I suppose that the number of contractors who came to the Borough Hall exceeded the number who actually tendered? A.—There were more there usually than the actual bidders, yes.

20 Q.—Yes. During that time that contracts were being let, the Borough Hall was sort of a Mecca for sewer contractors, wasn't it? A.—I wouldn't say that. They were there on days bids were opened. The rest of the time they would not be there.

Q.—But they had business with the municipal government whose place of business was in the Borough Hall? A.—Well, yes. If one of the payments was held up for any reason, they would come in to find out why, and so on.

Q.—So to anyone who was interested in contractors, it was a pretty good place to meet them, was it not? A.—I wouldn't say that, except on those days when bids were opened, we saw very few contractors.

30 Q.—But the contracts were let by the municipal government which had its head office at the Borough Hall? A.—Yes.

Q.—And any business between the parties to the contract was naturally transacted at the Borough Hall? A.—Yes.

Q.—And the contractors had to come to the Borough Hall first to find out if they wished to tender, and then to tender, and later to discuss any question that arose in the execution of the contract? A.—Yes.

40 Q.—So a man whose business made it useful that he come in contract with contractors might have a pretty good chance of meeting them at the Borough Hall?

MR. GOUDRAULT: Don't answer. I wish to object to this form of questioning the witness.

MR. HACKETT: Possibly you will say why.

William H. Bertram for plaintiff recalled (cross-examination).

MR. GOUDRAULT: I will. There are so many reasons I want to put them in order. First, because this is still the preliminary examination of the witness,—

MR. HACKETT: Let me put you right, there.

10 MR. GOUDRAULT: We having not yet started with Mr. Hackett on cross-examination of said witness.

MR. HACKETT: I have been cross-examining the witness yesterday afternoon.

MR. COOK: What's the use of arguing?

MR. GOUDRAULT: Why not let my put in the objection? You put in so many that were not justified, and this one is. Well, that's a good one. I will stick to that objection, for that reason.

20

MR. COOK: Would you read the objection?

(Objection read by Clerk).

MR. HACKETT: I began the cross-examination of the witness yesterday. What is the question?

(Question read by Clerk).

A.—On those days, yes.

30

MR. GOUDRAULT: What days?

THE WITNESS: When bids were opened.

BY MR. HACKETT:

Q.—Or on any day? A.—They wouldn't come in in groups and day.

Q.—But conceding. A.—Meet by appointment there, yes.

40 Q.—Conceding that they might come in larger numbers on a day when bids were opened, it is to your knowledge that they had constant business to transact at the Borough Hall and went there frequently during their contracts? A.—Well, may be once or twice a month they would come in.

Q.—They went there to be paid? A.—No. On some question as to whether the work was being done, or if a payment was delayed unduly. they would come in to find out why.

William H. Bertram for plaintiff recalled (cross-examination).

Q.—And there was a question of the progress estimate?
A.—Yes. There was frequently an argument between the field force and the contractor as to the amount he wanted payment for.

Q.—And the work was being carried on under the supervision of the Engineering Department of the Borough? A.—
10 After the work — after the contract was let, the field parties had most to do with the contractor. But the payments had to be certified to by Mr. Perrine, and Mr. Rice, I believe, and probably the Borough President or the Commissioner of Public Works.

Q.—And the offices of all the engineers were at the Borough Hall? A.—Yes.

Q.—You see, what I am aiming at is this: Something has been said about Phillips going to the Borough Hall from time to time. I am putting it to you if being a supplier of material and having customers, contractors, who were constructing sewers, if the Borough Hall was not a very natural place for him
20 to resort to frequently?

MR. GOUDRAULT: Would you state what part of the Borough Hall you mean, Mr. Hackett?

Q.—Will you answer the question? A.—In what part of the Borough Hall?

Q.—No. Answer my question, please. A.—Why, Phillips was there regularly, almost every day.

Q.—Yes. And there were contractors there every day?
30 A.—Well, there might be one contractor in every day.

Q.—Yes, and there might be 20? A.—Well, I never saw them in that number; except on bid days, there might be 30 there.

Q.—Yes. But the contractors did come there, to your knowledge, daily? A.—Well, in and out, one at a time.

MR. GOUDRAULT: You understand the question?

MR. HACKETT: Will you please desist until I finish
40 the cross-examination, please.

MR. GOUDRAULT: I do desist.

Q.—Was there anything in the specification for precast pipe in the large sizes, which called for waterproofing at the joints? A.—Precast pipe?

Q.—Yes. A.—No.

William H. Bertram for plaintiff recalled (cross-examination).

Q.—There was no provision in the specifications for waterproofing the joints on precast pipe? A.—No, except the statement that the sewers must be made watertight. That applied to either sewer; that is, either type of construction.

Q.—The specifications were invariably in the alternative, were they not? A.—By that you mean.

10 Q.—They might be monolithic or precast? A.—The contractors were allowed to bid on either type A or type B, which was either the monolithic or precast.

Q.—Was there anything in the specification which made the curing process of the concrete apply to the precast pipe? A.—When the pipes, when the precast pipes were made, they had to be cured for, I think it was, 21 or 28 days, I think.

20 Q.—Yes. What I wanted you to say is, is it not a fact that the same length of time for curing was exacted from the precast as from the monolithic type? A.—Well, the arch forms were to remain, in some of these specifications, for 21 days. But that was not a curing process.

Q.—You could not use the precast until after they had been cured for 21 or 28 days? A.—Yes.

MR. GOUDRAULT: What had been cured?

THE WITNESS: The precast pipe.

Q.—So the specifications applied to both types of pipe, the type A and the type B, or the monolithic and the precast?

30 MR. GOUDRAULT: I object to the question as being too general. The specifications appearing on the plan and profile and in the contracts are quite different whether they apply to type A or type B.

MR. HACKETT: Well, the purpose of the objection is quite apparent, being to prevent the cross-examination of the witness and putting words into his mouth. Will you read the question?

40 (Question read by Clerk).

A.—No, it was a definite specification, that the precast pipe must be cured 21 days, or 28, I forget which now, before it was lowered into the trench.

Q.—There came up also a question of waterproofing in the monolithic type. Waterproofing is necessary or not, depending upon the amount of moisture to which the concrete struc-

William H. Bertram for plaintiff recalled (cross-examination).

ture is to be exposed, is it not? A.—Well, waterproofing is taken care of by the concrete itself without any other ingredients necessary. The fact is we built the precast sewers without any waterproofing in the sense that we put a membrane in or did anything else but used just the concrete.

10 Q.—Generally speaking, it is desirable that these sewer pipes be impervious, is it not? A.—That they be waterproof, yes.

Q.—And if it is desirable that they be waterproof, where the soil or strata in which they are laid is filled with water, it might be necessary to take exceptional precautions? A.—It might be.

Q.—Yes. Your objection, as I understood it, to the waterproofing membrane, was based upon the question of costs? A.—Yes. The fact that it was unnecessary.

20 Q.—If the question of cost were eliminated, there would be no objection from an engineering point of view to the waterproofing, would there? A.—The method of applying it there was a poor method. It weakened the structure itself.

Q.—Well, abandoning that aspect of the question for a moment, if the membrane was going to make the sewer absolutely impervious at a point where it was exposed to see page it would be good practice, its application would be good practice, wouldn't it? A.—We wanted the sewers waterproof. I mean watertight.

30 Q.—And there is a hazard, is there not, which arises from the sewers not being watertight, especially when the sewer is carrying sanitary sewage? A.—The reasons for making those sewers watertight, — you are talking about the Jamaica sewers now, I believe?

Q.—Yes. A.—And the Rockaway, was because the water all had to be lifted at the end of the sewers by pumps and discharged into the bay or ocean, and for that reason we did not want to pump any more water than we had to. The pumping charge is a continuous maintenance charge. That is the reason.

40 Q.—Then there was also danger of contamination from the escape of sewage into drains, or throwing off noxious gases? A.—We wanted to prevent the water getting into the sewer, not the sewage getting out, because we knew it would not get out because there was a head of water at the outside.

Q.—One reason was an economic reason, and another might be a sanitary reason? A.—Yes; there might be gases from the sewage. There is gas.

William H. Bertram for plaintiff recalled (cross-examination).

10 Q.—Would you say that if the question of cost were eliminated, that you would have no objection to the waterproofing process, because it did make the sewer more waterproof, did it not? A.—The way this section was drawn, it would be objectionable from the structural point of view. It weakened the section by placing the membrane in the middle of the section. It just simply breaks up the density of the whole structure. It weakens the structure. Without the waterproofing membrane there, the sewer could have been made considerably thinner. To put the waterproofing membrane in they had to put a lot more concrete around it.

Q.—But that again is a question of cost? A.—And strength, yes.

20 Q.—But let us assume for the moment that there was no additional cost, the waterproofing did make the sewer more watertight, did it not? A.—The application of waterproofing to any structure would make it more watertight.

Q.—Coming to the manholes and chambers, I understand that some waterproofing was specified for the bottom of the manholes? A.—The lower section.

Q.—The lower section. That was also a modification in the specifications within your time, was it not? A.—Yes.

Q.—You are still waterproofing the bottom of the manholes, are you not? A.—Not with the membrane waterproofing no. None of that waterproofing membrane is ever built.

30 Q.—But you do waterproofing with some sort of waterproofing the bottom of the manholes now? A.—Simply by making a dense concrete.

Q.—By making a dense concrete? A.—Without the addition of any waterproofing compound or material.

40 Q.—But you achieve by the use of another commodity, the purpose which was aimed at by the application of waterproofing in the specifications to which we refer? A.—We simply use the sandstone and cement, and make the concrete in a dense proportion. And we use the same concrete there as we do in a dry section.

Q.—But since you have been connected with the Sewer Department, a change has come in the construction of the bottom sections of these manholes, in that you now waterproof the lower reaches of them where formerly you did not? Is that not a correct statement? A.—No, that's wrong. We don't waterproof them.

William H. Bertram for plaintiff recalled (cross-examination).

Q.—Well, let us see if we can find other terms which will agree. You do construct the lower reaches of these manholes differently from the way you constructed them when you first went to the department? A.—Practically no change.

Q.—But have you not increased the depth or thickness of the concrete on the structure that you have? A.—Not with any purpose of waterproofing.

10 Q.—Well, quite regardless of the purpose then, you have increased the depth of the concrete at the bottom of these manholes, and the result of that increase is to make the manholes more impervious to water? A.—A greater amount of concrete would make it less impervious.

Q.—More impervious. A.—More impervious.

Q.—And it is to your knowledge that a greater amount of concrete is used in the bottom of these manholes than in the early days of your association with the Department? A.—I don't believe there is any greater quantity that I can think of, no.

Q.—Is the mix stronger or different? A.—I think we are using the 1-2-4 now, and I believe we used the 1-2-4 as long as I have been there; except for some of these Rockaway sewers the specifications called for 1-1-2.

Q.—1-1-2, that is a stronger mix? A.—Yes; more cement.

Q.—More cement, and that makes a stronger and more impervious amalgam? A.—Yes.

Q.—And the purpose and tendency of that is to keep out or keep in the water? A.—Yes.

Q.—In any event, whether you waterproof with a stronger mixture, or whether you waterproof with a membrane, the purpose is to keep out of the sewer water that is outside the sewer? A.—Yes.

Q.—And at a certain time a membrane, waterproofing membrane, was specified for the lower reaches of all the manholes, whether they were constructed in conjunction with a monolithic or a precast system, was there not? A.—On some of those plans it was, yes.

Q.—It was so? A.—So specified, yes.

Q.—And manholes, to your knowledge, with this membrane, this waterproofing membrane, were constructed? A.—No, they were not.

Q.—In no instance? A.—They never used any of that waterproofing membrane.

William H. Bertram for plaintiff recalled (cross-examination).

Q.—What did they use instead? A.—Manholes without any membrane.

Q.—You are confident of that? A.—Quite certain of it.

Q.—No exception to it at all? A.—No exception that I know anything about.

10 Q.—Well, do you think it impossible that there would be contracts about which you wouldn't know something? A.—I am certain I don't know all the details that went on in the field. I would have to have a daily inspection to keep in touch with those things.

Q.—Did you protest to anyone concerning use of this waterproofing membrane? A.—No.

Q.—You have never been a contractor, I suppose? A.—No.

20 Q.—Does your work take you into the commercial side of construction, into costs? A.—Yes. We make estimates of the work proposed by the plans. We estimate the cost of the constructions.

Q.—That makes it necessary for you to get the costs? A. Yes.

Q.—From suppliers of materials? A.—Yes. We constantly keep in touch with the market

Q.—Yes. And I suppose that that is an additional reason for suppliers of material to go to your office in the Borough Hall? A.—No. We have other means of getting information. The Engineering News Record, for instance.

30 Q.—Undoubtedly you have other means, but being so vitally interested in the cost of material, it is only natural that the aggressive salesman should seek you out? A.—Well, a few of them do come in occasionally.

MR. HACKETT: Will you let me see that contract 71761?

(Mr. Unterweiser hands document to counsel).

40 Q.—I take it from what you have told us of the construction of the Jamaica sewer, that the trench in which the sewer is constructed, or sewer pipe laid, must frequently be very near sea level, and sometimes below it? A.—Well, that 150th Avenue job, that's the one you are talking about, was through what might be termed tidal flats, or nearly so; creeks, tidal flats came up and passed right over the sewer. It was completely under water.

Q.—But when you tell us that the contents of the sewer has to be pumped to a higher level, you mean that it has to be

William H. Bertram for plaintiff recalled (cross-examination).

raised before it can flow out to sea? A.—It has to be raised at least to sea level.

Q.—To sea level? A.—In fact, it had to be raised higher than sea level.

Q.—How many feet did you have to raise it? A.—If I can look at the plan, I will tell you exactly.

10 Q.—Oh, tell me roughly. A.—The bottom of the thing was down about 35 feet below sea level.

Q.—You see, what I am trying to get at is that laying a sewer in this part of New York is wet work. A.—In this part, this Jamaica section, that lower section, extremely wet work.

20 Q.—I am reading to you from the contract that has been produced, a letter dated Long Island City, June 8, 1926, addressed to the Hon. Charles W. Berry, Comptroller, Department of Finance, Municipal Building, New York. I think we said yesterday that the Board of Estimate and Apportionment was comprised of the five Borough Presidents, of the Mayor, of the Comptroller, and the President of the Board of Aldermen? A.—That is correct.

Q.—And this letter is addressed to the Comptroller at that time, Mr. Charles W. Berry? A.—Yes.

30 Q.—And it is written, purports to be written, by Maurice E. Connolly, President of the Borough of Queens, and he refers to contract 71,761, and says “The work in connection with this contract was of a very difficult nature. Large quantities of water were encountered, and it was also necessary to take care of the existing sewers encountered during the prosecution of the work”.

Is it correct to say that the construction of this sewer on Hammels Boulevard was fraught with extraordinary difficulty or was nearly all of the construction work in the Jamaica district about that type?

40 MR. GOUDRAULT: Just to clear up that matter, is this contracts referring to the 150th Avenue sewer, or the Hammels Boulevard sewer?

MR. HACKETT: Hammels Boulevard.

MR. GOUDRAULT: I think that the witness, — I may be wrong, — but he has been under the impression, not having been told that it was the Hammels Boulevard, has been giving his evidence as to the 150th Avenue sewer.

William H. Bertram for plaintiff recalled (cross-examination).

THE WITNESS: I had the impression that it was 150th Avenue you were talking about, because that is not the Jamaica district. It is in Rockaway.

Q.—It is Rockaway? A.—Yes.

Q.—You have told us, Mr. Bertram, that the Jamaica district was exceedingly wet all the way? A.—I specifically mentioned the 150th Avenue.

10 Q.—Not, I have read to you a communication from Mr. Connolly to Mr. Berry, the Comptroller of the Department of Finance, with regard to Hammels Boulevard, showing that it too was wet, although it was situated in Rockaway and not in Jamaica. A.—It was very wet.

Q.—Was all of Rockaway very wet, or only part of it? A.—Well, you are talking about the contracts in Rockaway proper. Far Rockaway is not wet. That is, there is high land there, the surface rises 30 or 40 feet above sea level, and the sewers go down 10, or 12 feet. Now, Rockaway, all the way between Beach 32nd and Beach 149th, is all wet. The surface of the sewers is 3 or 4 feet above sea level at the most, in that area.

20 Q.—And Jamaica was all wet? A.—The upper end of Jamaica is not wet at all. Those portions, 150th Avenue and 150th Street and 158 Street, and other contracts I can think of in the lower sections of Jamaica, were wet.

Q.—But I got the impression that a great deal of the work in Jamaica, which is under review here, was in low land and wet? A.—Well, it was low and wet.

30 Q.—So the description that Connolly gives to Mr. Berry of the Hammels Boulevard job is to your knowledge accurate? A.—Yes. The fact that we had to take care of old sewers, and that it was really wet there, is true.

Q.—I wanted you to look, Mr. Bertram, at this 150th Avenue profile, which I think has been filed as C-3, and tell me who at the time of the preparation of C-3 was the engineer in charge of engineering construction? A.—Mr. James Rice.

40 Q.—James Rice. And the Commissioner of Public Works? A.—Now you have got me there. They were appointed so rapidly, and in such rapid succession that.

Q.—You have forgotten? A.—I have forgotten which one.

Q.—But do you know if the Commissioner of Public Works was generally an engineer? A.—Rarely, an engineer.

William H. Bertram for plaintiff recalled (cross-examination).

Q.—Rarely. I was anxious to find on this document the signature of the engineer of the Board of Estimate and Apportionment. A.—They never sign them.

Q.—How do they manifest their approval? A.—By.

Q.—Resolution? A.—Recommending. The engineers of the Board of Estimate and Apportionment recommend to the Board.

10 Q.—But you told me yesterday in your cross-examination that after the plans and specifications had been completed in the Borough, that the profile went to the engineer of the Board of Estimate and Apportionment, and I thought that evidence of their approval would appear on the plan? A.—No, they never do.

Q.—They do it by resolution? A.—They don't get the originals anyhow. We send them blueprints.

20 Q.—Yes. But they have in their office duplicates of your records? A.—Yes.

Q.—Of all these? A.—Yes.

Q.—In the course of your examination, you made reference to several investigations. There was the Meyer Investigation, and the Sherman, was it? Clarence something? A.—Clarence Shearn, and Scudder.

Q.—Meyer? A.—The Meyer was years before these others. Scudder. Shearn, and finally Buckner, were all practically the same investigation.

30 Q.—But investigation seems to be almost a chronic disease with municipal politics in New York, is it not? A.—Yes. It is right at this time, anyway.

MR. GOUDRAULT: Very necessary sometimes.

MR. HACKETT: I am not commenting on the necessity of it, but it seems to be an incident of the political life of this city. Parties come in and parties go out, and investigations follow regularly.

40 A.—Well, at intervals of five or six years, they make investigations.

MR. GOUDRAULT: They bring good results?

MR. COOK: One moment.

Q.—Most of these men whom you have named as being in charge of the Bureau of Engineering Constructions and Bureau

William H. Bertram for plaintiff recalled (cross-examination).

of Sewers, and engineers for the Board of Estimate and Apportionment, and engineer to the President of the Borough, are appointments that depend upon political favor; are they not?

MR. GOUDRAULT: I object to the question, being strictly a political one.

10. MR. HACKETT: It is not a political one.

MR. GOUDRAULT: (Continuing) The witness not being a competent man to answer same. And I wish to note furthermore, that these political and past investigation questions are brought up by attorneys for defendants.

THE COMMISSIONER: Your objection will be noted and placed on the record.

20 THE WITNESS: The engineer of sewers, and most of the engineers in the Board of Estimate are appointed after passing civil service examinations.

BY MR. HACKETT:

Q.—That is the general staff men. I am aware of that.

A.—Yes.

Q.—But I am talking of the chiefs of departments; for instance, the President of the Borough has an engineering adviser, has he not? A.—Yes.

30 Q.—And he appoints him himself? A.—Yes. He has one engineer he appoints; the others are all civil service men.

Q.—I beg your pardon? A.—The others are all civil service men.

Q.—All civil service men. Then what about the engineer in charge of engineering construction, is he a civil service man? A.—Well, he was an appointment originally, but he finally took an examination and was passed by civil service, and given a permanent job.

40 Q.—That is because he was skilful. But the position was actually filled. A.—By appointment.

Q.—By appointment. And appointments go to friends of the party, of the party in power? A.—Usually, yes.

Q.—Yes. You made some reference in your testimony to a Mr. Burr. A.—William H. Burr.

Q.—Yes. Who was Mr. William H. Burr? A.—He was a consulting engineer hired by the Borough President with the

William H. Bertram for plaintiff recalled (cross-examination).

consent of the Board on one of those jobs, I don't know which one it was now, I think it was Hammels Boulevard job.

Q.—There were exceptional difficulties there, you said, arising from water and the crossing of other sewers? A.—Yes. It was the first time we had built a sewer in Rockaway, and we did not know just exactly what we would be up against.

10 Q.—Burr was a man of experience? A.—Burr, — let's see. He was from Columbia University.

Q.—They called him Professor? A.—Professor Burr.

Q.—Associated with him were other engineers, were there not? A.—I don't know. I never met the man myself.

Q.—In addition to Mr. Burr, there was Mr. Perrine and Mr. Rice. And do you remember the name of the chief engineer of the Board of Estimate and Apportionment? A.—He is since out of office. Let's see now.

20 Q.—It wasn't Mr. Tait? A.—No. He filled the position that Mr. Perrine occupied later. He died.

Q.—It wasn't Mr. Moore? A.—No. Moore was a consulting engineer.

Q.—Well, apart from Burr, Rice, Perrine, Moore and the man whose name you can't remember, and it is not important that you should remember it, who was chief engineer to the Board of Estimate and Apportionment, was there any other engineer in charge or any other body of engineers before whom your plans and specifications went? A.—No.

30 MR. HACKETT: Thank you, Mr. Bertram. I am through M. Cook.

CROSS EXAMINATION BY MR. COOK:

(On behalf of the defendants, under reserve of all objections):

Q.—Mr. Bertram, you entered the employ of the City of New York, I understand, in the year 1905? A.—Correct.

40 Q.—And were for a time engaged in the Sewer Department of the Borough of Brooklyn? A.—Not the Sewer Department. In the subway.

Q.—In the Subway Department? A.—The Subway Construction.

Q.—Subway Construction. And then you were transferred to the Borough of Queens? A.—Yes, sir.

Q.—Where you still are as Assistant Engineer? A.—Well, I wasn't transferred to the Department in which

William H. Bertram for plaintiff recalled (cross-examination).

I am now, or at least not to the Sewer Department. It was another branch, the Topographical Bureau. And from there in.

Q.—1914? A.—No. 1912, I went to the Park Department in Queens. And from there I came to the Sewer Department in 1914.

Q.—1914, where you have been ever since. A.—Ever since.

10 Q.—And you are now holding the position which Mr. Seely previously held as assistant engineer? A.—That is correct.

Q.—You produced, I think, in your examination in chief, a document which has been filed in this record as Exhibit C-1, showing all contracts for the construction of sewers in the Borough of Queens between the month of September, 1907, and the month of November, 1927. Will you look at it and see if that is the exhibit I refer to? (Witness examines exhibit). A.—That's the one. I don't see the number on it.

20 MR. GOUDRAULT: C-1.

THE WITNESS: It is a tabulation.

Q.—I see from this exhibit that during the period in question, namely, from the 23rd of September, 1907, to the 23rd of November, 1927, that 347 contracts for the construction of sewers were signed and completed? A.—I believe that is so.

30 MR. GOUDRAULT: From what date to what date, Mr. Cook?

MR. COOK: From the 23rd of September, 1907, to the 23rd of November, 1927, that 347 contracts for the construction of sewers were signed and completed.

THE WITNESS: If that is the figure.

40 Q.—Please verify it for yourself, Mr. Bertram. A.—Some of the last three or four have no date as being signed. The contracts were not signed for five jobs; at least I have not the date for the last five. The contracts were not signed at the time this was made up. Bids were opened, though, on three hundred and forty-seven on that date.

Q.—At all events, the exhibit which you produced yourself shows that there were 347 contracts during that period? A.—For which bids were opened, yes.

Q.—On which bids were opened. A.—That is correct.

William H. Bertram for plaintiff recalled (cross-examination).

10 Q.—That is correct. Now, looking at this exhibit, I see that the first contract mentioned in the exhibit, which is dated the 23rd of September, 1907, has the following notation concerning it: “Contractor, John F. Clancy. Preliminary engineers estimate, \$14,500. Final engineers estimate, \$17,000. Contractors lowest bid, \$14,535.20. Total final cost, \$15,633.65.” So that in that case the total final cost was in excess of the final estimate, the total final cost was less than the final estimate of the engineers. Is that correct?

20 MR. GOUDRAULT: Do not answer. May it please the Commissioner, I wish to here state that Mr. Cook is questioning on Exhibit C-1, produced by me on the 19th inst., but this C-1 or tabulation was finally filed and I only offered as evidence such part of it which runs from the first of January, 1917, to the 2nd of April, 1928. So I wish that the use of said exhibit, which was produced by plaintiff, be limited to that period. Now we are referring, according to Mr. Cook’s question, to 1907. That is my objection and if the witness is to be allowed to answer I wish that his answer be taken under that objection of mine.

THE COMMISSIONER: I will allow the answer subject to your objection. It seems to be without the scope of the pleadings.

30 MR. COOK: Mr. Commissioner, if my friend, Mr. Goudrault, chooses to produce a letter or any written document he cannot pick out the paragraphs of that letter or written document that appeal to him as helping his case, and prevent me from using the balance of it. If he chooses to file as an exhibit this long statement, surely I am entitled to question the witness on it.

THE COMMISSIONER: I will take the answer subject to his reservation.

40 MR. COOK: I will endeavor to go as quickly as possible, Mr. Goudrault, so that I won’t delay you in any way.

MR. GOUDRAULT: That was the main purpose of my objection.

MR. HACKETT: Delay?

MR. GOUDRAULT: No. That we restrict ourselves to the period covered by the action.

William H. Bertram for plaintiff recalled (cross-examination).

BY MR. COOK:

Q.—You answer that “Yes”, do you not, Mr. Bertram?

A.—The final cost was less than the final engineers’ estimate.

Q.—Less than the final engineers’ estimate yes. And in some cases throughtout this entire exhibit, the final costs were higher than the engineers’ estimates, and in other cases they were less. Is that not correct? A.—Yes. The engineers’ estimates are the fair prices, and sometimes.

Q.—Sometimes the costs would be less than you estimated them, and sometimes they would be greater? A.—Yes. That is correct.

Q.—And turning to the third page of the exhibit, at the bottom of the page, Mr. Bertram, you will see two contracts, Nos. 47340 and 47339, relating to Collins Avenue and Hull Avenue, — you see at the bottom of the page? A.—I do.

Q.—Those were the contracts that you testified to yesterday, were they not? A.—Yes.

Q.—Those were the ones. That is to say, the Collins Avenue contract was No. 132 of the sewer contracts of the Borough of Queens? A.—Yes.

Q.—And the Hull Avenue contract was No. 133? A.—That is correct.

Q.—That is correct? A.—That is correct.

Q.—And according to the statement made yesterday and made this morning the City of New York are not interested in any contract in the present case prior to No. 132 and 133 as shown on sheet No. 3?

MR. GOUDRAULT: By the City of New York, you mean the plaintiffs?

MR. COOK: I mean the people of New York. Whatever you call yourselves, Mr. Goudrault; the plaintiffs.

MR. GOUDRAULT: I object to that question, this witness being not the competent witness to testify as to that. If he knows, no objection.

THE WITNESS: I don’t know what he means by the question.

MR. GOUDRAULT: That is what I thought.

William H. Bertram for plaintiff recalled (cross-examination).

BY MR. COOK:

Q.—I mean that as far as this exhibit is concerned, it is not the basis of the claim in this suit, being prior to contracts Nos. 132 and 133 beginning at the bottom of the page? A.—I don't know what the basis of the suit is.

10 Q.—What? A.—I don't know what the basis of the suit is.

Q.—Well, of course, you would not perhaps know? A.—I have been trying to guess what it is all about.

Q.—Is it not a fact that the precast system of sewers came in first in connection with Collins Avenue and Hull Avenue, as testified to by you yesterday? A.—I believe I testified that I thought they were the first.

Q.—Prior to that all the sewers were monolithic? A.—They were specified as monolithic, yes.

20 Q.—Specified as monolithic sewers. Now, if you will turn to the last page of the exhibit C-1, you will see that the exhibits apparently summarized in the following way, — apparently summarized as follows: The final estimates are stated, for all the sewers in the exhibit, are stated to be \$37,767,610.27? A.—Yes.

Q.—And the contractors' low bid is stated to be \$41,869-769.74? A.—That is correct.

30 Q.—So that the difference between the final estimates of the engineers and the contractors' low bids on these three hundred and forty-seven contracts which are referred to in the exhibit amounted to the sum of \$4,102,159. That is merely a question of subtraction. A.—It was a difference of about four million dollars, yes.

Q.—Four million dollars? A.—Four million dollars and some odd thousand.

Q.—That is over the entire period covered by the exhibit, namely from the 23rd of September, 1907 to the 23rd of November, 1927? A.—That is correct. That is a summary of the whole thing.

40 Q.—A summary of the whole thing; and it includes the 131 contracts appearing on pages 1, 2 and 3 of Exhibit C-1? A.—Yes. It includes all those.

Q.—Do you know what the amount of the claim that is now advanced against the Phillips Estate by the People of the State of New York amounts to, Mr. Bertram? A.—I don't know.

Q.—You don't know. Well, I'll tell you. The claim as advanced in plaintiff's declaration amounts to \$3,405,449.02. A.—That's a lot of money.

William H. Bertram for plaintiff recalled (cross-examination).

Q.—You will accept my statement as to that? A.—I'll have to.

10 Q.—In view of the fact that covering the entire period from September, 1907, to the 23rd of November, 1927, over 20 years, the difference between the engineer's estimates and the amount of bids, the contractors' low bids, only amounted to \$4,102,000, don't you think the claim as now advanced against the Phillips Estate is a very heavy one?

MR. GOUDRAULT: I object to this question inasmuch as he is asking the opinion of the witness and his impression, and not a question of fact. And furthermore, because the witness himself is not competent to answer such question. I strongly object to the answer being taken down. This is a mere opinion of the witness.

20 THE COMMISSIONER: I will allow the answer subject to counsel's objection.

MR. GOUDRAULT: I repeat my objection.

(Question read by Clerk.)

17 A.—Well, if you will read the whole summary here, it will tell a different story.

Q.—Never mind. We will get a summary as we go on later on. A.—I don't know how to answer that question.

30 Q.—Now, Mr. Bertram, apparently on 51 contracts, according to the charge against us, on 51 of these contracts the City of New York is claiming \$3,405,449.02. Was the statement of claim which is now advanced against the Estate of Phillips prepared by you? A.—I had nothing to do with it.

40 Q.—Nothing to do with it. Now, Mr. Bertram, a question was raised yesterday regarding the transfer of these various contracts. Mention was made of certain of the contracts being transferred. I suppose in every case the Borough of Queens was not interested in the transfer if they had proper bonding security?

MR. GOUDRAULT: Objected to, this witness not being a competent witness to answer such question. It is merely a question of administration, and not an engineering or sewer construction question.

THE COMMISSIONER: I will allow the answer subject to counsel's objection and reservation.

William H. Bertram for plaintiff recalled (cross-examination).

A.—I know before a transfer was made the specifications required that it have the approval of the Borough President.

Q.—Have the approval of the Borough President. If you had the approval of the Borough President, and proper bonds from the bonding company to guarantee the performance of the agreement, you would not object to the transfer? A.—You mean he wouldn't, the President?

10

Q.—Is it not true that these transfers were granted as a matter of course, provided the proper formalities were applied?

MR. GOUDRAULT: Same objection.

THE COMMISSIONER: Same ruling.

20

A.—I know a number of the contracts were transferred. One bidder would get the job and some other contractor would do the work. I know where one fellow bid and the other fellow did the work, yes; not once, but a number of times.

Q.—And you don't know any case, do you, Mr. Bertram, where the President of the Borough declined to sanction a transfer?

MR. GOUDRAULT: Same objection.

A.—I wouldn't know anything about that.

30

Q.—You wouldn't? A.—Only when it was made, I knew the contractors. When one fellow bid on the job and I saw somebody else working on it, yes. I would know that it was a transfer.

(At this point Mr. George B. Foster, of defence counsel, entered the hearing room and remained for the balance of the morning session.)

BY MR. COOK:

40

Q.—Mr. Bertram, coming back to Exhibit C-1, which covers these 347 contracts we have been speaking of, I observe that we have only the highest and the lowest bids for the contracts in question. Look at them. On the last page you will see contractors' low bid. You have got that, have you? On every page they are the same. A.—Yes.

Q.—Contractors' low bid. You are looking at the last page, are you? A.—I am now.

Q.—Then we have in the last column highest bid. A.—Yes.

William H. Bertram for plaintiff recalled (cross-examination).

Q.—Now, were there any, and had you not in your possession, bids between the high bids and the low bids? A.—Yes.

Q.—A great number, I suppose. A.—Why, the number of bidders are tabulated.

Q.—Where is the tabulation, Mr. Bertram? A.—Right next to the heading, “bids” A and B.

10 Q.—These number of bidders appearing on the sheet, the last sheet of Exhibit C-1, show the number of bidders on each particular contract? A.—That is correct.

Q.—The total number for this last contract, of \$273,736.90 would be seven bidders for the A-type of sewer, and nine bidders for the A.—Type B.

Q.—Type B? A.—Yes.

Q.—And the same all the way up the column. A.—Yes. Any one contractor may bid on both types if he chose.

20 Q.—I suppose they sometimes did bid on both types? A. Yes, they frequently did.

BY MR. GOUDRAULT:

Q.—Do you mean that if you have 16 bids for the last contract referred to by Mr. Cook, it may be that represents less contractors than 16? A.—Yes.

Q.—If one contractor can bid for the two types. A.—Yes. It would be less than the total number given.

BY MR. COOK:

30 Q.—Mr. Bertram, the precast type of sewer, as I understand your evidence, came into use in 1917, or thereabouts, possibly 1916, and I understand that it had certain advantages over the monolithic type of sewer, especially for use in the Jamaica and Rockaway system of sewers? A.—Yes, it had certain advantages.

40 Q.—Is it not a fact that in Jamaica especially the process of laying sewers was difficult, and the ground was lot and wet, and there was a great deal of water and it was a difficult job to lay good sewers in that Borough, that district, that area? A.—Yes, it was a job to put in precast as well and make it tight.

Q.—I think that it would be difficult for either precast or monolithic sewers? A.—It was a difficult job.

Q.—The condition of the soil and everything would make the laying of any sewer difficult? A.—Difficult and expensive.

Q.—But is it not a fact that in the Jamaica area the precast pipes would be preferable and better than the monolithic

William H. Bertram for plaintiff recalled (cross-examination).

type? A.—I wouldn't say they would be better. The contractor would prefer to use them.

Q.—Contractors would prefer to use them? A.—Yes.

Q.—I understand that the precast pipes were more easily laid and placed in shape than the monolithic; if the weather was bad or wet, or stormy, it would be difficult to lay the monolithic sewer whereas the precast type could be laid at any time? A.—
10 Both could be laid at any time, but the handling of precast pipe was easier than monolithic. It made less form work.

Q.—And the precast pipes could be laid the year round, at any time, whereas I assume the monolithic type could not. A.—Well, when the temperatures go below freezing, below 20, why, you wouldn't let them mix concrete.

Q.—You wouldn't let them mix concrete at all. And would it not be a fact also, Mr. Bertram, that the precast pipes would be more easily inspected, and that you would be able to see any
20 defects in the precast pipes more easily than you would in the monolithic work? A.—Well, the precast pipe as a pipe, could be hauled to a laboratory and put under a test and its strength determined.

Q.—And determined whether it was right or not. But the monolithic pipe you had to take a chance on? A.—No. We tested the ingredients.

Q.—Apart from testing the ingredients when the pipe was made, you had to take a chance as to whether it was good or bad? A.—Well, we had an inspector on the job. If the thing was not
30 watertight when he got through, why, he had to go back and fix it.

Q.—But you could determine whether a precast pipe was watertight before you put it in? A.—No. You couldn't.

Q.—You could not? A.—No. You would have to subject it to a head of water, to find that out; not by inspection.

Q.—The precast pipes are being used today, you said? A.—Absolutely.

Q.—Precast pipe comes in four foot sections, doesn't it? A.—It comes in four foot sections. At that time it came in four
40 foot sections. You could now get it in larger sizes.

Q.—Larger sizes? A.—Larger lengths, I mean.

MR. COOK: Your witness, Mr. Goudrault, and let us finish with Mr. Bertram now.

William H. Bertram for plaintiff recalled (redirect examination).

REDIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—Mr. Bertram, you testified on the 19th inst. and were called upon to produce a tabulation, Exhibit C-1, which was a photostatic copy of the original. I understand you have now found the original? A.—I have.

Q.—Would you look at C-1 as produced.

10 MR. HACKETT: Don't ask him to compare them now, Mr. Goudrault. Don't take up the time to compare this thing now. Let him do it outside of the sitting.

MR. GOUDRAULT: All right.

Q.—Will you then kindly look at the original and C-1 that was produced, a photostatic copy, and tell us after recess if the photostatic copy is in conformity with the original? A.—Well, I am afraid that would take quite a little time. There may have
20 been some changes on here that are probably not included on there.

MR. GOUDRAULT: Well, in order to save time, I will then offer in evidence the original of this tabulation as prepared under your supervision, as Exhibit C-11; and I offer as evidence that part of the exhibit which refers to contracts awarded from the 1st of January, 1917, to the 2nd of April, 1928.

30 MR. COOK: If Mr. Bertram will state that the photostatic copy C-1, which has already been filed, is exactly like the original, I wouldn't contradict him for a moment.

MR. GOUDRAULT: He said he didn't have time to compare it.

THE WITNESS: Oh, it's quite a job. If you will let me take these, I will have new photostats and they will be every bit as good as the original. The same thing is true of those tracings.

(Discussion off the record).

40 MR. GOUDRAULT: Then you will produce the original?

THE WITNESS: I will produce it, yes.

(Recess at 1:00 p. m. recess to 2:00 p. m.)

William H. Bertram for plaintiff recalled (redirect examination).

AFTER RECESS.

2:00 p. m.

WILLIAM H. BERTRAM, resumed:

BY MR. GOUDRAULT:

10 Q.—This document, Mr. Bertram, contains how many sheets? A.—Eight.

MR. COOK: What document?

MR. GOUDRAULT: Exhibit C-11.

20 Q.—Now, Mr. Bertram, will you kindly compare C-11, which is the original, and C-1, which is that copy, photostatic copy you have produced already, and at a subsequent hearing tell us the changes; if any, appear on the original C-11 and the photostatic copy C-1? A.—Yes.

(The said original tabulation was thereupon received in evidence and marked Plaintiff's Exhibit C-11, of this date) consisting of eight sheets.

MR. COOK: Now, Mr. Commissioner, I object to the production of this Exhibit C-11 as irrelevant and illegal, and as not being the best evidence.

30 MR. HACKETT: I associate myself with that objection.

THE COMMISSIONER: It will be taken in evidence subject to counsel's reservations and objections.

MR. GOUDRAULT: After you have made that comparison, will you kindly have photostatic copies made, the defendants' attorneys agreeing that you take the original in the meantime from the record for that purpose, and also for purpose of further examination, and we will adjourn your examination for that point only, for further date.

40 THE COMMISSIONER: I understand that that is the Commissioner's Exhibit to be returned to the Superior Court, until such time as it is released, and it is in your custody now, Mr. Goudrault.

MR. GOUDRAULT: Yes; I will be responsible for it.

William H. Bertram for plaintiff recalled (redirect examination).

THE COMMISSIONER: Unless that is released by all the counsel, that exhibit is to be attached to the commission and sent to the Court in Montreal.

BY MR. GOUDRAULT:

Q.—Do you identify that Exhibit C-11 as the original?

10 A.—I do.

MR. COOK: No, he didn't say that, Mr. Goudrault.

MR. GOUDRAULT: I am asking him if he does identify this Exhibit C-11 as the original tabulation prepared under his supervision.

THE WITNESS: Yes. I identify that.

20 MR. O'DONNELL: The same objection to evidence with regard to that document that was made with reference to the purported photostat C-1, inasmuch as the witness has specifically declared on various occasions that he personally did not prepare the document.

MR. HACKETT: I associate myself with that objection.

BY MR. GOUDRAULT:

30 Q.—In your evidence at page 101, you produce Exhibit C-3, plan and profile of the 150th Avenue sewer, and you also produce as Exhibits C-4 and C-5, two sheets attached to and referring to the same plan and profile for the 150th Avenue sewer. I understand that these three sheets are part of the original?
A.—They are part of the original.

MR. O'DONNELL: Defendants reiterate the objection which was made with reference to the said documents C-3, C-4, and C-5, as set forth at page 101 of the deposition of this witness.

40 Q.—Mr. Bertram, do you also identify Exhibit C-7 as an original? A.—Yes.

Q.—Do you, Mr. Bertram, identify Exhibit C-10 as an original? A.—I do.

Q.—Now, much was said by Mr. Hackett on the Board of Estimate. Did I understand you to say that this Board of Estimate had nothing to do with the bids and the awards and the prices of contracts? A.—They had nothing to do with the award of the contracts. That was done by the Borough President.

William H. Bertram for plaintiff recalled (redirect examination).

Q.—Anything to do with the bids, the Board of Estimate?
A.—Not with the bids, no.

Q.—After it is awarded, after a contract for a sewer is awarded, does it go back to the Board of Estimate? A.—Does the award go back to the Board, is that what you meant?

Q.—Yes. A.—No. The Comptroller is notified of the award.

10

MR. HACKETT: The Comptroller forms part of the Board of Estimate?

THE WITNESS: Yes. He is one of the members of the Board of Estimate.

MR. O'DONNELL: And his representative is there when the bids are opened.

20

THE WITNESS: Yes, that is true.

BY MR. GOUDRAULT:

Q.—Now, there is in your department, an Engineer of Sewers? A.—Yes.

Q.—And an assistant engineer of sewers? A.—Yes.

Q.—They have both well defined duties and rights? A.—Yes.

Q.—And powers? A.—Yes, sir.

Q.—Did you tell us if bidders were obliged or not obliged to go to the drafting room? A.—Bidders are not obliged to go there, no.

30

Q.—Is there a necessity for their presence in the drafting room? A.—They come in. If there is any doubt in their minds as to what is meant by a plan, they may come in and get a clearer understanding of what is contained in it.

Q.—Mr. Hackett asked you if the Borough Hall of Queens was not a Mecca for contractors? And I think your answer to him was "I will not say that". A.—I don't believe it is a Mecca, no.

40

Q.—Did you know what was meant by a Mecca? A.—Well, a congregating place, I assumed.

Q.—Quite right. The contractors did not have to be there except on days when bids were opened? A.—They may have had business there.

Q.—Did you consider the plans and designs of the waterproofing membrane as a poor suggestion on the part of Mr. Seely?

William H. Bertram for plaintiff recalled (redirect examination).

MR. HACKETT: Well, now, I am going to object to the reopening of the examination in chief. It is not competent, Mr. Goudrault, to begin all over again the examination in chief. The witness was questioned at great length on this point; and he has been cross-examined on it. And I submit that unless there is some finality to proceedings of this kind, we will be here when the robins nest again.

10

THE COMMISSIONER: I will accept the answer subject to your reservation and objection.

MR. GOUDRAULT: What is the question?

(Question read by clerk).

MR. O'DONNELL: Defendants further object, inasmuch as the witness's opinion is entirely irrelevant.

20

BY MR. GOUDRAULT:

Q.—What is the answer? A.—I didn't think it was necessary.

Q.—Any such plans and profiles for a waterproofing membrane in the manholes and chambers were suggested by Mr. Seely?

MR. HACKETT: Same objection.

MR. GOUDRAULT: You introduced that. It does not come from my examination.

30

MR. HACKETT: Of course it does come from your examination.

Q.—What is your answer? A.—Seely put the membrane in the manholes, the bottom section of the manholes.

Q.—Contractors were allowed to bid on A or B type, weren't they? A.—Yes, sir.

Q.—Where was the precast pipe being manufactured?

40

MR. COOK: I object to that as irrelevant and not arising out of the cross-examination.

Q.—I do not mean the manufacture itself. We are not interested in that. But the spot or the place, was it near where the sewer was being constructed, or elsewhere?

MR. O'DONNELL: Same objection.

William H. Bertram for plaintiff recalled (redirect examination).

A.—The specifications required that it be made at or near the site of the work.

Q.—Precast pipe? A.—Precast pipe, type B.

MR. O'DONNELL: We further object, inasmuch as the specifications are the best evidence on that.

10 Q.—You stated to Mr. Hackett, or to Mr. Cook, that certain advantages made the precast pipe favorable. Would you tell us in a word the nature of these advantages, if any? A.—Well, the pipe could be laid under water with greater ease. In a very wet trench it could be laid easier than the monolithic type.

MR. HACKETT: And in cold weather?

20 THE WITNESS: Yes. It could be laid in colder weather. But of course the joints come up for the same objection about the temperature. Joints are made of concrete too, or mortar. The joints have to be made and the weather would stop them making the joints, if it was too cold.

BY MR. GOUDRAULT:

Q.—Did you have to pump out the water from the ditch where monolithic or precast sewers were being built? A.—Well, the same arrangement as to pumps was used in both cases, or would have been used in both cases.

30 MR. O'DONNELL: But in the one case you were merely pumping the joint, which was a comparatively small portion, and in the other you had to pump the whole pipe.

THE WITNESS: That is true.

Q.—The same amount of pumping was necessary in each case, whether precast or monolithic? A.—Well, in those jobs it was necessary, yes.

Q.—But the same amount, if it was for either a monolithic or a precast sewer? A.—Yes.

40 Q.—Now, I understand Hammels Boulevard was constructed in a monolithic type? A.—Yes, sir.

Q.—And you told us already that you had occasion to see that sewer? A.—I did. I went and looked at the operations.

MR. O'DONNELL: It was merely during the construction that you saw it?

William H. Bertram for plaintiff recalled (redirect examination).

THE WITNESS: While it was being built.

MR. O'DONNELL: Not after it was completed.

THE WITNESS: No.

BY MR. GOUDRAULT:

10 Q.—Any complaint on the Hammels Boulevard sewer; any complaints? A.—None that I know of.

Q.—Do you know where the Hammels Boulevard sewer was constructed, if it was a wet territory or not? A.—Very wet.

Q.—You have been examined quite at length on the proceedings that were followed for the awarding of these sewer contracts, Mr. Bertram; and you have spoken to us of the bids being published in the City Record. Will you please look at this book and tell us what it is.

20

MR. GOUDRAULT: Mr. Cook, do you want to see it?

MR. COOK: No, I don't want to see it.

A.—A bound volume of the City Record.

Q.—Do you know what is the City Record? A.—The City Record is the official paper of the City of New York.

Q.—And it is published by the City of New York? A.—The Bureau of the City Record; the Board of the City Record.

30 Q.—I now read, — will you produce this City Record as Exhibit C-12?

MR. HACKETT: Just a minute. (Counsel examines book). Before admitting this document as an exhibit, I think counsel should state if he intends to bring the City Record for all contracts that were let, or whether he is putting this in merely as an example, and does not intend to rely upon any text in it.

40 MR. GOUDRAULT: The present use of it, and the present purpose of introducing it in the evidence, is for more reasons than that. I first wish to have the witness identify it as the official organ or record of the City of New York, and then I will have to use same in reference to proposals or bids on one or two contracts, the number of which I am not too sure now, and this in order to save time, because there may be parts of the City Record I wish to refer to as I go on.

William H. Bertram for plaintiff recalled (redirect examination).

THE COMMISSIONER: Are you offering the whole book, or just a few pages?

MR. GOUDRAULT: Yes, just a few pages, which I will note.

10 MR. O'DONNELL: We associate ourselves with the objection.

THE COMMISSIONER: May we mark it? I think we better have it marked.

MR. GOUDRAULT: Yes.

THE COMMISSIONER: It is now offered in evidence and filed in evidence, as you say.

MR. GOUDRAULT: Yes.

20 THE COMMISSIONER: Subject to the objections of counsel and the reservations made by them for later ruling by the Superior Court in Montreal.

MR. O'DONNELL: And that the witness is not the best witness to testify to the authenticity of the document produced.

30 MR. HACKETT: I would like to again raise the objection that my friend is going into his examination in chief again after the witness has been cross-examined, which is thoroughly illegal and improper, as he well knows.

MR. GOUDRAULT: Mr. Hackett chose to speak of the City Record in his cross-examination of the witness. No. such reference was ever made by me before.

MR. HACKETT: Will you withdraw the exhibit if I show you where you made a reference to it?

40 MR. GOUDRAULT: I will need the exhibit anyway.

MR. HACKETT: Will you withdraw it if I show you a reference to it in your examination in chief?

MR. GOUDRAULT: No. I will offer it now.

MR. O'DONNELL: You told us yesterday that you were finished with these things, and we cross-examined, and now you are reopening it.

William H. Bertram for plaintiff recalled (redirect examination).

MR. HACKETT: We have waited, Mr. Goudrault, for you to examine this witness, on eight different occasions.

MR. GOUDRAULT: Oh, no.

MR. HACKETT: Yes, on eight different occasions.

MR. GOUDRAULT: I always had the witness on hand
10 and he was examined right along.

MR. HACKETT: We waited for you to examine the witness on eight different occasions, that we might cross-examine him after you had finished with him.

MR. GOUDRAULT I beg your pardon. My examination in chief, or direct examination, was adjourned, out of those eight times, six times for purposes of recess; so it was one sole examination in chief. And I allowed you, furthermore, to make a
20 preliminary examination of the witness instead of a direct cross-examination.

MR. HACKETT: It was a direct cross-examination.

MR. GOUDRAULT: And you chose this witness, Mr. Bertram, for purposes of giving us the way things were being conducted in the Borough of Queens and City of New York, and you have referred to all the various departments, and this is one of the departments on which you asked him questions, so I
30 do insist on him producing the exhibit.

MR. HACKETT: Well, I insist upon my objection, that you are re-examining the witness in chief, and it is incompetent to do it after you have closed your examination in chief. And I object to any further evidence.

MR. O'DONNELL: The other defendants join in the objection.

THE COMMISSIONER: Are you examining this gentleman in chief now?
40

MR. GOUDRAULT: No. Oh, no.

MR. O'DONNELL: The examination in chief is finished.

MR. GOUDRAULT: I offer this in evidence as Exhibit C-12, under all reserve.

William H. Bertram for plaintiff recalled (redirect examination).

(The said book, City Record, was thereupon received in evidence and marked Plaintiff's Exhibit C-12, of this date).

MR. GOUDRAULT: This City Record being Vol. 44, part 8, August 6th, 1916, and on.

10 BY MR. GOUDRAULT:

Q.—Is it to your knowledge that this is the official journal of the City of New York?

MR. O'DONNELL: Same objection.

A.—Yes.

Q.—Do you personally know that proposals are printed in there? A.—I do, yes. Proposals are printed in there.

20 Q.—What is the purpose of the proposals being printed in the official journal of the City of New York, the City Record? A.—To advise anyone to send in a bid.

Q.—You have been cross-examined by Mr. Hackett on what were the proposals, the bids and the summary of bids. Could you find one of those summaries of bids, and when you come back for the production of a photostatic copy of this Exhibit C-11, which is the original tabulation, we will put you just a question or two on that summary of bids. And I thank you ever so much. A.—By summary of bids, you mean just what?

30 Q.—By summary of bids, isn't there a sheet made up summarizing the bids? A.—A long sheet with the prices for each item, and the contractor's name. Is that it?

MR. GOUDRAULT: I think that is what it is.

(Mr. Goudrault confers with witness). The witness declares that we have a better man to explain that than he, and so that closes that.

40 THE COMMISSIONER: Then you will return, under Mr. Goudrault's directions.

THE WITNESS: Monday morning, I believe.

John J. Creem for plaintiff recalled (direct examination).

DEPOSITION OF JOHN J. CREEM
(recalled)

JOHN J. CREEM was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposeseth and saith as follows:

10

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—Mr. Creem, you have previously been sworn, and you have testified? A.—Yes.

Q.—You have already filed and identified the exhibit which I now show you and which is an agreement between yourself, Mr. Creem, and Joseph L. Sigretto & Company. A.—Well, this is not the one that I identified as the agreement.

20 Q.—I beg your pardon. Then I will show you Exhibit C-2; and state if this is the one that you have identified. A.—Yes. This is the one.

Q.—I see. That was referring to what sewer? A.—Sewer in 51st Street, Corona.

MR. O'DONNELL: Defendants reiterate the objection made to evidence in regard to this document for the reasons stated when it was produced.

30 THE COMMISSIONER: The evidence will be taken subject to counsel's objection.

Q.—Will you examine this document and tell us what it is?

MR. HACKETT: Is that a new document?

MR. GOUDRAULT: Yes, it is.

MR. HACKETT: Let me see it, please. (Counsel examines document). That is all right, Mr. Goudrault.

40 Q.—Will you tell us what it is by comparing it with Exhibit C-2? A.—Well, it is the approval of the assignment of the 51st Street sewer contract from Joseph L. Sigretto & Company to John J. Creem, approved by the different surety companies and the Borough President.

Q.—I see. So it is the same agreement, but with the approval of the interested parties; is that so? A.—Well, it refers to the same thing. But the first one was the details of what I was

John J. Creem for plaintiff recalled (direct examination).

to pay, and how; and this is merely the regular form that the City has, that it requires for any assignment of a contract.

MR. GOUDRAULT: I offer as evidence this exhibit C-13.

MR. O'DONNELL: Defendants make the same objection with regard to the production of the exhibit now tendered, together with any testimony in regard thereto, as irrelevant.

THE COMMISSIONER: It will be accepted under counsel's reservation and objection.

(The said document was thereupon received in evidence and marked Plaintiff's Exhibit C-13 of this date.)

Q.—Now, will you look at this document and state do you recognize this signature? (Indicating). A.—I do.

Q.—That is your original signature. And do you recognize Joseph L. Sigretto's signature?

MR. O'DONNELL: Objected to as not the best evidence of Sigretto's signature.

Q.—Did Mr. Sigretto sign in your presence? A.—I don't think he did.

Q.—On the reserve of the last page, will you read? A.—“Approved quadruplicate, September 4, 1918, in accordance with the terms and condition of contract No. 49,784.”, signed “Maurice E. Connolly, President of the Borough of Queens.”

Q.—Have you previously seen the signature of Maurice E. Connolly? A.—Yes, I have seen the signature.

Q.—Could you swear that this is his signature? A.—No.

Q.—Now, will you look at this file of papers, bearing No. 49,784, which is referred to in the approval that you just have read, and state what it is.

MR. O'DONNELL: Objected to. The document speaks for itself; and furthermore, the witness is not the competent and best witness to give evidence in regard to this document.

MR. GOUDRAULT: Question withdrawn. Mr. Tully, please.

(Mr. Creem was temporarily excused).

Eugene J. Tully for plaintiff recalled (direct examination).

DEPOSITION OF EUGENE J. TULLY
(recalled)

10 EUGENE J. TULLY was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposeseth and saith as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—Mr. Tully, will you kindly look at this file of papers and tell us in brief what it is?

MR. COOK: Wait a minute, please. I object to the production of this file of documents as entirely irrelevant and illegal, and as having no bearing on the issues in the case.

20 MR. O'DONNELL: And all evidence in regard thereto.

MR. HACKETT: I associate myself with that objection.

THE COMMISSIONER: The evidence will be taken subject to counsel's reservations and objections.

30 THE WITNESS: This is contract No. 49,784, between Joseph L. Sigretto & Company and the City of New York, for the construction of a sewer and appurtenances in 51st Street (Central Avenue) from Lurting Street (Willow) to Waldron Street (Lawn Avenue) Second Ward (Type "B" construction). The contract is dated June 25, 1918 — pardon me, the date of contract is July 12, 1918. Date of award June 25, 1918.

BY MR. GOUDRAULT:

Q.—Is this an original? A.—That is the original contract, yes, sir.

40 Q.—I presume it contains practically the papers that were described by you when you did produce the previous contracts of a similar nature? A.—Yes, sir. It contains everyting that applies to that particular contract, that was received by the Comptroller.

MR. GOUDRAULT: I offer this now as evidence, as Exhibit C-14.

MR. O'DONNELL: Same objection.

John J. Creem for plaintiff recalled (direct examination).

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-14 of this date).

MR. GOUDRAULT: Any cross-examination?

(No cross-examination.)

10

DEPOSITION OF JOHN J. CREEM
(recalled)

JOHN J. CREEM, resumed:

20 DIRECT EXAMINATION BY MR. GOUDRAULT:
(Continued):

Q.—In your previous examination when you stated that a contract was transferred to you by Joseph L. Sigretto & Company, you evidently referred to this contract, Exhibit C-14, didn't you? A.—Yes.

Q.—And the payments to which you have already testified. I understand were in connection with the transfer of this contract which has now been produced as Exhibit 14, weren't they, Mr. Creem? A.—Yes.

30 Q.—You recollect your evidence of the other day when I first examined you on that C-2 exhibit, which was that agreement between you and Sigretto? A.—Yes.

Q.—You recollect it? A.—Yes.

Q.—Now that the original contract for the 51st Street sewer has been produced as C-14, have you anything to alter in your declarations?

40 MR. COOK: One moment, please. I object again to all evidence in regard to this contract, by this witness, as irrelevant and illegal, and beside the issues in the action.

MR. GOUDRAULT: Will you read the question?

(Question read by Clerk).

Q.—(Continuing) In your declarations or in your deposition that has already been taken on January 20th, 1931? A.—I have not.

John J. Creem for plaintiff recalled (direct examination).

Q.—After you made that payment of \$14,000, and one of \$1,000, was any other money paid besides that, at that time?

A.—I don't recollect.

Q.—When that contract for the 51st Street sewer was assigned to you, had the work commenced at that time? A.—No.

Q.—And you did the entire job? A.—Yes.

10 Q.—I now hand you two other documents, and ask you to state if you have seen these before?

(Counsel for defendants examine papers referred to).

Q.—Have you seen those before? A.—Yes, I have seen them before.

Q.—Will you produce as Exhibit C-15, this letter dated September 5, 1918, and addressed to Joseph L. Sigretto & Company and signed by yourself?

20 MR. O'DONNELL: Same objection.

(The said letter was thereupon received in evidence and thereupon marked Plaintiff's Exhibit C-15 of this date).

Q.—Will you now look at a letter reading "Brooklyn, New York, September 5, 1918", and state what it is? A.—This is a letter from Joseph L. Sigretto & Company, addressed to myself.

30 MR. O'DONNELL: Is that letter produced?

MR. GOUDRAULT: It is going to be produced in a minute.

MR. O'DONNELL: Why not produce it before you read it?

MR. GOUDRAULT: You want to know what the document is.

40 MR. HACKETT: What is the date, September 5, 1918?

THE WITNESS: September 5, 1918.

Q.—Will you produce this as evidence in the case, and as Exhibit C-16?

MR. O'DONNELL: Same objection.

John J. Creem for plaintiff recalled (direct examination).

(The said letter was thereupon received in evidence and marked Plaintiff's Exhibit C-16 of this date).

MR. HACKETT: I understand, Mr. Goudrault, that there is on the back of C-16, a copy of C-15.

10 Q.—Does that bear your signature, Mr. Creem? (Indicating) A.—Yes.

Q.—Do I get this right, if this letter, Exhibit C-16 was in answer to the letter Exhibit C-15? Is the letter which you have in your hand now, C-16, an answer to this letter? A.—The other way round. This letter is an answer to Sigretto's letter.

MR. HACKETT: C-15 is an answer to C-16. And on the back of C-16 is a copy of C-15.

20 Q.—Do you remember if the letter was handed to you by somebody? A.—Well, I don't remember the circumstances.

MR. COOK: It might have come by post, I suppose.

THE WITNESS: I don't quite.

MR. COOK: You don't know.

THE WITNESS: No.

30 Q.—Do you remember going to a law office in connection with this assignment of contract? A.—Arranging the details, yes.

Q.—I see. Payments, and things like that? A.—Yes, drawing the agreement that provided for the various payments.

Q.—Did it happen the same day? A.—Well, I think there were two days.

40 Q.—This letter of Sigretto, dated September 5, 1918, addressed to yourself, reads as follows: "Referring to the agreement dated September 3, 1918, between yourself and us, by which we sold you our contract for building a sewer in 51st Street, in the 2nd Ward, Borough of Queens, for the consideration of \$15,000 and a sum equal to 4 per cent. of each and every payment to be made by the City on account of the said contract" —

MR. HACKETT: What is the purpose of reading it into the record after you have filed it, Mr. Goudrault?

John J. Creem for plaintiff recalled (direct examination).

MR. GOUDRAULT: Well, the explanation would take as long as your objection, so we might as well put it in.

MR. O'DONNELL: It is already in the record.

10 Q.—Reference is made here in this letter, Mr. Creem, to 4 per cent. to be paid on every payment to be made by the City on account of the said contract. I understand that is in addition to the \$15,000 already paid? A.—Yes.

Q.—And will you tell us if once the payment of \$6900. had been paid to Sigretto, if the balance of the said 4% payments had to be made to John M. Phillips?

MR. COOK: Objected to as irrelevant and illegal and having no bearing on the issues in this case.

20 MR. HACKETT: And also because it is not the best evidence of any payment; and until the witness brings either receipts, checks or other evidence, or establishes that he can not produce it.

THE COMMISSIONER: The answer will be taken under counsel's objection.

BY MR. GOUDRAULT:

30 Q.—In a word, Mr. Creem, it is a direction to pay \$6900. to Sigretto, and the other payments to go to John M. Phillips; is that right? The letter speaks for itself? A.—Yes.

Q.—And it is an answer to that request contained in C-16, that you sent this letter — this is signed by you, dated the same date, and which has been filed or produced as C-15? A.—Yes.

Q.—Was there anything said in Mr. Phillips's presence as to what that 4 per cent represented? A.—I haven't any recollection.

Q.—Or why it was to be paid to him, or for what was it to be paid to him?.

40 MR. HACKETT: I object to that question. The document is here, written by Mr. Sigretto; and if anybody wants to know why, I think he has to ask Mr. Sigretto.

Q.—You have the question. I want you to explain, in other words, the circumstances surrounding this agreement. A.—I don't think any explanation was made to me.

John J. Creem for plaintiff recalled (direct examination).

Q.—While this document was being executed, in whole or in part, could you report to us the substance of any conversation?

MR. COOK: Between whom?

MR. GOUDRAULT: Between the persons that were there present.

10 A.—No, I could not report that.

Q.—You remember testifying the other day that Mr. Sigretto was there, Mr. Phillips was there, and may be somebody else, and you were there. And how long did that interview last, to the best of your recollection? A.—Well, I think I was there two or three hours.

Q.—Two or three hours. During those two or three hours, what was Phillips doing and Sigretto doing?

20 MR. O'DONNELL: Objected to as being irrelevant.

A.—Well, if you will let me explain, I think the reason I was there so long, a question came up that required the bonding agent Purcell to be present, and he was over in Queens some place, and we had to send for him.

Q.—I see. That is one of the reasons? A.—Yes, And we waited for him.

Q.—During the time that you were waiting, was there any conversation that you heard between Sigretto and Phillips?

30 MR. O'DONNELL: Objected to, as being hearsay and irrelevant.

MR. HACKETT: I object to any conversation between Phillips and Sigretto, or any evidence of it, until the parties to the conversation have been summoned. Now, Mr. Commissioner, this, it seems to me, is a question which is rather vital. If we are going to investigate the persiflage of the whole Borough over there by bringing here people who have overhead something, we are going to be condemned to a very long investigation. I think we can all agree that Mr. Creem may not be legally examined on this unless and until the parties to it have been asked about it and have either admitted it or denied it.

40 MR. GOUDRAULT: I understand Mr. Creem is leaving for Florida, and it was in order to expedite matters that I just want to find out from him if he remembers hearing any part of

John J. Creem for plaintiff recalled (direct examination).

that conversation. He will tell us if he did, under the reservation of your objections.

Q.—What is your answer? A.—Well, they did not appear friendly.

Q.—Do you recollect hearing any words at all? A.—No.

10 Q.—I understand that the 4 per cent. was plus the \$15,000 which you paid for getting this job — I mean the 4 per cent. was plus the \$15,000 which you had already paid. Wasn't it? A.—In addition to the \$15,000.

Q.—Upon which no work was done? A.—What does that mean?

Q.—No work had been done yet on that contract? A.—Oh, no.

Q.—And no materials supplied, either? A.—No.

Q.—And you did the entire job? A.—Yes.

20 Q.—How much did the 4 per cent. amount to? A.—Well, I couldn't answer that unless I saw the final certificate and multiplied it by 4 per cent.

MR. HACKETT: You think with that data you could do it, Mr. Creem?

THE WITNESS: I am quite sure it was all paid.

Q.—Did you pay the 4 per cent.? A.—Yes.

Q.—You did. To whom? A.—As directed in the letter and the agreement.

30 MR. O'DONNELL: Objected to as not being the best proof of any payment.

Q.—To John M. Phillips? A.—After \$6900. the remainder to John M. Phillips.

Q.—Was it paid in cash? A.—Checks.

Q.—Have you got your checks? A.—You mean did I ever get them?

40 Q.—Did you ever get them back from your bank cancelled? A.—No, I haven't them. I don't know where you got this correspondence of mine either. I didn't give it to you.

Q.—Did you lose those checks? A.—I lost them by giving them to an investigating committee.

Q.—Whatever the balance was, you paid it to Phillips after you had paid \$6900. to Sigretto? A.—Yes.

Q.—And that was in addition to the \$14,000 he got that day?

John J. Creem for plaintiff recalled (direct examination).

MR. COOK: Oh, we have had that a hundred times. Let us go on to something new; we can't be here indefinitely.

Q.—I want to know if you know where those cancelled checks of yours are.

MR. O'DONNELL: He has told us he didn't know.

10 THE WITNESS: I don't know.

Q.—Mr. Creem, you are one of the executors under the late John M. Phillips will, are you not?

MR. O'DONNELL: Objected to as not being the best proof. The will speaks for itself.

A.—I am not.

Q.—You are not? A.—I am not.

20 Q.—Of the will? A.—I am not.

Q.—Did you have anything to do with getting Mr. Connolly's approval to substituting you for Sigretto, for the construction of the 51st Street sewer? A.—I did not.

Q.—Did you furnish to the Borough President's office, or any department or bureau, when you came in and took this contract over, any financial statement or any kind? A.—I did not.

Q.—Were you asked to? A.—I was not.

30 Q.—This transaction, I understand, took place partly in Mr. Titcomb's office, didn't it? A.—The drawing of the agreements.

Q.—Was that the first time you met John M. Phillips, at Mr. Titcomb's office? A.—Yes.

Q.—You didn't know him before? A.—Never saw him, or as far as I know, ever heard of him.

40 Q.—Was the approval of Maurice E. Connolly on the assignment in that office when you signed it and when you paid your money? A.—It was on there when I paid my money. As I remember, to not leave that just as it stands, we waited for the completed document before we closed up.

Q.—And what do you mean? A.—I imagine the surety companies are the last to sign it, and until they had approved of it I wouldn't take it over.

Q.—Had Maurice E. Connolly approved of it when you first saw it? A.—Well, when it came in it was complete. I imagine I had to sign it first, then Sigretto, and then it was taken

John J. Creem for plaintiff recalled (direct examination).

to Connolly and to the different surety companies. And it was no use until they had all approved of it.

Q.—Do you know by whom it was taken to Maurice E. Connolly? A.—No, I don't know.

Q.—I understand you followed the agreement? A.—Yes.

10 Q.—You say you were not asked for any financial statement on the part of the Borough of Queens Bureau. How long had it been at that time in 1918 since you had done any public work or contract for the Queens Borough?

MR. COOK: I object to that as irrelevant and having nothing to do with the case.

A.—I had never done any work personally up to that time.

Q.—That was your first job? A.—Yes.

20 Q.—Didn't you work for the Borough of Queens or have a contract with the Borough of Queens some time previous? A. No.

Q.—As far back as 1892? A.—You certainly are going back some. I worked in the Borough of Queens 42 years ago.

Q.—Is that so? A.—Just 42. I don't know whether you guessed at it or not. But there was not any Borough of Queens in those days. The Borough of Queens did not come into effect until 1898.

30 Q.—From 1898 till 1918, you did no particular contract for the Borough of Queens, did you, Mr. Creem? A.—I did not do any work for the Borough of Queens.

MR. GOUDRAULT: Mr. Creem, I am obliged to ask you to kindly go into the other room for a minute and allow us to have Mr. Tully come back and identify another contract.

(Witness temporarily excused).

Eugene J. Tully for plaintiff recalled (direct examination).

DEPOSITION OF EUGENE J. TULLY
(recalled)

EUGENE J. TULLY, resumed:

10 DIRECT EXAMINATION BY MR. GOUDRAULT:
(Continued):

Q.—Mr. Tully, will you look at this file of papers and state briefly what it is?

MR. COOK: I object to this, Mr. Commissioner, on the ground that it is irrelevant, illegal and has no bearing on the issues in this case, and I object to any evidence in regard to this agreement, on the same ground.

20 THE COMMISSIONER: The same will be received,
subject to counsel's objection.

Q.—Will you tell us what this is? A.—This is contract No. 52,633, between O'Rourke Engineering Construction Company and the City of New York for the construction of a sewer and appurtenances in Linden Avenue, from 32nd Street (Myrtle Avenue) to 35th Avenue (State Street), — do you want this entire description?

30 Q.—No, no. When you state the main avenue, Mr. Tully, on which the sewer was constructed, that is sufficient. A.—Yes, that is what I wanted to know. The date of award is January 8, 1920; the date of contract is January 19, 1920.

MR. GOUDRAULT: I now offer as evidence this file of papers as Exhibit C-17.

MR. COOK: Well, I object, for the reasons above stated.

MR. HACKETT: So do I.

40 (The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-17, of this date).

MR. GOUDRAULT: Thank you, Mr. Tully.

John J. Creem for plaintiff recalled (direct examination).

DEPOSITION OF JOHN J. CREEM.
(recalled)

JOHN J. CREEM, resumed:

10 DIRECT EXAMINATION BY MR. GOUDRAULT:
(Continued):

Q.—Will you now look at this Exhibit C-17, Mr. Creem, which purports to be the original contract for the Linden Street sewer, and state if you had any work to do in connection with this contract?

MR. COOK: I object to this, on the ground that it is irrelevant and illegal, and has nothing to do with the issues in this case.

20 MR. HACKETT: I avail myself of the same objection.

A.—Yes. I did part of that contract.

Q.—From whom did you get the contract? A.—Part of it was assigned to me by the O'Rourke Engineering & Construction Company.

Q.—What part of the contract did you do? A.—The part known as the open cut work.

Q.—Did you know Major O'Rourke, of that company, before you took over the contract? A.—I did.

30 Q.—Did you have any conversation with Major O'Rourke about taking over this contract — (question withdrawn). I mean, did you have any conversations with Major O'Rourke before taking over the job? A.—Yes.

MR. HACKETT: Objected to as irrelevant, as there was a contract between Mr. Creem and O'Rourke.

THE COMMISSIONER: I will take the answer subject to counsel's objection.

40 MR. HACKETT: Was there a written document by the terms of which you took over the contract?

A.—Well, I remember lawyers on both sides and some kind of an agreement growing out of it, but I don't remember the substance of it. I remember the Major taking me into Hughes' firm and telling me they were so nice you wouldn't think they were lawyers.

John J. Creem for plaintiff recalled (direct examination).

BY MR. GOUDRAULT:

Q.—Do you recollect discussing the question of the pre-cast pipe with Major O'Rourke, before you signed the contract?

MR. HACKETT: Objected to as irrelevant.

10 MR. COOK: It is very interesting, this, but it is irrelevant.

MR. GOUDRAULT: It is not irrelevant. I protest most emphatically. These gentlemen were going to assign to the witness Creem a portion of the contract in the Borough of Queens. Naturally enough, they must have had some kind of agreement, but before they came to that agreement they must have discussed terms and stipulations and prices, and things like that.

MR. COOK: What has that to do with Mr. Phillips?

20 MR. GOUDRAULT: We are coming to Mr. Phillips in a minute.

MR. O'DONNELL: And he doesn't remember the substance of the document. You can not contradict your own witness.

MR. HACKETT: It is entirely irrelevant. Let us get on.

30 THE COMMISSIONER: I will take the answer, subject to counsel's objection.

THE WITNESS: You are discussing precast pipe?

BY MR. GOUDRAULT:

Q.—Yes, precast. A.—I don't remember taking up pre-cast or vitrified. We just discussed open cut work and tunnel work. The job was divided into two parts. Part was tunnel and part was open cut.

40 Q.—I see. So in the open cut part you had to use precast pipe? A.—Oh, no.

Q.—You did not? A.—I used vitrified pipe also for man-holes.

Q.—But did you use precast pipe? A.—I did, yes.

MR. GOUDRAULT: That is the question.

John J. Creem for plaintiff recalled (direct examination).

MR. COOK: Mr. Commissioner, it is highly interesting what pipe Mr. Creem used, and what happened in connection with the agreement, but what on earth has it to do with this case? I object, on the ground that it is irrelevant.

Q.—Did you discuss the question of the prices of precast pipe with Mr. Phillips?

10

MR. COOK: I object to that on the ground that conversations between Mr. Phillips, who is dead, and Mr. Creem, who is here, are absolutely illegal and improper and can have no effect on the issues in this case whatever.

MR. GOUDRAULT: Will you read the question?

(Question read by Clerk).

MR. COOK: Well, if he did, what difference would it
20 make?

MR. GOUDRAULT: You will see it in the long run.

MR. COOK: Well, it is so very long, it is such a long run, that I am exhausted.

MR. GOUDRAULT: The claim is a huge one, too.

THE WITNESS: I can't recollect whether I did or not.

30

BY MR. GOUDRAULT:

Q.—I understand your recollections are hampered by all sorts of objections that are put by learned attorneys for the defendants. I will come to that, you know. I think I will make you remember. A.—Well, I will explain to you, so that you will understand my position, if you wish.

Q.—Yes, Mr. Creem. A.—The pipe on this job were not furnished by Phillips, but were furnished by the Lock Joint Pipe Company, of Ampere, New Jersey. Now, whether I discussed it with Mr. Hirsch, the President, or with Mr. Phillips, who I think was an agent, or some representative at that time, I am not sure which it was.
40

Q.—But anyway, you remember discussing the price of the precast pipe, naturally enough? A.—Well, I had an agreement with them to furnish it, and we must have stipulated a price.

John J. Creem for plaintiff recalled (direct examination).

Q.—With whom did you have the agreement? A.—With the Lock Joint Pipe Company, of Ampere, New Jersey.

Q.—Who was one of the principal officials of that company at the time, do you recollect, Mr. Creem? A.—Yes. Mr. Hirsch was the president.

Q.—I see. A minute ago you also stated that Mr. Phillips was their agent? A.—Well, I don't think I said that.

10 Q.—I am quite positive you did. (To the Clerk): Will you read the answer, please?

(Question and answer read by Clerk).

Q.—Then you must have had quotations at the time for the precast pipe? A.—At what time now?

Q.—At the time that you were making arrangements to take over that open cut portion of the Linden Avenue sewer. A.—Yes. I must have known how much it was going to cost me.

20 Q.—I see. Do you recollect now? A.—No, I do not. You mean the prices?

Q.—Yes, on precast pipe. A.—I don't.

(Whereupon, at 4:00 o'clock p. m. an adjournment was taken to Monday, January 26th, 1931, at 11:00 o'clock a. m.)

30

40

Depositions of witnesses, sworn and examined on the 26th day of January, in the year of Our Lord one thousand nine hundred and thirty-one, at eleven o'clock in the forenoon, in the office of DeCoursey Fales, 40 Wall Street, in the County of New York, State of New York, United States of America, by virtue of this commission issued out of His Majesty's said Superior Court, to us DeCoursey Fales, a lawyer, of 40 Wall Street, City and State of New York, directed for the examination of witnesses in a cause therein pending between The People of the State of New York, plaintiff and Heirs of the late John M. Phillips, et al., Defendants: — I, the commissioner acting under the said commission, and also the clerk by me employed in taking, writing down, transcribing and engrossing the said depositions, having first duly taken the oaths annexed to the said commission, according to the tenor and effect thereof and as thereby directed heard the following depositions:

20 Louis A. Leslie was sworn as assistant clerk by the Commissioner.

MR. O'DONNELL: Mr. Commissioner, there is a correction to be made on page 333, the 6th and 7th lines, where "pumping" and "pump" appear; they should read "pouring" and "pour". They are talking of pouring the joint at the time.

Also my observation should have come in just before Mr. Goudrault's question.

30 MR. GOUDRAULT: Have the witnesses called in. These are witnesses to be examined. I wish to have their names entered on the record.

(Whereupon, the following witnesses entered the room and gave their names: James L. Carey, Arthur F. Holmes, D. E. Enright, John F. Faber.)

THE COMMISSIONER: When do you wish them here?

40 MR. GOUDRAULT: I wish Mr. Faber and Mr. Carey to remain here this morning. The other two gentlemen may be relieved until the 28th, at the same hour. We will get in touch with them in the meantime.

MR. COOK: Did you know the 28th was Wednesday?

MR. GOUDRAULT: Yes.

MR. HACKETT: We are apt to sit earlier then, Mr. Goudrault.

MR. GOUDRAULT: If so, why not fix it now?

THE COMMISSIONER: When would you like to meet — shall we fix it for 10.30 on Wednesday?

MR. GOUDRAULT: Yes.

10 THE COMMISSIONER: We will be here at the hour named. The other gentlemen will remain here today.

MR. GOUDRAULT: Will you make the following entries: Mr. Harry S. Hart is called and makes default.

James F. Richardson is called and makes default.

William S. Hastings is called and makes default.

George A. Everett is called and makes default.

20 Joseph J. Elkin is called and makes default.

William Goldsmith is called and makes default.

I think all these witnesses will be in a position to come in at a later date.

I shall recall Mr. Bertram for the sole purpose of having him file the original document.

30

DEPOSITION OF WILLIAM H. BERTRAM
(recalled)

WILLIAM H. BERTRAM was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposeth and saith as follows:

40 MR. COOK: Is this examination in chief?

MR. GOUDRAULT: No, it is just to complete his evidence.

BY MR. GOUDRAULT:

Q.—Mr. Bertram, you have already produced as Exhibit C-1, photostatic copy of the tabulation prepared under your supervision in your department, and which I now show to you.

William H. Bertram for plaintiff recalled (direct examination).

You have also produced as C-11, the original of said tabulation? A.—Yes, sir.

Q.—Now I will show you a photostatic copy comprising eight sheets. Will you please tell us what that is. A.—That is a true copy — a photostatic copy made of the original tabulations.

10 Q.—Already produced as Exhibit C-11? A.—Already produced as Exhibit C-11.

Q.—Was this photostatic copy made —

MR. COOK: I take it that this evidence is all under the reservation of the original objections.

THE COMMISSIONER: A note will be made on the record to that effect.

18 MR. HACKETT: I avail myself of all objections made with regard to C-1 and C-11 and the document that is now offered in evidence.

BY MR. GOUDRAULT:

Q.—Did you have occasion to compare, since I asked you to do so, the original tabulation and the photostatic copy, C-1, that you have produced? A.—I did compare them.

20 Q.—Are you in a position to state if there are any discrepancies or changes of any nature, between the said original and the photostatic copy C-1? A.—The original has been changed in some minor details after the photostatic copy C-1 was made.

30 Q.—These changes would naturally appear on this photostatic copy of the original? A.—This is now a complete copy of the original as it stands today.

Q.—Mr. Bertram, in order to save all possible difficulty over these plans, will you keep this photostatic copy of the original and leave in the record the original that you have already filed? A.—All right, I will do that.

40 THE COMMISSIONER: This last photostatic copy is not offered in evidence?

MR. GOUDRAULT: No, sir.

BY MR. GOUDRAULT:

Q.—Did you state, Mr. Bertram, after looking at this original tabulation, the changes there are with the photostatic copy? A.—No.

William H. Bertram for plaintiff recalled (direct examination).

Q.—Will you state and will you say if those changes are of any material importance? This question is put to you in order to save discussions later on when we come to the evidence. What are those changes, exactly?

MR. COOK: I object. The document speaks for itself. There is no necessity —

10

A.—There is a pencil correction here in some of the figures on one of the sheets. On sheet 7 there are corrections in the final engineer's estimate on contracts No. 296 and 297. Corrections are made in pencil. The original has not been changed.

Q.—That is simply a change in the final estimate of the engineers? A.—That is all.

Q.—Have they or have they not any importance on the award of the contract? A.—Not to any great extent.

20

MR. O'DONNELL: The changes were never verified.

A.—(Continued) The ink has never been crossed out. The pencil is simply substituted for the ink, but nobody is willing to say that the pencil is right.

Q.—Are those the only changes that you have noticed?

A.—That is all I could find.

BY MR. O'DONNELL:

30

Q.—You don't know who made the pencil changes? A. I don't know that.

BY MR. COOK:

Q.—Are there many?

MR. O'DONNELL: No, there are only two.

BY MR. GOUDRAULT:

40

Q.—You have now, Mr. Bertram, produced as C-3, C-4, and C-5, three sheets of the plan and profile, rather of the original plan and profile for the construction of the sanitary sewer in 150th Avenue, have you not? A.—Yes, sir.

Q.—Have you made searches since, and can you tell us if you have been successful in finding the remainder of the plan and profile? A.—Yes, I was.

Q.—Will you look at these sheets and tell us what they are. A.—They are the eight remaining sheets of the plan and profil for the 150th Avenue sewer.

William H. Bertram for plaintiff recalled (direct examination).

Q.—Will you then produce the said 8 sheets to complete the plan and profile, —

MR. HACKETT: I object to their introduction.

Q.—(Continuing) — as Exhibit C-18. A.—Yes.

10 MR. COOK: Are you using all those as one exhibit, Mr. Goudrault?

THE COMMISSIONER: Have them marked, please.

MR. HACKETT: They are Nos. 2, 3, 4, 6, 7, 8, 9 and 11.

MR. O'DONNELL: We have had 3, 5 and 10 so far.

MR. HACKETT: No; we have had 1, 5 and 10.

20 MR. COOK: Before you answer, Mr. Bertram, I want to put in an objection. Put your question, Mr. Goudrault, and then I will object.

BY MR. GOUDRAULT:

Q.—The said sheets bearing numbers 2, 3, 4, 6, 7, 8, 9 and 11 —

MR. COOK: Have you finished?

MR. GOUDRAULT: Yes.

30 MR. COOK: The defendant objects to the introduction of these plans as entirely illegal and irrelevant, outside the issues in this case, and also objects to any and all evidence in regard thereto for the same reasons.

MR. HACKETT: I associate myself with that objection.

(The eight sheets referred to were thereupon marked Plaintiff's Exhibit C-18, of this date).

BY MR. GOUDRAULT:

40 Q.—Will you look at Exhibit C-3, which is the plan and profile for the 150th Avenue sewer? A.—Yes.

Q.—You have already testified that in the said plan and profile, the only reference made to a waterproofing membrane would appear on said Sheet No. 1, have you not? A.—If you mean the barrel of the sewer —

William H. Bertram for plaintiff recalled (direct examination).

Q.—Yes. A.—The circular barrel of the sewer would be on this sheet.

Q.—Will you now look at Exhibit C-18 which are the eight remaining sheets of the said plan and profile, and which complete the original plan and profile, and tell us if there is on the said eight sheets anything about that waterproof membrane?

10 MR. O'DONNELL: Objected to as the sheets speak for themselves.

MR. HACKETT: I object to it inasmuch as the plan speaks for itself, and we are as competent and capable of reading it as the witness.

A.—The eight remaining sheets only show waterproofing in the manholes and chambers.

20 MR. COOK: I object to this answer.

MR. GOUDRAULT: I wish you would let the witness make his answer complete.

MR. COOK: He made it.

Q.—Does it show any reference to waterproofing membrane in the barrel of the sewer?

30 MR. COOK: I object to that, Mr. Commissioner. The exhibit speaks for itself. Surely it is incompetent for this witness to say what a written document contains or does not contain.

MR. GOUDRAULT: I wanted it to be entered on the record that the sole reason of the questioning is that Mr. Bertram is the assistant engineer in the sewer department, the said plans were prepared by engineers of his department under his supervision and he is well qualified, much more than the lawyers, on this matter, I think.

40 THE COMMISSIONER: You may answer, under objection. A.—No.

MR. GOUDRAULT: Your witness.

MR. COOK: Mr. Hackett, will you take the witness?

MR. HACKETT: That is all.

MR. COOK: Will Mr. Bertram be back?

William H. Bertram for plaintiff recalled (direct examination).

MR. GOUDRAULT: He is finished, I think.

MR. HACKETT: Do I understand that you have not finished with Mr. Bertram entirely?

10 MR. GOUDRAULT: I would not say entirely. I am conducting my case, and if I need him I will make an application to have him heard again. I have examined him on the principal questions, and I do not think I will recall him. On the other hand, if it is necessary to enlighten our courts on these various matters, if I see fit to recall him, I will make an application for him.

MR. HACKETT: It is entirely irregular to call a witness and recall him and recall him. It causes complications and is not in accordance with either procedure or practice.

20 MR. GOUDRAULT: I may add that our courts have been seized with a similar situation and in practically all cases have decided otherwise than for Mr. Hackett. If it is necessary to clear up a point in the case.

MR. COOK: The objection that I strongly urge is this, that until Mr. Bertram's examination is completed, we are not in a position and we are not called upon to cross-examine him.

MR. GOUDRAULT: But you have cross-examined him.

30 MR. COOK: We have, because we thought he was finished. If Mr. Bertram is to be recalled, there is no possible reason why we should further cross-examine him at the present time.

MR. GOUDRAULT: You do not wish to recross-examine him at the present time? I have told you and I reiterate my statement that I do not see that I will have to recall Mr. Bertram, but I wish to make a reservation on that.

THE COMMISSIONER: You are through with him, Mr. Hackett, up to the present time?

40 MR. HACKETT: Yes.

John J. Creem for plaintiff recalled (direct examination).

DEPOSITION OF JOHN J. CREEM
(recalled)

JOHN J. CREEM was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposeseth and saith as follows:

10

DIRECT EXAMINATION BY MR. GOUDRAULT:
(Continued):

Q.—Mr. Creem, when you were last examined, we were discussing the contract which was transferred over to you for the open cut portion — the Linden Avenue contract, wasn't it?
A.—Yes.

Q.—Would you tell us from whom you got that contract?
A.—O'Rourke Engineering & Construction Company.

20

Q.—How did you get it? A.—By assignment.

Q.—What was the kind of sewer that was constructed by you there, Mr. Creem, as regards type? Was it a precast sewer?
A.—Precast pipe and vitrified pipe.

Q.—Did you discuss the question of the cost of precast pipe, for that sewer? A.—With whom?

Q.—With the O'Rourke Engineering & Construction Company, or with anybody else? A.—Well, I got — I don't remember discussing it with O'Rourke, but I had bought the pipe so I must have discussed it with somebody else.

30

Q.—Who would be that somebody else? A.—I am not sure whether it was Phillips of the Lock Joint Pipe people, or both.

Q.—Did that discussion of prices take place before you took over the job? A.—Yes, I found out what I could get the pipe for.

Q.—Do you remember the price that you were told you would be charged for the precast pipe? A.—No, I don't.

Q.—You don't? A.—No.

40

Q.—Do you know where the precast pipe came from? A. It was made right in Flushing, where the job was located.

Q.—Who was making it? A.—The Lock Joint Pipe Company of Ampere, New Jersey.

Q.—If you were shown the contract and the sizes of pipe that appear there, would you be in a position to state what price you were asked to pay for pipe? A.—You mean in the City contract?

John J. Creem for plaintiff recalled (direct examination).

Q.—Yes. Would that help your recollection as to the price you paid for it? A.—I don't think so.

Q.—It would not? A.—No.

MR. O'DONNELL: That is quite a long time ago.

BY MR. GOUDRAULT:

10 Q.—Did you talk with Mr. Phillips about taking over the work either before or after your conversation with Mr. O'Rourke?

MR. HACKETT: I object to conversations with the deceased individual, unless it is first established that they come within the rule which makes them admissible as evidence.

MR. COOK: I object to all evidence of this character as illegal and improper.

20 Q.—You remember paying anything to Phillips in connection with this assignment of the Linden Avenue job to yourself by the O'Rourke Company?

MR. HACKETT: I object to verbal evidence as to payment of any amount to Phillips.

THE COMMISSIONER: The answer may be taken subject to counsel's reservations and objections.

A.—No.

30 Q.—Mr. Creem, just try to recollect. You were trying to get, and you did get from the O'Rourke Construction Company, the assignment of an important contract in which precast pipe was to be used. You had to secure that precast pipe somewhere. Will you try to remember with whom you dealt in order to execute some kind of a contract to get this precast pipe in the sewer of the Linden Avenue job. A.—I imagine I took it up with Phillips first.

40 MR. COOK: I object to any discussion or conversations with Mr. Phillips, deceased, on the ground that they are illegal and incompetent.

MR. O'DONNELL: The witness has already testified that he does not remember that he had the conversations.

MR. GOUDRAULT: I object to objections while the witness is in process of answering.

John J. Creem for plaintiff recalled (direct examination).

A.—My recollection is that I probably spoke about it to Phillips, and it was finally consummated with the Lock Joint Pipe Company.

Q.—Now, whenever there was a contract where precast pipe had to be used, was there a written contract given or did you just call for a delivery of so much pipe?

10 MR. O'DONNELL: Objected to as being irrelevant.

Q.—Have you any more of these contracts that you had with the Lock Joint Pipe Company? A.—No.

Q.—Do you remember of any payments made by you for precast pipe in connection with the Linden Avenue job?

MR. HACKETT: I object to any evidence which is not the best evidence concerning payment.

20 MR. COOK: I object also for the same reason.

THE COMMISSIONER: The answer will be taken subject to counsel's reservation and objection.

A.—I know I paid for the pipe.

Q.—Have you any checks? A.—No.

Q.—Do you know where those checks are? A.—I don't think they are in existence.

30 Q.—Why are they not in existence? State briefly? A. My methods of doing business have been described as primitive. Not having any office, except in my own residence, the accumulation of that stuff would put me out on the street pretty soon, so I have to destroy it in order to continue to live there.

Q.—I gather from your answer, that the checks were destroyed? A.—I don't remember destroying them, but I don't know of anything I have that old.

Q.—Would you have any books for that period of time? A.—No.

Q.—Did you have any contract remaining for the furnishing to you of precast pipe for the Linden Avenue sewer? A.—No.

40 Q.—Do you recollect if you paid for that pipe in checks, or by money? A.—Invariably by check.

Q.—Do you remember the first payment that you would have made in connection with precast pipe for the Linden Avenue job?

MR. O'DONNELL: The same objection.

A.—No.

John J. Creem for plaintiff recalled (direct examination).

Q.—Do you know whether your first check for precast pipe was dated the same day as Mr. Connolly's approval?

MR. O'DONNELL: The same objection.

A.—No. I wouldn't know that.

Q.—All your checks are gone for that period? A.—Yes.

10 Q.—And all your books for that period are gone also?

A.—Yes.

Q.—You quite recollect your previous evidence when you stated to us that when the first contract ever awarded to you by Sigretto at 51st Street, you there stated that you had cashed a check for \$14,000, and given the money over to Phillips — you recollect that? A.—Of course Sigretto could not award a contract.

Q.—I mean assign. A.—Yes.

Q.—You remember the evidence? A.—Yes.

20 Q.—In the course of your dealings with the Lock Joint Company and Mr. Phillips, do you recollect if the said company assumed the execution of a contract for pipe?

MR. HACKETT: I object to that evidence unless and until the contract is produced.

Q.—I understand, Mr. Creem, that you had not kept the contract for the Linden Avenue sewer — any contract for getting precast steel pipe from whoever sold it to you? A.—No, not steel pipe.

30 Q.—Precast. A.—Yes.

MR. HACKETT: Even if Mr. Creem has not a written contract, it is still incompetent to make verbal testimony until proof is available that the contract, or a duplicate of the contract, is not in existence.

THE COMMISSIONER: I will take the answer subject to your objection.

40 A.—I have not the contract.

Q.—I would like you to make it quite clear why you haven't it. Is it for the same reason as the checks and books? A.—Yes.

Q.—Do you remember making any payments for precast pipe in advance?

MR. HACKETT: I object to the evidence as not being the best evidence. The witness has said that all payments were made by check.

John J. Creem for plaintiff recalled (direct examination).

Q.—I refer to the Linden Avenue contract where you had to use precast pipe which you said you got from the Lock Joint Company.

MR. COOK: I object to that as illegal and improper and irrelevant. I can not see what we have to do with that.

10 A.—I would not know how to answer that without an explanation.

Q.—Perhaps you would like to have the question put differently. Do you wish to give the explanation, or shall I? A.—This thing is very vague in my mind. Since you have been talking, the thought has occurred to me here that Phillips changed his position or connection, or whatever you may call it, with the Lock Joint Pipe Company about this time. My recollection is that he wanted me to make a contract —

20 MR. HACKETT: Just a minute, please. Again, Mr. Commissioner, I must object to this witness's testimony of conversations with a deceased witness, until at least that testimony is of the type which is sometimes admitted as evidence.

MR. O'DONNELL: And also I object to the manner of procedure.

THE COMMISSIONER: I allow him to proceed with the answer subject to counsel's reservation and objection.

30 A.—(Continued) — with him personally, instead of making a contract through the Lock Joint people. My recollection is that he said he was going to manufacture it, but I am not sure about that. That was the one drawback that appeared to me in taking this contract, because it called for an immense amount of pipe and while I had every confidence in the ability of the Lock Joint Pipe Company to fulfill that, I didn't know what accident might happen to Mr. Phillips to prevent him from doing so. The arrangement, as I recollect it, was finally arrived at, was that his commission on this contract —

40 BY MR. COOK:

Q.—Was that arrangement in writing? A.—I don't think so.

THE WITNESS:—(Continuing) — His commission on this contract was \$25,000, as I remember it. It seemed to me it figured \$4.00 or \$5.00 a foot.

John J. Creem for plaintiff recalled (direct examination).

BY MR. GOUDRAULT:

Q.—\$25,000 was to be the commission of Phillips? A. Yes, on this contract.

Q.—That is the amount I asked you a minute ago if it was paid in advance. A.—I don't know now whether it was or not.

10 Q.—All right, Mr. Creem. A.—After talking it over back and forth, I agreed to pay the \$25,000, providing my contract for this pipe on this job would be direct with the Lock Joint Pipe Company. The contract was made with the Lock Joint Pipe Company. They made the pipe and billed me and I paid for it.

BY MR. COOK:

Q.—A written contract? A.—Yes.

20 BY MR. GOUDRAULT:

Q.—You no longer have the contract? A.—No.

Q.—Did you actually pay that \$25,000? A.—Yes.

MR. O'DONNELL: Objected to as not being the best evidence.

MR. HACKETT: Associate me with that objection.

Q.—To whom did you pay it?

30 MR. COOK: Objected to.

A.—I paid it to Phillips.

Q.—Did you pay it by check or money? A.—I paid it by check.

Q.—Do you recollect if you did the same thing in this instance as you did before — go to a bank and cash a check and give him the money?

MR. COOK: Objection.

40 MR. O'DONNELL: Objection.

A.—I agreed to give it to him as soon as the Lock Joint Pipe Company had assumed the contract, and my attorney was over in Jersey with the Lock Joint Pipe Company executing the contract, and I waited in the bank to hear from them and when he telephoned to me that they had signed the contract in Jersey,

John J. Creem for plaintiff recalled (direct examination).

I don't know whether I identified Phillips, or the money was given to him there in the bank.

Q.—Mr. Creem, did you hear of Duit or the Duit Corporation? A.—I was one of the organizers.

MR. O'DONNELL: What is the relevancy of this?

10 MR. GOUDRAULT: If you can't see that, I am afraid you have not read the declaration.

Q.—Were you an officer in that corporation? A.—Yes, I was.

Q.—What position did you hold? A.—President and treasurer.

Q.—Is the company still in existence? A.—Yes.

Q.—Are you still in the same offices? A.—Yes.

Q.—Are you the sole stockholder? A.—No.

20 Q.—The work that we have talked about so far was for work that you did on the 51st Street job that you took over from Sigretto, and the Linden Street job that you took over from O'Rourke, were those jobs your own personal jobs, those two? A.—The 51st Street was my own job, and the open cut work assigned to me by O'Rourke was my own personal job.

Q.—That is the Linden Street? A.—Yes, Linden Street.

Q.—Limiting ourselves to your job for the 51st Street sewer, when you took over the contract from Sigretto, do I understand that you took his contract with Phillips as regards pipe? A.—No.

30

MR. O'DONNELL: Same objection.

A.—His contract was with the Lock Joint Pipe Company.

Q.—Can you recollect the price you paid for the pipe on the 51st Street job?

MR. HACKETT: I object to verbal evidence of a written contract.

40

MR. O'DONNELL: Further, that evidence is entirely irrelevant.

THE COMMISSIONER: The answer will be taken subject to counsel's objections and reservations.

A.—I think I do.

Q.—Will you tell us, please. A.—I think the larger size was \$30. and the smaller size was \$28.50.

Eugene Tully for plaintiff recalled (direct examination).

BY MR. COOK:

Q.—That was for which job?

MR. GOUDRAULT: That was for 51st Street.

BY MR. GOUDRAULT:

10 Q.—Do you remember if you had a 96-inch pipe on the job taken over from Sigretto? A.—That is my recollection of the size of the larger pipe.

Q.—And your recollection is that you paid \$30 for that size? A.—Yes.

Q.—I understand that you have not any books which you used at the time. A.—No.

Q.—They are not in existence? A.—Not to the best of my knowledge and belief.

20 Q.—Let us just limit ourselves to the Duit Corporation's jobs. What was the first job in Queens Borough that the said company did? A.—I always speak of it as the sewer in Fisk Avenue. I don't know if that is the exact title.

MR. GOUDRAULT: Will you please go out just for a moment while I have another witness identify these papers.

DEPOSITION OF EUGENE TULLY
(recalled)

30

EUGENE TULLY was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposeth and saith as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT: (Continued);

40 Q.—Will you look at the file of papers and tell us what it is? A.—This is contract No. 69,176 between Duit, Incorporated, and the City of New York, for the construction of a sewer and appurtenances in Fisk Avenue, from Queens Boulevard to Calamus Avenue, from Fisk Avenue to Decker Street, 2nd Ward, Borough of Queens. The date of the award of the contract is March 7th, 1924; the date of the contract is March 15th, 1924.

MR. GOUDRAULT: I offer as evidence the original of this contract as C-19.

Eugene Tully for plaintiff recalled (direct examination).

(The paper was thereupon received in evidence and marked Plaintiff's Exhibit C-19, of this date).

Q.—I understand, Mr. Tully, that is the original contract.
A.—That is the original contract.

BY MR. O'DONNELL:

10 Q.—That Exhibit contains all the papers relating to the contract? A.—Yes, sir.

Q.—In the same way you have already testified in regard to the other exhibits? A.—Yes, sir.

BY MR. GOUDRAULT:

Q.—Will you look at the file of paper which I now show you and tell us what it is.

20 MR. O'DONNELL: The defendant objects to the production of this contract C-19 as being entirely irrelevant and illegal.

MR. HACKETT: I avail myself of the same objection.

MR. O'DONNELL: Also to any verbal evidence in connection therewith.

MR. HACKETT: I avail myself of the same objection.

BY MR. GOUDRAULT:

30 Q.—Will you now look at the file and tell us what it is.
A.—It is Contract No. 76,066 between Duit Inc. and the City of New York for the construction of sanitary sewers and appurtenances in Farmers Boulevard from Judith Street to 143rd Road, 143rd Road from Farmers Boulevard to 173rd Street, etc., Fourth Ward, Borough of Queens. The date of the award of this contract is August 5, 1925. The date of the contract is August 12, 1925.

40 MR. GOUDRAULT: I now offer as evidence this contract as Exhibit C-20.

(The contract was thereupon received in evidence and marked Plaintiff's Exhibit C-20, of this date).

Q.—I understand that this contract is an original? A. Yes.

MR. O'DONNELL: Same objection to the production of this contract as to the foregoing.

John J. Creem for plaintiff recalled (direct examination).

DEPOSITION OF JOHN J. CREEM
(recalled)

JOHN J. CREEM, resumed:

BY MR. GOUDRAULT:

10 Q.—Will you now look at Exhibit C-19, which is the original contract for the Fisk Avenue sewer, which appears to have been constructed by the Duit Company, and will you read page 34 and will you state if that is your signature? A.—Yes. That is my signature.

Q.—As president of the Duit, Inc. Company? A.—Yes.

20 Q.—Will you tell us how much pipe you used on that sewer job and what the sizes were, by looking at the contract? A.—I would have to look at the final estimate, because the contract is an estimated contract, and the final estimate would show, if it is here, the actual quantities, which differ sometimes.

Q.—Does it differ to any great extent? A.—Not more than 100 feet or so.

Q.—I am satisfied that you tell us the requirements of precast pipe in that particular sewer, Mr. Creem. A.—This calls for 2,028 feet of 8-foot pipe and also for 1,730 feet of 8-foot pipe.

Q.—That would make a total of 3,758 feet of precast reinforced concrete sewer pipe? A.—Yes.

30 Q.—Coming back to the question I have put to you as to the precast pipe used — would this give you the final figures — that which appears hereon? A.—No, that is the price that I bid for furnishing those quantities.

Q.—Is that for the whole job, or just for pipe? A.—This is an itemized price list of the prices per unit, the aggregate of which make the total contract. There are probably 25 items with unit prices.

Q.—That is solely for pipe? A.—No.

40 Q.—That is on page 11 and 12. You told us a minute ago that a final estimate might be a certain number of feet less than the length of pipe? A.—It might be more.

Q.—Do you recollect any figure? A.—No, I do not.

Q.—Would it run considerably different? A.—No, I wouldn't think so.

Q.—How much, about? A.—Of course it would be hard to say — the engineers actually measure the sewer when it is in. This is their estimate. If it differed more than ten or twelve

John J. Creem for plaintiff recalled (direct examination).

feet, it would be unusual if it was laid in the same location as shown in the plan.

Q.—So that would be the amount of pipe you would use within a few feet on this particular sewer? A.—I wouldn't say that would be the amount of pipe, but that would be the amount of sewer I would build.

10 Q.—That is what I mean — 3,758 feet of sewer.

BY MR. O'DONNELL:

Q.—And the price is per foot of sewer? A.—Yes.

BY MR. GOUDRAULT:

Q.—Do you recollect from whom your company bought the pipe? A.—Phillips.

Q.—Did I understand there was only one size of pipe for that sewer? A.—One size of re-enforced concrete pipe.

20 Q.—Of what length? A.—You mean the diameter — that is 8 feet.

Q.—Of the diameter of 8 feet? A.—Yes.

Q.—Do you remember how much you paid for the pipe?
A.—My recollection —

MR. O'DONNELL: Objected to as being entirely irrelevant.

30 MR. HACKETT: Objected to as not being the best evidence.

A.—\$35.00, is my recollection.

Q.—Per foot? A.—Per foot.

Q.—You told us you were the treasurer of Duit, Inc. Who did the work and the construction for the Fisk Avenue sewer? Have you in your possession the books or checks which would show this payment for precast pipe to John M. Phillips? A. I think I have.

40 Q.—The checks? A.—I would have to look that up but I could — books that would tell how much it was, and probably the cancelled checks.

Q.—Would that be much of a job to find it between now and two o'clock? A.—I couldn't even get there between now and two.

Q.—Where is the head office of the Duit Corporation?
A.—203 Argyle Road, where I live. I am not sure whether they are there or at my attorneys. The Government was the last

John J. Creem for plaintiff recalled (direct examination).

one who went through the checks, and I am not sure they gave them all back.

Q.—Would you then kindly look and make inquiries and tell us whether or not you can find those original checks? A. Yes.

Q.—That is not the only job that your company, the Duit Company, did in Queens Borough, is it? A.—No, they did one more.

Q.—And that one is — it was a sewer in Merrick Road. I don't —

Q.—Will you look at this Exhibit C-20 and tell us if this is the contract for the construction of a sewer on Farmers Boulevard and tell us if this is the job you are referring to? A. This is the job.

Q.—You recognize your signature there? A.—Yes.

Q.—In several places, page 36, page 35 and page 32? A. Yes.

Q.—I understand this sewer was also a precast sewer. A. Yes.

Q.—Will you look at page 2 of the said original contract and tell us if that is the pipe that was required by the specifications for the construction of the sewer on Farmers Boulevard? A.—Yes, estimated quantity.

BY MR. HACKETT: There was an alternative specification? A.—Yes.

Q.—That was the monolithic? A.—Yes, one was monolithic.

BY MR. GOUDRAULT:

Q.—This was a precast sewer? A.—Yes.

Q.—I mean your company's? A.—Yes.

Q.—The various sizes of the re-enforced concrete pipe used to appear there on page 2? A.—Yes.

Q.—The said sizes are — 4,957 of 5-foot sewer; 1,213 lineal feet of 4½-foot sewer; 2,300 lineal feet of 4-foot sewer.

Q.—That makes a total of 8,470 feet of precast re-enforced sewer? A.—Yes.

Q.—That is the section that you built? A.—Yes, but it was not built on Farmers Boulevard.

Q.—Yes, but that is the title of it. A.—Yes.

Q.—Your section was not on Farmers Boulevard? A. No.

John J. Creem for plaintiff recalled (direct examination).

Q.—Do you remember from whom you bought the said pipe? A.—From John M. Phillips.

Q.—Do you remember how much you paid for the pipe? A.—Yes.

Q.—How much? A.—A lump sum of \$366,000.

MR. O'DONNELL: Objected to as not being the best
10 evidence.

Q.—Is that the last job that Duit did in the way of building sewers in Queens? A.—Yes.

Q.—Do you know if that was paid to Phillips in cash, or by check, by your company?

MR. COOK: What was paid?

MR. GOUDRAULT: The sum of \$366,000.

20 A.—My recollection was it was paid through an assignee of Phillips.

Q.—Do you remember the name? A.—Surely, Daniel J. Creem. Phillips was not able to finance all the pipe making and he borrowed money and assigned the payments. The checks are drawn to Daniel J. Creem, assignee of Phillips.

Q.—All for the lump sum? A.—No, monthly as it was paid for.

Q.—Will you look for those checks of the Duit Corporation, Mr. Creem, and produce them? A.—Yes, but do I get them back?

30 Q.—Yes. A.—Right away?

Q.—No, not right away. A.—Well, I have litigation against the City on both of those jobs and I must retain my ammunition.

Q.—You look in your office and produce the checks and we will see about it. A.—Can't we photostat them?

Q.—Yes, I think we could do that. What is the name of your attorney? A.—John C. Waite.

Q.—Is he the one attending to your cases with the City? A.—Yes.

40 (Recess from 1 p. m. to 2 p. m.)

John J. Creem for plaintiff recalled (direct examination).

AFTER RECESS, 2.00 p. m.

JOHN J. CREEM, resumed:

DIRECT EXAMINATION BY MR. GOUDRAULT:
(Resumed):

10 Q.—Mr. Creem, continuing your morning examination, I think the last part of that examination was in reference to checks that would have been paid to Duit, Inc. in payment of the precast pipe that was used by that company in the construction of the Farmers Boulevard and Fisk Avenue Boulevard. Now you told us that those checks were not available and that you would do your utmost to find them. When you report on that, will you kindly say if you have them, and we will see if they have to be filed or not. A.—Yes.

20 MR. GOUDRAULT: Otherwise my direct examination of the witness is completed.

MR. HACKETT: I don't think we will cross-examine him until it is completed.

MR. GOUDRAULT: It is completed.

MR. HACKETT: But you are going to bring him back again. As far as I am concerned, I would rather cross-examine after the plaintiff has discovered whether or not he is thoroughly
30 finished with Mr. Creem in chief.

MR. GOUDRAULT: I you prefer to wait, all right.

MR. HACKETT: I would rather wait.

John F. Faber for plaintiff (direct examination).

DEPOSITION OF JOHN F. FABER.

JOHN F. FABER, age 51; residence, 142 Kilburn Road, Garden City, Nassau County; occupation, jeweler, a witness produced, sworn and examined on the part and behalf of the People of the State of New York, the Plaintiff, deposeth and saith as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—Do you know a man named Peter Campbell? A.—Yes, I do.

Q.—When did you first meet him? A.—Well, I couldn't just tell you the date. I met him over in — I couldn't tell you the date.

Q.—No. The place, Mr. Faber? A.—Long Island City.

Q.—Do you know a man also by the name of Fred Curran? A.—Yes, I do.

Q.—Where did you meet him? A.—Over there, at Long Island City.

Q.—Yes. In any particular place at Long Island City? A.—In an office. I am not sure whether it was Mr. Phillips' office, or not. I could not tell you the address.

Q.—I mean, did you meet Curran and Campbell on the same occasion? A.—I think I met them most every time I was there. They were both together.

Q.—But I say, when you first met them? A.—Possibly I did. I couldn't tell you that exactly.

Q.—Do you know a man by the name of Turner? A.—Yes, I do.

Q.—Cliff Turner? A.—Cliff Turner.

Q.—When did you first see him? A.—Mr. Cliff Turner?

Q.—Yes. A.—That is difficult for me, to tell you that. I may have met him at Mr. Phillips' office, possibly at Mr. Phillips' home, I am not quite sure.

Q.—Did you see all these three men for the first time together, or did you see them separately? A.—Possibly separately. I don't think I saw them at any time together.

MR. COOK: Well, this is very interesting, Mr. Commissioner, but I would like Mr. Goudrault to intimate what he proposes to establish by this evidence, because it seems to me to be quite irrelevant and to be leading to nothing.

John F. Faber for plaintiff (direct examination).

MR. GOUDRAULT: I will tell you. This witness is in a position to prove that these men met and bought from him a very fine dinner set for John M. Phillips.

MR. COOK: What has that to do with the case?

10 MR. GOUDRAULT: It will relate to the case differently than you think.

MR. O'DONNELL: Defendants object to the evidence, being altogether irrelevant and illegal.

MR. HACKETT: I join in that objection.

Q.—Do you remember testifying to the facts that we are here for today, or similar facts, Mr. Faber?

MR. HACKETT: Just a minute.

20 MR. GOUDRAULT: Question withdrawn.

Q.—When did you meet Campbell and Curran, about the year? A.—I think it was '27. I am not sure. I think it was '27.

Q.—I see. A.—I think it was '27. All this data that you are asking me for, I have no positive recollection as to just the dates.

Q.—I know, Mr. Faber. I will ask for dates as little as possible. The very fact you have already been called upon to testify previous to this examination.

30 MR. HACKETT: I object —

MR. GOUDRAULT: I am just telling you that in order that you may recollect the facts.

Q.—Did you sell Mr. Campbell any jewelry?

MR. O'DONNELL: The same objection.

Q.—Did you sell him a dinner set?

40 MR. HACKETT: Just a minute. I object to any verbal evidence of the sale of property.

MR. GOUDRAULT: Moveable property, a dinner set.

THE COMMISSIONER: I will take the answer subject to counsel's reservations and objections.

Q.—Did you sell him a dinner set? A.—Yes.

John F. Faber for plaintiff (direct examination).

MR. COOK: I object to this. What possible interest have we knowing whether Mr. Faber sold Mr. Campbell a dinner set?

MR. GOUDRAULT: Well, I have an interest.

MR. COOK: You have an interest, but you have no right to ask questions of that sort, Mr. Goudrault.

10 MR. O'DONNELL: Objected to as being irrelevant and illegal.

MR. HACKETT: I associate myself with that objection.

MR. GOUDRAULT: We will have the Court decide that. When the attorneys have finished their objections, I will go ahead with the witness.

20 THE COMMISSIONER: We will proceed, Mr. Goudrault.

Q.—How much did the dinner set cost?

MR. HACKETT: I object to any verbal evidence as to the cost of the dinner set. It is not the best evidence.

MR. COOK: What has it to do with sewer pipes?

MR. GOUDRAULT: Mr. Faber, they don't want to let you answer, but I will get to that.

30 MR. HACKETT: I object to counsel's observation —

Q.—What did the dinner set cost?

MR. HACKETT: (Continuing) — concerning the manner in which counsel for the defense deem it their duty to carry out their mandate.

THE COMMISSIONER: I wish, gentlemen, you would confine your questions and objections to the matter in hand. Will you proceed with your answer?

40 THE WITNESS (Answering): In the forty thousands. The exact figure I couldn't give you just now.

Q.—Do I understand you to say that you sold it to one of the gentlemen?

MR. COOK: No, he didn't say that.

John F. Faber for plaintiff (direct examination).

MR. GOUDRAULT: Question withdrawn.

Q.—Was it a plated dinner set? A.—Solid gold.

MR. COOK: Ask him what it was, Mr. Goudrault. Don't lead him like that. Ask him what he sold, and whom he sold it to, and how much he got for it, and let's have it through with.

10 Q.—To whom did you sell it, Mr. Faber?

MR. HACKETT: Objected to, for reasons already given; not the best evidence.

MR. GOUDRAULT: Mr. Cook, do you object to it?

MR. O'DONNELL: Same objection.

Q.—Now, will you answer it? A.—I sold it to Mr. Campbell.

20 Q.—What is his first name? A.—Peter.

Q.—Who was with him when you sold him that dinner set?

MR. O'DONNELL: Same objection.

A.—I don't think there was anyone with him.

Q.—Did Peter Campbell tell you the purpose of the purchase he was making?

MR. HACKETT: Excuse me —

30 MR. GOUDRAULT: Question withdrawn.

Q.—Did you state the place you met these men in Long Island? A.—In their office. I couldn't just tell you the number, but they had an established office there. It was in that office.

Q.—On what street? A.—I think it was in Queens Boulevard.

Q.—And the office of whom? A.—I think it was the office of some insurance company. "Mortgage company", was on the window.

40 Q.—To whom did you deliver the said set?

MR. O'DONNELL: Same objection.

A.—I haven't delivered it to anybody. It was not delivered to anybody. No one ever received it.

MR. GOUDRAULT: Your witness.

MR. HACKETT: No cross-examination.

John F. Faber for plaintiff (direct examination).

MR. COOK: No cross-examination.

THE WITNESS: I want to correct my answer about delivering the set. It was taken over to a safe deposit vault, where it is now.

Q.—To whom did you deliver the said set? A.—It has never been delivered to any person, any individual; but the son, who died, it was taken over to the safe deposit vault, and I think it was put in his name, and it is in the vault now.

MR. O'DONNELL: Same objection.

Q.—Son of whom? A.—Son of John M. Phillips.

Q.—You have been paid for it? A.—Oh, yes.

Q.—What is the name of the trust company where it was delivered?

MR. O'DONNELL: Same objection.

20 A.—Safe Deposit Company of New York, 149 Broadway.

Q.—May I ask you who asked you to deliver it there?

MR. O'DONNELL: Same objection.

A.—Well, someone from the office called me up and asked me whether I could have it sent.

Q.—You don't remember who it was? A.—No, I don't remember. We just took it to the vault, and there it has been ever since.

30 Q.—Do you remember seeing that vault? A.—Oh, yes; when the set was delivered to me, I took it over and put it in the vault, and there it is.

BY MR. HACKETT:

Q.—And that was after the death of Phillips? A.—I think it was before.

Q.—Well, do you know? A.—Yes. It was before his death.

40 Q.—When did you deliver it? A.—I would have to get you that date.

Q.—Then you don't know? A.—I don't know just the date, no, sir.

Q.—Did you get a receipt for it? A.—Yes, sir.

Q.—Where is the receipt? A.—I haven't got it here.

Thomas F. Purcell for plaintiff (direct examination).

BY MR. GOUDRAULT:

Q.—You have the receipt in your file? A.—I believe I have. I have the receipt, or young Phillips had the receipt. When I relinquished the thing, it was in their hands; it wasn't in mine. I was glad to get rid of it.

10 MR. GOUDRAULT: Your witness.

(No cross-examination.)

MR. GOUDRAULT: All right; thank you.

DEPOSITION OF THOMAS F. PURCELL.

20 THOMAS F. PURCELL, age 53; residence, 15 Newton Avenue, Baldwin, Long Island, Nassau County; occupation, surety bonds and insurance, a witness produced, sworn and examined on the part and behalf of the People of the State of New York, the Plaintiff, deposeth and saith as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—How long have you been in the insurance business and bonding business? A.—Since 1903.

30 Q.—Did you know, in his lifetime, one John M. Phillips?
A.—Yes, sir.

Q.—Did you know Maurice E. Connolly, President of the Borough of Queens? A.—Yes, sir.

Q.—And did you know Mr. Seely, the Assistant Engineer of the Sewer Department? A.—Slightly.

Q.—Do you remember when you first made the acquaintance of John M. Phillips, Mr. Purcell? A.—I just can't recall now when I first made his acquaintance.

40 Q.—Some years ago, anyway; many years ago? A.—Yes, I would say it was about 1908 or 1909.

Q.—Do you know a man named Joseph L. Sigretto? A. Yes, sir.

Q.—Do you know his business? A.—General contractor.

Q.—Any special line of contracting? A.—Construction of sewers and bridges.

Q.—Do you know if he is engaged now in business? A. Yes, sir, he is.

Thomas F. Purcell for plaintiff (direct examination).

Q.—How long have you known Joseph L. Sigretto?

MR. HACKETT: Objected to as irrelevant.

THE COMMISSIONER: You will answer the questions subject to counsel's reservations and objections, if you please, Mr. Purcell.

10 THE WITNESS: What was the question?

Q.—How long have you known Joseph L. Sigretto? A. Since 1907.

MR. O'DONNELL: Same objection.

Q.—Where did you first know him? A.—I met him in Brooklyn for the first time.

20 Q.—Any special place there that you would recollect? A. Yes; but the place where I met him has long passed away and gone. It was in an office that was conducted by a man by the name of Kelly, William Kelly.

MR. COOK: When was this?

MR. HACKETT: 1905.

THE WITNESS: No. 1907.

MR. COOK: 1907. What has this to do with the charges against Mr. Phillips?

30 MR. GOUDRAULT: There are no charge against Mr. Phillips.

MR. O'DONNELL: We object to this line of evidence as being totally irrelevant.

Q.—Did you have any business relations with Sigretto?

MR. O'DONNELL: Same objection.

40 Q.—(Continuing) — during the years 1916, 1917 up to 1927?

MR. O'DONNELL: Same objection.

THE COMMISSIONER: The answer will be taken subject to counsel's reservations and objections.

A.—Yes, I had business relations with Mr. Sigretto.

Thomas F. Purcell for plaintiff (direct examination).

Q.—No details, but just the nature of such business, Mr. Purcell? A.—Furnishing surety bonds and various kinds of insurance policies.

Q.—Furnishing surety bonds for what, Mr. Purcell? A. Guaranteeing the completion of contracts.

Q.—What kind of contracts? A.—Principally sewer contracts.

10 Q.—Where?

MR. O'DONNELL: Same objection.

THE WITNESS: Well, now, let me understand it, gentlemen; these gentlemen object. Now, am I to answer as soon as they object?

THE COMMISSIONER: You are to answer all questions unless I tell you to stop.

20 THE WITNESS: I see. Now, the question is "Where"?

Q.—Yes. A.—Well, principally in the Borough of Queens.

Q.—I would like to fix the date as approximately as possible, Mr. Purcell, of your writing bonds for Sigretto for sewer construction work in the Borough of Queens. So would you remember the first bond that you did guarantee for them by your company who guaranteed for Mr. Sigretto?

30 MR. HACKETT: The best evidence of the date of the bond, Mr. Commissioner, I submit, is the production of the bond.

THE COMMISSIONER: I will allow the witness to answer to the best of his recollection, subject to your objection.

A.—I can't supply the exact date. I can supply an approximate date.

Q.—To the best of your recollection, what date was that dated?

MR. O'DONNELL: Same objection.

40 A.—Some time during the year of 1907.

Q.—Do you remember the construction of what sewer?

MR. COOK: Mr. Commissioner, I renew the objection as to the irrelevancy of this evidence. What possible connection there can be between the transactions of Mr. Sigretto and this gentleman in 1907, with the charges that are advanced here against the Estate of the late Mr. Phillips, I don't see. Conse-

Thomas F. Purcell for plaintiff (direct examination).

quently I submit that this evidence is entirely illegal and irrelevant, and we are just wasting time.

MR. GOUDRAULT: It is just to refresh the witness's memory, Mr. Cook.

10 MR. COOK: However, I bow to your Honor's ruling in the matter.

THE COMMISSIONER: I will accept it subject to your objection.

MR. GOUDRAULT: Will you read the question?

(Question read by Clerk).

THE WITNESS (Answering):—The Panama Street sewer, Borough of Queens.

20 Q.—Do you personally know if Sigretto then continued to build sewers in Queens, or not?

MR. O'DONNELL: Same objection.

A.—Did he what?

Q.—Did he continue to build sewers in the Borough of Queens after the Panama Street sewer?

30 MR. HACKETT: Inasmuch, Mr. Commissioner, as the witness has testified that the Panama Street sewer was in 1907, and as it is ten years, at least, before any of the subject matter of the action in this suit, I must object to it as irrelevant.

THE COMMISSIONER: He may answer the question subject to counsel's reservation.

Q.—Did you get that question, Mr. Purcell? A.—The, Mr. ✓ Stenographer?

(Question read by Clerk).

40 A.—Yes.

Q.—Up to what time?

MR. O'DONNELL: Objected to as not being the best evidence. Mr. Sigretto should be called.

MR. GOUDRAULT: The best evidence will come later.

MR. O'DONNELL: Then why waste time on this?

Thomas F. Purcell for plaintiff (direct examination).

A.—Up to about 1917 or 1918.

Q.—Did the time come when he stopped building sewers in Queens?

MR. O'DONNELL: Same objection. This is entirely irrelevant.

10 Q.—Did you know a contractor named Joseph DeCola?

A.—Yes.

Q.—Did you ever know a contractor named John Martino?

A.—Yes.

Q.—When did you know them, and who were they, just in a word? A.—Both of them formerly worked for Mr. Sigretto.

Q.—They were at one time with the Joseph L. Sigretto Company? A.—Yes, sir.

Q.—Do you know what were their connections with that company?

20 MR. O'DONNELL: Objected to as irrelevant.

A.—They had a small interest in the company; and they were superintendents.

Q.—Did the time come when they were no longer in that company? A.—Yes, sir.

MR. O'DONNELL: Same objection.

30 MR. HACKETT: Mr. Commissioner, I realize the difficulty of your position, but where a thing is patently outside the record, useless, and of no possible value, may we not have a direction from you that we keep within the written pleadings? Here we are called upon to discuss the relationship between one Sigretto and his hired men, and the contracts that they may have got from the Borough of Queens after they ceased to be in the employ of Sigretto. If my friend will point to the paragraph in his declarations which makes that relationship even remotely relevant, I will be glad of the information.

40 THE COMMISSIONER: This question relates to whom, Mr. Joseph DeCola and who else?

MR. GOUDRAULT: Martino, and Sigretto. In answer to Mr. Hackett, I may state that paragraph 9 of the declaration relates to the facts that we are trying to get out from the witness.

THE COMMISSIONER: Well, I will allow the answer subject to counsel's objections and reservations.

Thomas F. Purcell for plaintiff (direct examination).

Q.—Will you tell me about what time it was that they ceased having connection with Joseph L. Sigretto & Company?

A.—No, I don't recall now.

Q.—Was it before or after 1917? A.—My best recollection is that it was about 1918. It is possible that it was the latter part of 1917.

10 Q.—Did you ever have any occasion to talk to John M. Phillips about DeCola and Martino?

MR. O'DONNELL: Objected to.

MR. HACKETT: I object to any evidence of conversations between the witness and the deceased, Phillips.

THE COMMISSIONER: I will allow the answer subject to counsel's objections and reservations.

20 MR. COOK: I join very strongly in that objection, urging that any such evidence is entirely illegal and improper; first, because Mr. Phillips is dead, and it is not possible to obtain any contradiction; and, secondly, because it is irrelevant.

THE COMMISSIONER: The answer will be taken subject to counsel's objections, exceptions and reservations.

30 MR. COOK: I would ask, Mr. Commissioner, as a favor, if my objection can be taken, as far as this witness's answer is concerned, as applying to his entire evidence, because I don't wish to take up time by repeating the same objection over and over again.

MR. GOUDRAULT: Will you read the question?

(Question read by Clerk).

A.—Yes.

Q.—Can you fix the time, as near as you can A.—No, I can not.

40 Q.—Do you know of your own knowledge whether or not DeCola and Martino had bid upon a sewer job in Queens Borough?

MR. O'DONNELL: Objected to as not being the best evidence of any such bid.

A.—They did bid on a sewer job in the Borough of Queens.

Q.—How did you happen to know anything about De Cola and Martino bidding for the construction of a sewer in Queens

Thomas F. Purcell for plaintiff (direct examination).

Borough, Mr. Purcell? A.—Because I had promised to get them a bond if they were low.

MR. HACKETT: I object to all this evidence as irrelevant.

THE COMMISSIONER: The objection will be noted.

10 Q.—Would you remember the sewer it was that DeCola and Martino did bid on, Mr. Purcell?

MR. O'DONNELL: Same objection.

A.—Collins Avenue.

MR. COOK: I object to that answer on the ground that it is absolutely irrelevant, outside the issues in this case, and that we can not ask this witness to go into any question concerning
20 Collins Avenue; and not only that, it is not the best evidence.

THE COMMISSIONER: The witness's answer will be taken subject to your exceptions and reservations and objections.

Q.—Do you know about when that was, Mr. Purcell? A. I can't fix any date, Mr. Commissioner. The records speak for themselves.

Q.—Yes. We will produce those records. We will show them to you, if they will help you. Do you remember whether they were low bidders on the job, of your own recollection? A.
30 Yes.

MR. O'DONNELL: Same objection.

THE COMMISSIONER: He may answer, subject to counsel's objection.

Q.—With reference to the Collins Avenue job, whatever the date was, did you ever have any talk or did you listen to words of John M. Phillips about DeCola and Martino?

40 MR. O'DONNELL: Objected to as illegal and irrelevant.

MR. HACKETT: Same objection.

THE COMMISSIONER: He may answer, subject to the objections.

A.—Yes. I listened to advice from Mr. Phillips along those lines.

Q.—Was it after or before DeCola and Martino were bid-

Thomas F. Purcell for plaintiff (direct examination).

ding on the Collins Avenue job? A.—After they bid on the job and were found to be low.

Q.—Will you look at Exhibit C-9, which is the original contract No. 47340, —

MR. COOK: Let me see it after you put your question, Mr. Goudrault.

10 MR. GOUDRAULT: Yes.

Q.—I ask you, Mr. Purcell, to look at this Exhibit C-9, which is an original contract between the City of New York and Joseph L. Sigretto & Company for the construction of a sewer in Collins Avenue. The date of the award there appears to be April 10, 1917. And will you state to me if you had anything to do in connection with securing this bond for Joseph L. Sigretto & Company?

20 MR. O'DONNELL: Same objection.

A.—I don't recall at this time having had anything to do with the bond in connection with this contract.

Q.—All right. We will get to that later on. A.—There is nothing there that I can identify myself with it.

Q.—All right, Mr Purcell Now you spoke a minute ago of a conversation you had with John M. Phillips. A.—Yes.

Q.—Can you give us the location of that now? A.—Location of the conversation?

30 Q.—Yes, the place where you had that conversation with Mr. Phillips as regards DeCola and Martino. A.—No. I would have to have something to refresh my memory on that, Mr. Commissioner.

Q.—Where was your office then, at the time? A.—In the Bridge Plaza Building, Long Island City.

Q.—Long Island City. Do you remember meeting Phillips at your office in Long Island City, or Bridge Plaza Building, as you state? A.—He came into my office several times.

Q.—Several times? A.—Yes.

40 Q.—And at one time you told us, Mr. Purcell, that he spoke to you about DeCola and Martino, is that right?

MR. O'DONNELL: Same objection.

A.—Yes. But I couldn't recall now whether it was in my office or on the street.

Thomas F. Purcell for plaintiff (direct examination).

Q.—Well, whether it was in your office or on the street, do you recollect the matter sufficiently to tell us what took place then?

MR. O'DONNELL: Same objection.

A.—I testified to all these things in the Connolly trial.

10 Q.—But this is a new trial altogether. I know it is not very pleasant for you to be here, but I am trying to get the facts, please.

THE COMMISSIONER: You will have to give the answers, whatever they are, to the best of your knowledge, and the truth.

A.—Well, the best of my knowledge and belief is that Mr. Phillips either came to my office or met me on the street, or in the building, maybe in the hall.

20

MR. GOUDRAULT: I see.

MR. HACKETT: I object to all conversations with the deceased Phillips.

MR. COOK: I join in the objection.

THE COMMISSIONER: Your objections will be noted, and the answers taken subject to them.

30 Q.—Would you remember the year now? A.—No, I couldn't recall the year. But it was during the time that DeCola and Martino bid upon that particular contract. You could identify the time by the records of the Borough of Queens.

Q.—Would you tell us what Phillips said to you and what you said to him with reference to DeCola and Martino with reference to the Collins Avenue sewer job?

MR. O'DONNELL: Same objection.

40 MR. COOK: I would ask Mr. Goudrault not to bring in conversations of this character which, I submit, are entirely illegal, for the reasons above stated. We should not have the record loaded up with irrelevant and illegal and improper evidence, and Mr. Goudrault knows perfectly well what is right and what is wrong; and to bring in evidence of conversations with a dead man whose estate is being attacked, is entirely improper.

MR. GOUDRAULT: What is the question?

Thomas F. Purcell for plaintiff (direct examination).

(Question read by Clerk).

MR. COOK: Also irrelevant.

THE WITNESS: Well, without fixing any date —

10 ✓ Q.—Sure, I understand that. A.—To the best of my knowledge and belief, to make it as brief as possible, my recollection is that DeCola and Martino bid upon this job, and were low bidders, and they came to me and said “We are too low, and we don’t feel that we can go ahead with this work”. I had promised them that I would get them a surety bond. That was startling information to me. And I decided that the best thing they could do was to try to have the contract rejected. So my office being in Long Island City, and having spoken to a number of people about how you go about it to have a job rejected, probably Mr. Phillips heard that and he came to me and solicited me to give him the job having the job rejected.

20 Well, I had no alternative. I said “Why, go ahead and have it rejected.”

MR. O’DONNELL: This is all under the objection.

THE COMMISSIONER: The objection will be noted as stated.

THE WITNESS: I had in mind, gentlemen, the loss that might occur to my company.

30 MR. GOUDRAULT: Sure.

MR. COOK: Let him alone now, Mr. Goudrault. Let the witness alone.

Q.—Do you know as a matter of fact, whether the job was rejected?

MR. O’DONNELL: Objected to as not being the best evidence.

40 THE WITNESS: The job was finally rejected.

Q.—Did you have any subsequent conversations with John M. Phillips?

MR. O’DONNELL: Same objection.

A.—Well, he came into my office and informed me that it had been rejected.

Thomas F. Purcell for plaintiff (direct examination).

Q.—Do you remember the words, do you recollect the words that Phillips used in stating that? A.—Yes, I remember them very distinctly. He said “The job is out. Kicked out”, such a remark of that kind.

Q.—Was that long after? A.—No, not very long.

Q.—Can you state the date? A.—No, I could not fix the date.

10 Q.—Do I understand you to say that Phillips reported to you that the job had been rejected? A.—Yes.

Q.—Do you remember where he told you that? A.—I don't remember whether he told it to me in my office, or on the street.

Q.—Do you remember the substance of the conversation you had with Mr. Phillips then on that special occasion?

MR. O'DONNELL: Same objection.

20 MR. HACKETT: I object, too.

A.—Well, Phillips was a man who, of course, I would not believe even under oath, so —

MR. HACKETT: Just a minute.

THE WITNESS: So I checked up on that conversation.

MR. GOUDRAULT: Will you let the witness answer?

30 MR. HACKETT: I object, Mr. Commissioner.

THE COMMISSIONER: Let him answer, and then put in your objection, Mr. Hackett.

MR. HACKETT: It is to prevent the evidence going on the record that I wish to make the objection.

THE WITNESS: Well, I am only telling the truth.

THE COMMISSIONER: Make your objection, and I will give you a ruling on it.

40 THE WITNESS: I am only telling the truth. I knew the men, you didn't.

MR. O'DONNELL: That is not an answer to the question, Mr. Commissioner.

MR. HACKETT: We have a question which is propounded, and without any reason the witness launches into a

Thomas F. Purcell for plaintiff (direct examination).

condemnation of the credibility of the deceased. I ask that the answer be struck from the record as not being elicited by the question propounded.

10 MR. COOK: My objections apply equally with those of Mr. Hackett to a statement of this character. It is quite impossible for us to check up any such statement as might be made at the present time, owing to the death of Mr. Phillips; and I submit that they are entirely illegal and improper, and should not be allowed to remain in the record.

THE COMMISSIONER: Your objections are noted, and the witness may proceed with the answer to the questions.

Q.—Just state to us the substance of your conversation?
A.—I checked up on Mr. Phillips' conversation regarding the job being rejected, and found out that it was true.

20 BY MR. HACKETT:

Q.—It was a matter of public notoriety, wasn't it? A. Not at that time.

Q.—Anybody who wished to inquire, could find out? A. Nobody inquired at that time.

Q.—Anybody who wished to inquire. A.—But they didn't.

MR. O'DONNELL: How do you know?

30 THE WITNESS: I was on the ground.

MR. O'DONNELL: You would not know if other people had been there before you, would you?

THE WITNESS: My office is in the neighborhood, and I would have heard of it.

BY MR. GOUDRAULT:

40 Q.—I think I have asked you, Mr. Purcell, to tell us if John M. Phillips made a report to you about the job being rejected, did I not? A.—Yes, you did ask me that.

Q.—And what was your answer?

MR. HACKETT: He has answered that twice, Mr. Goudrault.

MR. HACKETT: A third time?

Thomas F. Purcell for plaintiff (direct examination).

Q.—A third time, stating if you remember the words that Mr. Phillips might have used, if you recollect, Mr. Purcell?

MR. HACKETT: He has given that to you. He said "The job is out", and the job is "kicked out". Now, that doesn't make it any better, giving it three times.

10 MR. GOUDRAULT: Mr. Hackett is right. Question withdrawn, Mr. Purcell.

Q.—After you satisfied yourself that the job was rejected, did you have any more conversations with John M. Phillips?

MR. O'DONNELL: Same objection.

THE COMMISSIONER: You may proceed.

A.—Mr. Phillips then asked me to introduce him to Joseph L. Sigretto.

20 Q.—What did you say to that, Mr. Purcell? A.—I said I would.

Q.—Where was Joseph L. Sigretto at the time? A.—He was in East Orange, New Jersey.

Q.—Did you talk to anybody else about getting them out of their bids before you talked to Phillips? You can answer that just yes or no.

MR. COOK: You should not tell the witness what to say.

30 MR. GODRAULT: Either one of the words.

A.—My recollection is that I did ask a man, who was a political leader.

Q.—What is his name? A. (Continuing:—How you could get a bid rejected where a man was going to lose money on the job.

Q.—What was that man's name? A.—I think it was Keating.

40 Q.—Do you remember what was his connection with a political party? A.—I don't know what his official connection was, but he was some sort of — the leader of the Assembly District.

Q.—What party? A.—Democratic.

Q.—What did you do after Phillips had told you that he wanted you to introduce him to Sigretto? A.—I told him I would do it.

Q.—That you would do it? A.—Yes.

Thomas F. Purcell for plaintiff (direct examination).

Q.—Where? A.—In East Orange, N. J.

Q.—At exactly what place in East Orange, N. J., Mr. Purcell? A.—That I don't recall. He was doing — he was constructing a sewer in East Orange, New Jersey, at that time; and it was along the line of the work, or in his office, or may have been in his office. That I just don't know, somewhere.

10 Q.—I see. Who went with you? Anybody? A.—No one outside of Mr. Phillips.

MR. COOK: You and Phillips were alone?

THE WITNESS: Yes.

MR. GOUDRAULT: Until they met Mr. Sigretto.

Q.—Was this trip to East Orange before or after the rejection of the bid which we have spoken of? A.—To the best of my recollection it was after the bids were rejected.

20 Q.—You mean after the formal rejection? A.—No, not after the formal rejection, but after Mr. Phillips notified me that it was rejected, and I checked up on it and found out it was so.

Q.—And what happened when you took Phillips over to East Orange? A.—Well, I simply introduced him to Mr. Sigretto.

30 Q.—Was anything else there at the time, that you recollect, Mr. Purcell? A.—I don't recall anything, unless you have something there that might refresh my memory. There have been a great many people — there was a man by the name of Decker, and Sigretto himself, and others, that testified in this proceeding, and there may be something on the record that I finally knew about, and it might refresh my memory. But I can't recall at this time.

Q.—Was there any conversation between Phillips and Sigretto after you introduced him?

MR. HACKETT: Same objection.

40 THE COMMISSIONER: The answer will be taken subject to counsel's objection and reservation.

A.—There is no doubt there was some conversation, but I don't recall what the conversation was.

Q.—You didn't take part in it, naturally? A.—I may have listened.

Q.—Do you know how long it lasted? Would you recall that? A.—Well, we went over there about noon time. We didn't

Jefferson J. Reilly for plaintiff (direct examination).

get back to New York until late in the evening, about half past six.

Q.—Did you ever see them together again, John M. Phillips and Joseph L. Sigretto? A.—Oh, yes.

Q.—When was that?

MR. O'DONNELL: Same objection, irrelevant.

10 A.—Shortly after the introduction, Mr. Sigretto came back to Queens again to bid upon sewer work.

Q.—And what happened? A.—Mr. Phillips was usually around his office where he was working.

Q.—Did you happen to go again there with M. Phillips at Mr. Sigretto's place? A.—In East Orange, or —

Q.—Yes, in East Orange. A.—My recollection is that I made several trips with Mr. Phillips to East Orange prior to the time that they went in business.

20 Q.—Do you remember if Sigretto and Phillips had any conversation the second time Phillips and you went to East Orange to meet Sigretto? A.—No; I don't recall any conversation. I could not testify now as to anything that was said.

MR. GOUDRAULT: Mr. Purcell, may I ask you to stand side for a few minutes? I want to have Mr. Reilly come in with those bid records.

30

DEPOSITION OF JEFFERSON J. REILLY.

JEFFERSON J. REILLY, age 54; residence, 2801, 161st Street, Flushing, Long Island, Queens County; occupation, contract clerk office of the President of the Borough of Queens, a witness produced, sworn and examined on the part and behalf of the People of the State of New York, the Plaintiff, deposeth and saith as follows:

40

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—How long have you held that position of contract clerk, in what department? A.—President of the Borough of Queens' office.

Q.—How long have you held that position? A.—You mean in the employ of the City, or this particular job?

Q.—As contract clerk. A.—I think about 1919 I took it over.

Jefferson J. Reilly for plaintiff (direct examination).

Q.—That would be about 11 years then? A.—That particular job, yes, sir.

Q.—And that is a civil service position? A.—Civil service, yes, sir.

10 Q.—There was put in evidence a little time ago, a contract between Joseph L. Sigretto & Company and the City of New York for the building of a sewer on Collins Avenue, this contract being in April, 1917, and produced as Exhibit C-9. Have you investigated the records of your office, and are you prepared to tell us whether or not the award of this contract to Sigretto for the Collins Avenue sewer was on the first advertisement let, or whether there had been previous advertising and rejection of the bids? A.—I couldn't say.

Q.—Have you made a search in your records, Mr. Reilly, concerning this? A.—Yes, sir.

20 Q.—Have you got a memorandum of the facts? A.—Yes, sir.

Q.—Now that you have your memorandum, will you refresh your memory and answer my question, if you please. A. Contract No. 47340.

Q.—Eight. A.—Collins Avenue. Bids opened April 4, 1917, our records show.

30 Q.—What does the record show there concerning, — was that the first time the bids were opened? A.—The first time? That was not the question that they sent a memo. on to me now. This was a request made by this office for me to look up this date, which I did, but they did not ask me whether it was or not that particular date, or whether it was rejected.

Q.—All right. We will get what we want. You have seen a book like this before, Mr. Reilly? A.—Oh, yes, sure.

Q.—This book has been filed in the record as Exhibit C-12. And we call that the City Record. A.—Yes, sir.

40 Q.—Now, will you look at page 6004 of the City Record, Saturday, August 5, 1916, and will you please, after examining the said page, see if there is any reference there to the Collins Avenue contract, of which you are speaking? A.—Yes. Known as Ad. No. 6, I see a contract for construction of sewer in Collins Avenue from Mount Olivet Avenue to Adriatic Street.

Q.—By reading the said notice, are you in a position to state if it was for the construction of a sewer? A.—If I make a comparison, I will be able to tell. (Witness makes comparison). Yes, sir, I would say that is it.

Q.—What is it? A.—I would say that this particular contract was the same as this (indicating).

Jefferson J. Reilly for plaintiff (direct examination).

Q.—You mean that this is a notice, this is a notice, is it?
A.—This is a public advertisement that must appear in the City Record ten days, irrespective of Sundays and holidays, for the award of a contract. And it has got the same title as that (indicating).

10 Q.—Now, by looking through the City Record, have you any means to tell the Commissioner whether or not bids were received after this advertisement had been published? A.—For the same particular work?

Q.—Exactly; for the same particular work. A.—Bids were opened for Collins Avenue April 4, 1917.

20 Q.—No, no. You are wrong. Will you state to us by reading page 6004, what is the date according to the City Record of the advertisement for the construction of a sewer on Collins Avenue? Tell us the date of the advertisement? A.—The date of the opening, — the date of the City Record here, Saturday, August 5, 1916.

Q.—Which is ten days, at least ten days previous to the opening of the bids, is that right? A.—Yes.

Q.—Now, the said advertisement having been published on the 5th August, 1916, the bids were opened, tell us on what date? A.—Now, wait a minute. Don't get me confused on this thing.

30 Q.—All right. A.—I don't want to get you to misunderstand this thing. This was Saturday, August 5th, we would say, and we would open them on the 16th. That wouldn't say that it had not been published ten days previously, because this is August 5th, the date of publishing, and this is a daily publication.

Q.—Anyway, that is a notice of advertisement. A.—For the opening of bids for that particular work.

Q.—And they were opened on what date? A.—This date. August 16th.

Q.—1916? A.—1916.

Q.—Now, what do the records show? A.—What do the records show?

40 Q.—Yes, as regarding bidders after this advertisement had been published? A.—I don't think I have a record of that particular job, because I was not instructed to get that. But I have got a record of another one, Collins Avenue, that was opened up at a later date.

Q.—Do you know if after bids had been obtained, the bids were rejected? Would your records show? A.—Would they show?

Q.—Yes. A.—Yes, I think they do.

Jefferson J. Reilly for plaintiff (direct examination).

Q.—You know Maurice E. Connolly? He was the President of your Borough of Queens, wasn't he, Mr. Reilly? A.—Yes, sir.

Q.—Will you take communication of a letter dated the 29th of November, 1916, signed by, or apparently signed by, Maurice E. Connolly, and addressed to the then Comptroller of the City of New York, and state whether or not you can tell us exactly what this letter means?

10

MR. O'DONNELL: I object to any verbal evidence of the letter. It speaks for itself. It is the best evidence.

A.—Yes. This is a notice from the Borough President to the Comptroller notifying that he had rejected all bids on August 16, 1916.

MR. GOUDRAULT: I now offer in evidence this letter as Exhibit C-21.

20

(The letter as thereupon examined by defendants' counsel).

(The said letter was thereupon received in evidence and marked Plaintiff's Exhibit C-21, of this date).

Q.—Do you know this signature?

MR. COOK: I object to the letter and any verbal evidence in regard thereto, inasmuch as the witness is entirely incompetent to testify, and furthermore, verbal evidence is irrelevant. The document speaks for itself, such as it is.

30

Q.—The purpose of my last question, Mr. Reilly, was not to tell us what the letter contains, but can you state to us the practice followed by the Borough President when bids are opened? A.—Yes.

Q.—In your official capacity, can you tell us? You are the contract clerk. A.—Yes, sir.

Q.—That is the purpose of my question. A.—Well, there is either an award or a rejection made of it.

Q.—And this is a rejection? A.—This is a rejection.

40

Q.—Will you further look into your records and find out what were the bids that were opened, the name of the bidders, with the amount of their bids, that were opened on August 16, 1916, with reference to the Collins Avenue contract? A.—Will I look for it?

Q.—Yes, and take note of it. A.—Yes, if you will give me a memorandum.

Jefferson J. Reilly for plaintiff (direct examination).

Q.—Because we are told that you are the witness who will have to produce those bids and summary of bids. A.—Yes, I think that from this last investigation, I imagine some of them have not been returned from Mr. Buckner yet, that were used at that trial.

10 Q.—We will let you have those. Now, will you look at this book, the City Record, volume for December, 1916, at page 8881, and see if there appears a notice to contractors for the construction of a sewer on Collins Avenue, Borough of Queens? A.—Yes, sir.

Q.—Will you then produce as Exhibit C-22, the said page 8881? A.—Can I produce it?

Q.—Yes, will you produce it.

MR. GOUDRAULT: I produce the whole book.

20 (The said City Record was thereupon received in evidence and marked Plaintiff's Exhibit C-22 of this date).

MR. O'DONNELL: Defendants object to the production of this book as being irrelevant and illegal.

BY MR. GOUDRAULT:

Q.—Will you bring us the name of the bidders on that second advertisement of the Collins Avenue contract, and the amount of their respective bids? A.—Yes, if you will just give me a memorandum of it. What date is it, please, now?

30 Q.—According to your evidence, in the City Record the first advertisement for the Collins Avenue would be August 5th, 1916. A.—Yes.

Q.—Now, will you look at this letter dated January 16, 1916, and state in a word what it is. Although the letter speaks for itself, I want to get that statement from you.

(Defendants' counsel examines said letter).

MR. HACKETT: All right.

40 Q.—What is the answer to the question? A.—That is a form gotten out by the Bureau, signed by the Borough President, showing that all bids have been rejected on a particular contract.

MR. COOK: Is that the Collins Avenue, Mr. Goudrault?

MR. GOUDRAULT: Yes.

Jefferson J. Reilly for plaintiff (direct examination).

MR. O'DONNELL: Defendants object to the production of this letter inasmuch as the witness is incompetent to produce it.

MR. GOUDRAULT: Now, I produce a C-23, the original of this letter.

10 MR. COOK: I object to it as being illegal and irrelevant and having no bearing on the issues.

(The said letter was thereupon received in evidence and marked Plaintiff's Exhibit C-23 of this date).

BY MR. GOUDRAULT:

20 Q.—By reading the letter you will see that the bids were rejected by the Borough President, bids that had been opened in his office on December 29, 1916. And this letter is dated January 16, 1916. A.—That is an error, I believe.

Q.—Yes. It should have been? A.—1917.

MR. O'DONNELL: I object to any verbal evidence as to this, inasmuch as the witness did not write the letter and does not know personally whether it is an error or not.

30 Q.—All right. Now, will you look at the City Record, edition of the 24th of March, 1917, where there appears also an advertisement for the construction of a sanitary sewer on Collins Avenue? A.—Yes, sir.

MR. GOUDRAULT: I now offer as evidence City Record, page 2087, as Exhibit C-24.

MR. O'DONNELL: I object to the production of this document on the ground that it is entirely irrelevant and illegal.

(The said City Record was thereupon received in evidence and marked Plaintiff's Exhibit C-24, of this date).

40 Q.—Now, will you also give us the names of the bidders after that advertisement as it was put in the City Record, and the amounts of their respective bids?

MR. O'DONNELL: Objected to as irrelevant, and not being the best evidence as to any bids may have been made.

THEE WITNESS: What is the date of that?

Jefferson J. Reilly for plaintiff (direct examination).

MR. GOUDRAULT. March 24, 1917. And the bids were opened?

THE WITNESS: April 4, 1917.

10 Q.—Mr. Reilly, will you please look at the City Record, page 5218, dated October 11, 1919, and state if you see there an advertisement calling for the construction of a sewer on Linden Avenue, in the Borough of Queens? A.—Yes, sir.

MR. GOUDRAULT: I offer now as evidence page 5218 of the City Record, dated October 11th, 1919.

MR. O'DONNELL: Same objection, inasmuch as it is not the best evidence.

20 Q.—Now, will you look up your records and give us the names of the bidders and the amount of their respective bids according to this? A.—Yes.

MR. O'DONNELL: Defendant's objection, inasmuch as it is not the best evidence of any bids that may have been made.

Q.—Have you that reference now? A.—Yes, I have a memo. of that.

Q.—Will you give us first of all, the date of the opening of the bids for the Linden sewer?

BY MR. COOK:

30 Q.—These bids were in writing, Mr. Reilly? A.—They are filled in on regular bid sheets.

Q.—Yes. And signed by the men who tender? A.—Yes, sir.

MR. COOK: Well, I object to this evidence as not the best evidence.

MR. HACKETT: So do I.

40 THE COMMISSIONER: The answer will be taken subject to your exceptions and reservations and objections.

MR. GOUDRAULT: All right.

MR. COOK: And also as irrelevant.

THE COMMISSIONER: Your further objection will be noted.

Jefferson J. Reilly for plaintiff (direct examination).

(The said City Record was thereupon received in evidence and marked Plaintiff's Exhibit C-25 of this date).

BY MR. GOUDRAULT:

Q.—What is the date of the opening of bids? A.—November 19, 1919.

10 MR. COOK: Mr. Reilly, what are you referring to there in your hand? What is that? Is that an official paper?

THE WITNESS: No. This is a copy taken from the ledger.

MR. COOK: I object to the witness referring to a document that is not official.

THE COMMISSIONER: Let him answer, subject to counsel's objection.

20

BY MR. GOUDRAULT:

Q.—By reading in this City Record, or this Exhibit C-25, will you tell us on what date, according to this notice, bids were supposed to be opened? A.—Thursday, October 9, 1919.

Q.—Now, did you look into the original record? A.—Did I look into it?

Q.—Yes. A.—Just looked at the ledger.

30 Q.—And the information that you have there is from what ledger? A.—From the contract ledger.

Q.—The contract ledger? A.—Yes.

Q.—Is that a public document of your department? A. Yes, sir.

MR. O'DONNELL: We object to any evidence with regard to this without the production of the document.

Q.—I suppose you have easy access to that ledger? A. Yes.

Q.—Is it part of your work? A.—Yes, sir.

40 Q.—By whom are entries made in that ledger when bids come in? A.—I make them now.

Q.—You do. But at the time? A.—A young man, — there were two, in fact; one has died since, that I succeeded.

Q.—Will you tell us then exactly how the work is carried on when the bids are opened and put in the ledger? A.—Yes, sir. After the bids are opened, they are sent to the respective bureaus

Jefferson J. Reilly for plaintiff (direct examination).

to be tabulated and checked. After they have tabulated and checked them the typewritten form is sent to me with all the bids sheets. I pick out the low bidders, the successful bidders bid sheet, and attach a tabulation of that and send it inside to the Commissioner or the Borough President.

10 Q.—Now, do I understand that you just enter in your ledger the lowest bidder? A.—All of them.

Q.—All of the bidders? A.—Yes, sir.

Q.—And that goes in your ledger? A.—Yes, sir.

Q.—Is it to your knowledge that that work was being carried on the same way in 1919, and in 1916, 1917, and 1918 as it is now? A.—No, sir, it was not.

Q.—It was not. It was different? A.—Yes, sir.

20 Q.—Then how could we get that information if we wanted to know the names of the bidders for the Linden Avenue contract? A.—Well, I will tell you. Some of them are in, and some are not. Where there is a big list of bidders I think the man was a little bit lazy and didn't put them in.

Q.—Will you kindly endeavor to secure from your ledger, or whatever official source of information you have in your bureau, the required data which is as follows: The name of the bidders, if you have them, and the amount of their respective bids? if you have them, and the amount of their respective bids? A. I have got some of them in my memo. here.

Q.—(Continuing For the Linden Avenue sewer. The bids you have told us about were opened on the 9th of October, 1919.

30 MR. COOK: What are you referring to there, your own memo?

THE WITNESS: Yes.

BY MR. GOUDRAULT:

40 Q.—Will you give us your information if you did secure it from the official records? Have you any data there on just what I have asked you, the names of the bidders and their respective bids for the Linden sewer, that were opened on the 9th of October, 1919?

MR. COOK: Mr. Commissioner, I respectfully object to the witness answering this question, as being not the best evidence.

THE COMMISSIONER: I will allow the witness to answer subject to your objection.

Jefferson J. Reilly for plaintiff (direct examination).

THE WITNESS: My date on Linden Avenue is the 19th of November, 1919.

MR. GOUDRAULT: I am sorry. I think you better look into those records and give us the correct information then.

10 MR. COOK: Mr. Commissioner, it is excessively difficult for us who are unfortunately on the defense side here, to know how we are to proceed. We have not yet cross-examined all the witnesses, on account of the constant adjournments and interruptions of witnesses, which makes it very difficult.

MR. GOUDRAULT: Mr. Purcell will come in tomorrow morning. And Mr. Carey is adjourned until the 28th, at 10.30, unless otherwise notified.

20 (Whereupon, at 4.00 o'clock p. m. an adjournment was taken to tuesday, January 27th, 1931, at 11.00 a. m.)

30

40

Depositions of witnesses, sworn and examined on the 27th day of January in the year of Our Lord one thousand nine hundred and thirty-one, at eleven o'clock in the forenoon, in the office of DeCoursey Fales, 40 Wall Street, in the County of New York, State of New York, United States of America, by virtue of this commission issued out of His Majesty's said Superior Court, to us DeCoursey Fales, a lawyer, of 40 Wall Street, City and State of New York, directed for the examination of witnesses
10 in a cause therein pending between The People of the State of New York, plaintiff and Heirs of the late John M. Phillips, et al., Defendants: — I, the commissioner acting under the said commission, and also the clerk by me employed in taking, writing down, transcribing and engrossing the said depositions, having first duly taken the oaths annexed to the said commission, according to the tenor and effect thereof and as thereby directed heard the following depositions:

20 MR. GOUDRAULT: I wish Mr. James F. Richardson could be recalled on Thursday of this week, at eleven o'clock.

THE COMMISSIONER: Mr. Richardson, you will report here Thursday at this office, at eleven o'clock.

DEPOSITION OF JOHN J. CREEM
(recalled)

30 JOHN J. CREEM was recalled as a witness on behalf of the plaintiff and having been previously duly sworn, deposed and saith as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT:
(Continued):

40 Q.—Mr. Creem, when last examined, you were called upon to make searches to see if you could find checks with reference to various matters on which you have been examined. Have you been successful? A.—I have found the checks.

Q.—Will you show us those checks, please. A.—These are the checks for the Fish Avenue job.

Q.—There are six checks? A.—I have a record right here with me.

Q.—I mean here. A.—Let me count them. (Witness counts checks). Yes, there are six checks.

John J. Creem for plaintiff recalled (direct examination).

MR. GOUDRAULT: I offer in evidence the six checks as Exhibit C-26. The checks are as follows:

	December 4, 1925.....	\$8,350.
	October 8, 1925.....	19,000.
	August 20, 1925.....	15,000.
	June 9, 1925.....	17,500.
10	January 21, 1925.....	28,000.
	November 5, 1924.....	36,750.

(The six checks were there upon marked Plaintiff's Exhibit No. C-26, in evidence, of this date).

MR. COOK: I object to the production of these documents on the ground that they are irrelevant.

MR. HACKETT: I also avail myself of the same objection.

MR. GOUDRAULT: At the suggestion of the attorney for the defendants, Mr. O'Donnell, you may have photostatic copies.

MR. COOK: Not at Mr. O'Donnell's suggestion. Make it at your own suggestion. As a matter of fact, you can put in photostats if you want to; we don't care.

MR. GOUDRAULT: I must have your approval.

MR. O'DONNELL: That is all right.

BY MR. GOUDRAULT:

Q.—Will you produce photostatic copies of this original?

A.—Yes. Can you have them made for me?

Q.—Yes, I will have them made.

MR. COOK: The front and back of the checks.

Q.—Is this your signature appearing on these checks, Mr. Creem? A.—Yes, it is.

Q.—These checks were given to Phillips or the assignee of Phillips in payment of pipes? A.—They were.

Q.—Will you look at a series of checks, ten checks of Duit, Inc., and will you state what they are? A.—They are the checks by which Duit, Inc. paid for the Lock Joint pipe used on the Farmers Avenue contract.

John J. Creem for plaintiff recalled (cross-examination).

MR. COOK: The defendants object to the production of these checks as irrelevant and illegal, and outside the issue.

MR. GOUDRAULT: I offer as evidence, Exhibit C-27, photostatic copies of these ten checks. If the attorneys have no objection, the photostatic copies will take the place of the original.

10

(Marked Plaintiff's Exhibit C-27, of this date).

THE COMMISSIONER: It is agreed that the plaintiffs will furnish photostatic copies to take the place of the original.

MR. O'DONNELL: The front and back of the checks.

BY MR. GOUDRAULT:

Q.—These checks were signed by you? A.—By me.

20

Q.—All these checks constituting Exhibit C-27 — you said what they were for a minute ago, didn't you? A.—Yes.

BY MR. O'DONNELL:

Q.—They were signed by you as an officer of Duit, Inc.? A.—Yes.

BY MR. GOUDRAULT:

30

Q.—Of which you were the president and treasurer? A.—Yes.

MR. GOUDRAULT: I have now completed Mr. Creem's examination.

CROSS EXAMINATION BY MR. HACKETT:

Q.—You have been in the contracting business and particularly in the sewer construction business for many years? A.—Over 40 years.

40

Q.—Will you say if the work which you did on 51st Avenue and Linden Street and the work which Duit, Inc. did on Fish Avenue and Farmer Avenue was difficult of performance? A.—Yes.

Q.—Why was it difficult? A.—In detail — on 51st Street the sewer was at a depth of over 50 feet in places. That of itself, as an open cut, is counted very hazardous. Also, there was water encountered throughout, which had to be taken care of and which added to the danger. In passing on to Linden Avenue — that

John J. Creem for plaintiff recalled (cross-examination).

provided for two lines of 8-foot pipe, which, as I remember it, made the trench some 24 feet or 25 feet in width or practically from curb to curb, and some 35 feet to 40 feet deep in places, and having trees along the edge it is very difficult to handle the immense amount of material that was encountered. In passing on to Fisk Avenue, — that was very wet and it was a material that would run through the slightest opening and the last one,
10 Farmers Avenue, we struck water about 4 feet or 5 feet below the surface, and still we had to go down 30 odd feet and there was a tremendous head of water, which, being in sand, my recollection is that we pumped about 8,000 gallons a minute 24 hours a day, in order to construct the sewer.

Q.—Your excavation was frequently below sea level, was it not? A.—I don't know. That does not have any bearing. If you work on the shore at sea level, and then you go back a mile
20 in from the shore, the water is 10 feet higher there than it is at the seashore. As you go away from the sea, you will find the ground water much higher than towards the sea.

Q.—In any event, none of these jobs could have been successfully performed by a constructor who had not a good deal of skill and experience in dealing with difficult work of that kind? A.—I should say that all four came under the head of difficult work.

Q.—That may account for your ability to do it to better advantage than a person having less experience. A.—Possibly.

Q.—Would it have been in your view, well to have built
30 a monolithic sewer in the conditions which you have described? A.—Speaking in particular about the last job first — I had built in about 1910, a monolithic sewer in somewhat similar conditions to those that existed there and it convinced me that personally I would feel I was crazy if I ever attempted to build another under those conditions.

Q.—In so far as the assignments went, the performance of this work was still guaranteed to the Borough or the City by the bonding companies? A.—Yes.

Q.—So if the bonding companies were solvent, it made
40 no difference to the City who did the job? A.—The contractor is also a party to the bond, so the City had an interest in that respect.

Q.—But you were asked if you had been called upon to make a statement of your affairs and you answered that you did not. A.—I answered No.

John J. Creem for plaintiff recalled (cross-examination).

Q.—You furthermore say now that the bond of the bonding company guaranteeing the performance of the work to the satisfaction of the City and in conformity with the specifications was still in effect? A.—Yes, they had to approve of the assignment.

10 Q.—And moreover, the performance of the work was still guaranteed by the original contractors? A.—That is a legal question, I couldn't answer that.

Q.—You had been in the contracting business in a large way in and about the City of New York for many years? A.—Yes.

Q.—You might prefer that others speak to this point — you were looked upon as a man of substance and of financial stability? A.—As far as I know, I was.

20 Q.—With regard to the payment which you said was made to Phillips of part of the money which you had undertaken to pay to Sigretto, you know nothing of the reasons for the payment or the relationship between Sigretto and Phillips? A.—No.

Q.—For what reasons Sigretto may have owed money to Phillips? You know nothing of that? A.—No.

Q.—You have known of men buying contracts before? There are excellent reasons for paying for contracts, are there not? A.—Oh, yes.

30 Q.—At the time you purchased this contract, had you any reason to keep an organization together? A.—Yes, I had a reason. I had sons coming along and I wanted to keep in the harness until I saw whether their minds led in that direction.

Q.—What I want to get at is this — does it sometimes happen that a man can, to advantage to himself, take a job even though the profit be not big if it is going to enable him to keep his organization together and keep working? A.—The plant is the big item there. You might better have it working, and it will last longer.

Q.—Had you a plant available for this work? A.—Yes.

40 Q.—And did that place you in a more favorable position to execute it than a man who might not have the plant? A.—Yes.

Q.—You have made some reference to documents which have been produced by you to certain investigating committees; there was sort of a political feud over these contracts, was there not? A.—I don't know whether that describes it, but there was turmail of some kind.

John J. Creem for plaintiff recalled (cross-examination).

Q.—It came about when there was a falling out between political parties or factions in a political party? A.—I couldn't testify to that.

MR. GOUDRAULT: Plaintiffs wish to raise a general objection to any allusion made to any political strife, because the examination of witness never did refer to any such political
10 feud.

THE COMMISSIONER: The evidence will be taken subject to objections and reservations.

BY MR. HACKETT:

Q.—Mr. Creem, reverting for a moment to the question of your solvency — have you been frequently called upon during the forty odd years that you have been in the contracting business, to give a statement of your affairs when taking a contract?
20 A.—I have no recollection of ever having given a statement to any one, of any kind.

Q.—You have met the requirements of the contract and it has been a matter of public notoriety that you were a man of sufficient means to carry it out A.—I have always succeeded in getting bonds without their requiring a statement. I assumed that they were satisfied that I would finish whatever I started.

Q.—In any event, you gave the required bonds in these four contracts? A.—I think in only two — Duit gave bonds. In
30 the other case, Sigretto had a bonding company and O'Rourke had a bond.

BY MR. O'DONNELL:

Q.—They assumed the bond for you? A.—Yes. They wanted an additional fee on O'Rourke's job, and I said "If there is any greater liability attached to it by reason of both of us doing it instead of one of us doing it —" but I didn't think that
40 having two of us would add to the liability.

BY MR. HACKETT:

Q.—It really modified it? A.—I think so.

Q.—With regard to the Linden Avenue job — you have testified that it was originally awarded to the O'Rourke Construction Company? A.—Yes.

John J. Creem for plaintiff recalled (cross-examination).

Q.—Have you told the Commissioner why you approached Major O'Rourke for part of his work? A.—I don't remember whether I was asked that question, or not.

10 Q.—Was there a particular reason arising out of the job itself, that caused you to approach him? A.—It was a similar job to what I was just finishing on 51st Street and the same sized pipe and the same plant I could use and I could go right from one to the other.

Q.—And the same conditions? A.—Yes, same conditions.

Q.—You said something in your examination in chief about tunneling and open cut? A.—O'Rourke is a tunnel man and I am an open cut man. I never built a tunnel and so far as I know, he never did an open cut.

Q.—Knowing that you felt that he would be glad to assign that portion which was an open cut? A.—Yes.

20 Q.—And on approaching him you found that such was the case? A.—Yes.

Q.—You went direct to O'Rourke? A.—Yes.

Q.—Did you pay him anything for the assignment? A.—Nothing.

Q.—The authorization of the assignment was treated apparently as a matter of course? A.—Yes.

Q.—You had no difficulty in getting it through? A.—This was a little unusual, I guess, inasmuch as it was part of a contract. No, there was no difficulty, as I remember it. They seemed familiar with it in the City departments.

30 Q.—I suppose they knew that O'Rourke was primarily a tunnel man and that you were primarily an open cut man? A.—Yes.

BY MR. O'DONNELL

Q.—It was to the advantage of both of you that you should do the open cut and he should do the tunnel work? A.—It would seem so.

40 BY MR. COOK:

Q.—I have before me the papers regarding the contract for the sewer and appurtenances on 51st Street, No. 49784. That was the contract that was transferred to you by Sigretto. The transfer has been produced as Exhibit C-13 and the agreement between yourself and Sigretto in regard to the transfer has been produced as Exhibit C-2. I see from the agreement, Exhibit C-14,

John J. Creem for plaintiff recalled (cross-examination).

that the total amount paid under that contract amounted to \$396,879.76. From Exhibit C-2 it would appear, Mr. Creem, that you paid Cigaretto \$15,000 for the transfer of the agreement and four per cent. of the amounts paid, from time to time, as they were paid. Is that correct? A.—Whatever the agreement provides is right.

10 Q.—Will you look, Mr. Creem, in the contract which has been produced in regard to the Linden Avenue work, Exhibit C-17, and just tell me the total amount of the payments made under that contract by the City to you, or to your company? A.—I don't think the amount stated here is the amount I received.

BY MR. HACKETT:

Q.—The amount stated there is \$927,375.40, is it not? A.—Yes, that is the whole job, I take it.

20

BY MR. COOK:

Q.—I see from the papers in regard to the Fisk Avenue job, Exhibit C-19, the total amount paid for the work was \$342,175. Is that correct, Mr. Creem? A.—I think that is correct.

Q.—Looking at the papers in regard to the Farmers Boulevard job, I see by referene to Exhibit 20, that the total amount paid for the work amounted to \$1,122,408.43. A.—That is correct.

30

Q.—These are all very large contracts involving heavy responsibility on the contractors? A.—Yes.

Q.—And all parties interested in connection therewith, and proper bonds had been furnished is every case to the Borough of Queens for the proper fulfilment of these agreements? A.—Yes.

Q.—And the agreements were in all cases actually fulfilled? A.—They were.

40 Q.—These are the only four contracts in regard to sewers in the Borough of Queens that you have been questioned on in this case? A.—They are.

Q.—Prior to obtaining the transfer of the 51st Street contract, I understand you did not know Mr. Phillips? A.—No.

Q.—It was then that you met him for the first time? A.—Yes.

Q.—And you met Mr. Phillips, if I am right, through the instrumentality of Mr. Purcell? A.—He was the one who call-

John J. Creem for plaintiff recalled (redirect examination).

ed my attention to the contract which was in Sigretto's name, and Phillips came in with Sigrétto's lawyer.

Q.—Were you friendly with Mr. Phillips? A.—Yes, I was friendly with him.

Q.—You had a good opinion of him? A.—In certain respects, yes:

10 Q.—He was a man of ability and energy? A.—Wonderful.

Q.—Wonderful energy and considerable ability? A.—A great real.

Q.—A great deal of ability — large ideas about everything, I suppose, including horses and everything at all A.—He was the nearest thing to a dynamo I ever met.

Q.—Mr. Creem, you are going to Florida, I understand? A.—I have hopes.

20 MR. COOK: As far as I am concerned, I hope you will have a very pleasant holiday, because I am not going to keep you any longer. That is all.

REDIRECT EXAMINATION BY MR. GOUDRAULT:

30 Q.—With the kind permission of the opposing counsel, I should like to ask you one more question. You stated on pages 379, 380 and 381, that a payment of \$25,000 was made in connection with the Linden Avenue sewer to Mr. Phillips for pipe, and I want to ask you now if you have that check? A.—I have not.

Q.—You know where it is? A.—I do not.

MR. GOUDRAULT: That is all.

Thomas F. Purcell for plaintiff recalled (direct examination).

DEPOSITION OF THOMAS F. PURCELL
(recalled)

THOMAS F. PURCELL was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposeh and saith as follows:

10

DIRECT EXAMINATION BY MR. GOUDRAULT:
(CONTINUED):

Q.—In order to link up your evidence of yesterday with that on which we are now proceeding — I remember that you told us that you had gone to East Orange and there had introduced Phillips to Sigretto? A.—Exactly.

20

Q.—Anybody else went there outside of Mr. Phillips and yourself to meet Mr. Sigretto? A.—It is a great many years ago. It is possible that Mr. Decker may have been there. He was an engineer for Mr. Sigretto at that time.

30

Q.—There was filed as Exhibit C-1, a letter dated November 29, 1916, which is a rejection of all bids opened in the Borough of Queens office, on August 16, 1916, for the construction of a sewer on Collins Avenue. Will you look at this document, and will you state if it was after that date or previous that you went to East Orange and that the introduction of Phillips to Sigretto by yourself took place? A.—This letter is the official rejection. I think that this letter was sent out long after Mr. Phillips told me and then I in turn checked up that the job had been rejected. This is the official notification.

Q.—My question to you, Mr. Purcell, is does that letter help you recollect if it was after that date you introduced Mr. Phillips to Mr. Sigretto? A.—I could not say that, sir. I introduced him immediately on being notified by the Borough Hall that the job had been rejected. I was not notified, however in writing. I was notified over the telephone.

40

Q.—Was there any conversation between Phillips and Sigretto after you introduced him?

MR. HACKETT: I object to this evidence of conversations with the deceased, for reasons stated.

MR. GOUDRAULT: I simply wanted him to state if there was a conversation.

Thomas F. Purcell for plaintiff recalled (direct examination).

THE COMMISSIONER: I will allow the answer subject to counsel's objection.

BY MR. GOUDRAULT:

Q.—Was there a conversation after you had introduced them? A.—Oh, yes, a lengthy conversation.

10 Q.—Did you and Phillips come back home together, then?
A.—I don't recal. I think we did, but the record will speak for itself.

Q.—What happened next? Did you go there again with Mr. Phillips? A.—Yes.

MR. COOK: Go where with whom?

MR. GOUDRAULT: To East Orange.

BY MR. GOUDRAULT:

20 Q.—You did? A.—Yes.

Q.—Do you remember any particular facts concerning subsequent visits of yours and Phillips to Sigretto, in East Orange? A.—Nothing other than taking them there.

Q.—I just want to know from your memory. A.—No, I don't remember.

Q.—Would you kindly refresh your recollection, Mr. Purcell, and see if you can picture what you then recall of a visit of yourself and Mr. Phillips to Mr. Sigretto, in East Orange.

30 MR. HACKETT: I object to the question inasmuch as the witness has given a definite answer that he can not recall. A supplication won't change or modify that.

MR. GOUDRAULT: I did that in order to refresh his memory and help him along, if it is possible, because it was so long ago.

A.—I don't recall any conversation.

40 Q.—I don't mean conversation, I mean do you recall a fact which you might remember? Something that might have happened between Phillips and Sigretto? What kind of an office had Sigretto in East Orange at that time, do you recall that? A.—Just an ordinary field office. They call it a shack.

Q.—Do you recollect if Sigretto was bidding at that time in Queens Borough for the construction of sewers?

Thomas F. Purcell for plaintiff recalled (direct examination).

MR. HACKETT: I object to the question as leading and suggestive.

MR. GOUDRAULT: The question is withdrawn.

10 Q.—At one of these visits of Phillips and yourself to Sigretto, do you recollect hearing any statement made by Phillips to Sigretto?

MR. HACKETT: I object to the evidence of conversations with the deceased, for reasons stated.

Q.—Just state if you remember the substance of any conversation?

20 MR. COOK: I object strongly to any such evidence as absolutely illegal and improper. It is incompetent for this witness to testify as to what Mr. Phillips said and no matter what he said it does not make any proof as your Honor very well knows.

MR. GOUDRAULT: The question is withdrawn.

Q.—Will you tell us the reasons why you brought Phillips to Sigretto? A.—Yes, I can tell you that.

Q.—Will you tell us, please. A.—In so far as I learned from Mr. Phillips.

Q.—Will you tell us. A.—The purpose of the visit was that Mr. Phillips.

30 MR. HACKETT: I object to testimony concerning the relationship with Phillips.

THE COMMISSIONER: I will allow the answer subject to your objection and reservations.

Q.—Will you tell us now. A.—Mr. Phillips wished to bring Mr. Sigretto back into Queens for the purpose of bidding on contracts. I want to link that up with how I started to answer the question. That was the purpose of the visit.

40 Q.—Did you say anything to Mr. Phillips with reference to the progress that.

MR. O'DONNELL: Objected to as being leading and irrelevant.

MR. GOUDRAULT: The question is withdrawn.

Thomas F. Purcell for plaintiff recalled (direct examination).

MR. HACKETT: The purpose of putting the questions that counsel withdraws is apparent; they are suggestive and illegal.

MR. COOK: Mr. Commissioner, I object also. My friend puts questions which are entirely illegal, suggesting the answer to each of his witnesses.

10

MR. GOUDRAULT: I protest.

MR. COOK: He then withdraws the question when the damage is done. I strongly object to this method of proceeding. I don't think it is fair.

MR. GOUDRAULT: Plaintiffs will withdraw all questions pertaining to the matter contained in the last question.

BY MR. GOUDRAULT:

20

Q.—Did you know Mr. Maurice E. Connolly, Mr. Purcell?

A.—Yes, slightly.

Q.—Did you ever see him with Mr. Phillips? A.—Oh, yes.

Q.—Can you fix any particular time? A.—Yes — not the time, but I can fix the place. I could fix the time if I had the contract which was signed that day.

Q.—What contract are you referring to, do you remember? A.—I think it was the 51st Street contract — I am not

30

sure. Q.—Do you remember the place? A.—City Hall Park, New York City.

Q.—Who else was present? A.—Mr. Sigretto was present — he was not standing with Mr. Phillips and Mr. Connolly, but standing off a few feet.

Q.—Were you with these people or were you away from them? A.—I was called there by Mr. Sigretto.

Q.—Did you meet them on that occasion? A.—Yes.

40

Q.—Who went with you to where they were standing? Did anybody go with you to meet Mr. Connolly and Mr. Phillips, who were together? A.—As I recall Mr. Sigretto and Mr. Phillips went with me.

Q.—Will you tell us then what happened? A.—The purpose of the visit was either the modification of a contract or the signing of a contract. I can not recall which.

Thomas F. Purcell for plaintiff recalled (direct examination).

Q.—What conversation did you have or hear or engage in with Mr. Connolly and Mr. Phillips and Sigretto and yourself on that occasion in City Hall Park?

MR. HACKETT: Objected to.

A.—I can not recal the conversation at this late date.

10 Q.—Will you tell us exactly what happened after you and Sigretto joined Mr. Phillips and Mr. Connolly? A.—There was some discussion about Mr. Connolly signing the paper, and Mr. Connolly suggested that we must have a notary public. I offered my services to both Mr. Connolly and Mr. Phillips and said I would get a notary public.

Q.—Did you see the notary public? A.—I brought him there and brought him back.

Q.—Who was he? A.—Francis J. Hogan.

20 Q.—What happened then? A.—I don't recall exactly what happened.

Q.—Did you make any new introduction? A.—I don't recall that. If you will permit me — my impression is that when I came back with Mr. Hogan, Mr. Connolly was not there. I introduced Mr. Hogan to someone, I don't remember who and they took him to Mr. Connolly, and he in turn took Mr. Connolly's acknowledgment.

Q.—You mean Mr. Hogan? A.—Yes.

30 Q.—You know what happened to Phillips and Sigretto? A.—No; I don't recall what happened to either one of them.

Q.—Did I understand you to say for what purpose the meeting took place there? A.—For the purpose of signing some legal documents.

Q.—What was your interest in that document? A.—I was in the bonding business, and my impression is that my company was on the bond. It may have been the signing of the contract, or a modification of the contract, and it would be necessary to get Mr. Connelly's consent to that modification.

40 Q.—Did you have occasion to see Mr. Phillips elsewhere but the places you have stated to us? A.—Yes. I saw him.

Q.—Will you kindly state the places, to the best of your recollection — for that period.

MR. O'DONNELL: Objected to as being entirely irrelevant.

MR. HACKETT: I also avail myself of the same objection.

Thomas F. Purcell for plaintiff recalled (direct examination).

A.—Mr. Phillips would call at my office occasionally or meet me for lunch while I was going from my office to the Bridge Plaza as they call it, in Long Island City.

Q.—Do you recall meeting him anywhere else? A.—I recall having been stopped by Mr. Phillips many times, on the street.

10 Q.—Do you know Mr. Seely, the ex-assistant engineer of the Sewers Bureau? A.—I know him very slightly.

Q.—Did you have any occasion to talk to him in the Sewers Department, from time to time?

MR. HACKETT: I object to that as being irrelevant.

MR. O'DONNELL: I object to that as being immaterial.

A.—I don't remember having had any conversation with him.

20 Q.—Will you look at this Exhibit C-14 which has been offered in evidence, and which is the original contract for the construction of the sewer on 51st Street. Will you rapidly examine the contract and see if you were interested in this contract. As you see, this contract was awarded to Joseph L. Sigretto & Company. A.—Yes, I was interested in so far as writing the surety bond was concerned.

Q.—You remember writing the surety bond for the 51st Street contract? A.—Yes, sir, I procured the business for the various companies mentioned here.

30 Q.—The date of the contract is December 7, 1918. Do you recollect having any conversation with Phillips in reference to that 51st Street contract?

MR. O'DONNELL: The same objection to conversations with the deceased.

MR. HACKETT: May I avail myself of the same objection?

40 THE COMMISSIONER: You may proceed with the answer, under the objections and reservations of counsel.

A.—Mr. Phillips sought me out in connection with that contract after it was signed and filed.

Q.—Do you know at what particular time — now that we have given you the date of the contract? A.—I can not fix any time that Mr. Phillips had his conversation with me, but it was after the contract was awarded.

Thomas F. Purcell for plaintiff recalled (direct examination).

Q.—Do you know where that conversation was? A.—It may have been on the Bridge Plaza, Long Island City, or it may have been in my office.

Q.—Do you remember the conversation with reference to the contract with Phillips?

MR. O'DONNELL: Same objection.

10

Q.—Do you remember what Phillips told you?

MR. COOK: I renew my objection to all discussion with Mr. Phillips, deceased.

MR. HACKETT: I avail myself of the same objection.

THE COMMISSIONER: You may proceed with your answer, subject to the objection and reservation of counsel.

20 A.—Mr. Phillips informed me that Mr. Sigretto could not go ahead with the contract.

Q.—What else did he say, if anything? A.—He said that Mr. Sigretto would not make good certain promises that he had made.

MR. HACKETT: I object as entirely irrelevant and illegal.

30 Q.—What did you do after that? A.—I saw Mr. Sigretto and reported to him that Mr. Phillips had informed me that he would not go ahead with the contract.

Q.—Just tell us what you did. Don't tell us what you reported. What happened afterwards?

MR. HACKETT: This is all subject to objection, Mr. Commissioner.

A.—My recollection is that I went to Mr. Sigretto's house and reported that Mr. Phillips had informed me that he would not be permitted to go ahead with the contract.

40 Q.—You know Mr. John J. Creem, do you not? A.—Yes.

Q.—What did Phillips tell you besides that?

MR. HACKETT: Objected to.

MR. O'DONNELL: Objected to.

Q.—If he told you anything? A.—Naturally, I asked him why he would not be permitted to go ahead with the contract.

Thomas F. Purcell for plaintiff recalled (direct examination).

Q.—Did he tell you why? A.—Yes, he said there was a large sum of money that Sigretto had promised to pay him.

Q.—To pay whom? A.—Phillips.

10 MR. HACKETT: Mr. Commissioner, I must again enter an objection under the most elementary of our rules of practice, and of evidence, this witness would not be heard. He is testify-

ing in a way which is objectionable, for many reasons. He is giving testimony which is not the best evidence, and he is putting into the record what purports to be the statement of a deceased person. For these reasons I object.

THE COMMISSIONER: I will allow the answer subject to your objections.

Q.—Can you tell us what happened after that? A.—Phillips stated to me.

20 Q.—Don't make any statement of Mr. Phillips. Just state the facts, Mr. Purcell. A.—Where are we now — I am at Sigretto's house.

Q.—You told us that you met Sigretto. What happened — give us the facts? A.—Sigretto told me that he would not.

Q.—Don't state what Sigretto told you, just tell them what happened. A.—I said "What is the matter with you and Phillips?"

BY MR. HACKETT:

30 Q.—Mr. Purcell, what we want to get at is who carried out the contract for the construction of the sewer? A.—John J. Creem carried out the contract after I had gone to Brooklyn and brought him over to Queens.

BY MR. GOUDRAULT:

Q.—Do you remember where the meeting took place for the assignment of the job? A.—The assignment of the 51st Street contract?

40 Q.—That is the one, yes. A.—Yes, I remember that very distinctly.

Q.—Where? A.—215 Montague Street. That is George W. Titcomb's office. He was the attorney for the Joseph L. Sigretto Company at that time.

Q.—Do you know if any papers were executed for the Creem assignment? A.—Yes, there were a number of papers executed.

Thomas F. Purcell for plaintiff recalled (direct examination).

Q.—Other papers were executed you said in or about City Hall Park when you introduced the notary, Hogan. Do you remember that transaction? A.—My recollection is that the contract was originally awarded to Sigretto and in order to complete that award it was necessary to have Mr. Connolly sign certain papers. Whether these papers he signed were a modification of the contract or the original, I do not remember.

10 Q.—You remember the contract you are referring to now? A.—I stated that my recollection was that it was the 51st Street contract. It may have been some other contract. Whatever file you have there with Mr. Hogan's acknowledgment on it would be the contract I am speaking of Mr. Hogan would be the notary public and that would identify it.

Q.—Will you then look at Exhibit C-14 and state if this is the contract that you are referring to, which is the Collins Avenue contract? A.—That is the contract. This is the contract I am referring to where you asked me the question, did I ever see Mr. Phillips with Mr. Connolly? This is the particular contract. This refreshes my memory, — Mr. Hogan's acknowledgment on this paper — because I don't believe he acknowledged any other papers.

20 Q.—When you speak of Mr. Titcomb's office and papers being executed there, you remember what contract you are speaking of? A.—The 51st Street contract.

Q.—Which was assigned to Creem? A.—To John J. Creem.

30 Q.—Did you go to the lawyer's office yourself? A.—I went there myself.

Q.—Who else was in the office there? A.—Mr. Titcomb, Mr. Sigretto, Mr. Phillips, Mr. Decker, Mr. Creem, and another man, but he was not in the conference. His name was Frenz.

MR. O'DONNELL: Objected to as irrelevant.

40 Q.—What took place then? A.—There was a great deal took place. There were many arguments and discussions pro and con and checks passed in payment of the assignment.

Q.—And you were present all along? A.—Yes. In other words, Mr. Creem purchased the contract from Mr. Sigretto.

Q.—Can you tell us or state the substance of what took place?

MR. HACKETT: Objected to.

Thomas F. Purcell for plaintiff recalled (direct examination).

A.—My best recollection is that there was a check drawn to the order of Joseph L. Sigretto, or Joseph L. Sigretto & Company.

Q.—You saw that check? A.—Yes, sir.

Q.—Do you remember the amount? A.—My best recollection is that it was \$14,000. There was another check drawn in the sum of \$1,000.

10 Q.—Signed by whom? A.—Both checks having been signed by Mr. Creem. The \$14,000 check was passed to Mr. Sigretto.

Q.—In your presence? A.—In my presence, — and the \$1,000. check was to the best of my recollection passed over to me in payment of the premium or rather part of the premium upon the surety bond.

Q.—Could you tell us what happened then? A.—The question then arose between Mr. Sigretto and Mr. Phillips.

20 MR. O'DONNELL: Objected to.

MR. HACKETT: I object to that.

A.—(Continued): And Mr. Phillips directed Mr. Sigretto to endorse the check over to him.

Q.—Then what happened? A.—After considerable argument that was done.

Q.—In your presence?

30 MR. O'DONNELL: Same objection.

A.—Yes, in my presence.

Q.—Do you recollect writing bonds for Sigretto further in connection with the construction of sewers, Mr. Purcell?

MR. O'DONNELL: Objected to as being irrelevant.

A.—Not unless there is something to refresh my recollection. I have written many bonds for Mr. Sigretto in the last 20 odd years.

40 Q.—I would limit my question to the Borough of Queens.

A.—I don't recall whether I wrote any bonds after that, or not.

MR. GOUDRAULT: That is all.

(Whereupon, at 1 p. m. a recess was taken to 2 p. m.)

Thomas F. Purcell for plaintiff recalled (cross-examination).

AFTER RECESS. 2:00 p. m.

THOMAS F. PURCELL, resumed:

CROSS EXAMINATION BY MR. HACKETT:

(On behalf of defendants, under reserve of all objections):

10

Q.—In the bonding business, you have your customers or clients? A.—Yes, sir.

Q.—I understand that Sigretto was a customer of yours and had been for many years before 1917 or 1918? A.—Yes, sir.

Q.—When he was contracting at an earlier period and constructing sewers in the Borough of Queens, you obtained his bonds for him? A.—Some of them.

20

Q.—Could we say most of them? A.—No. I don't think so.

Q.—John J. Creem was also a client of yours? A.—No.

Q.—You had known Creem for some time? A.—I had known Mr. Creem for a number of years.

Q.—As a man of substance and a contractor actively engaged in sewer construction? A.—Yes, sir.

Q.—Was there any coolness between Sigretto and De Cola and Martino, his former employes? A.—Not that I recall.

30

Q.—But they were both young in the contracting game and weak financially, were they not? A.—They were large enough for a contract of the size of the Collins Avenue job if they had placed a bid in there that would be fair and equitable to them. They made a mistake.

Q.—You had known both of these men as employes of Sigretto? A.—Both as employes, and having an interest in the Sigretto concern.

Q.—Yes. You explained yesterday that that was a small, nominal interest. A.—It depends upon what you would call small, counsellor. I do know that they had received considerable money when they stepped out.

40

Q.—It cost most of us money to step out. In any event, when they had confessed to you that they had made a mistake in bidding a price which was too low for the job, it was in your interest to see the contract go to somebody who would give you the bonding business, was it not? A.—Not exactly.

Q.—Well, you are in the bonding business for profit? A. Yes, sir.

Thomas F. Purcell for plaintiff recalled (cross-examination).

Q.—And the more bonds that you can place with your company, the greater is your commission on the premiums? A.—Yes, sir.

10 Q.—So naturally enough, you would prefer to see a contract which had been awarded to contractors who didn't feel competent to carry it out, go to somebody for whom you might write another bond? A.—No, sir. That thought never occurred to me. The only thought that occurred to me was that if they had been forced to go ahead with that contract, I felt in duty bound to write their bond.

20 Q.—You explained that yesterday. But I thought that while you were anxious to be relived from the obligation of finding a bond upon a contract which was not going to be profitable, you might be equally interested in seeing it go to somebody for whom you could write a bond upon a contract that was going to be profitable. A.—Well, if the contract was rejected and a new bidder secured the contract, I would surely have solicited the business.

Q.—Yes. In any event, the bid of Messrs. De Cola and Martino was rejected? A.—Yes, sir.

Q.—And it is the function of the president of a borough to accept or reject bids? A.—That is my understanding.

Q.—And it is done frequently? A.—Yes, sir.

Q.—You told us yesterday that you sought the assistance of a political leader, Mr. Keating. A.—Yes, sir.

30 Q.—Was Phillips a bit of a politician? A.—Yes, sir.

Q.—Was he in the same group as Keating?

MR. GOUDRAULT: Just a minute. I again reiterate my objection to any allusion to the politics of the parties herein, Phillips and others, on the following grounds: That it is totally irrelevant, and the cross-examination on that subject is not derived from the direct-examination.

MR. HACKETT: I would refer my friend to pages 418 and 419 of Mr. Purcell's examination yesterday.

40 Will you just read the question to Mr. Purcell?

(Question read by Clerk).

A.—Judging from what Phillips told me, he was.

Q.—And judging from what you observed, was he or was he not? A.—From what afterwards occurred, I would say that he was.

Thomas F. Purcell for plaintiff recalled (cross-examination).

Q.—And there came a time when that group or faction was not uppermost in Queens, did there not? A.—What faction do you refer to?

Q.—The one to which the leader of which you applied for assistance, Mr. Keating? A.—Only as to the individual. Mr. Keating was not re-elected as the Chairman of the County Committee.

10 Q.—The County Committee, that is a party organization? A.—Yes, sir.

Q.—And he and his friends went into the opposition, or where they were no longer the majority? A.—That I have no knowledge of, where he went or what he did.

Q.—You live in Queens? A.—Yes, sir.

Q.—And you take some interest in the politics of that locality? A.—I did at that time.

20 Q.—Yes. Now, when you were informed of the rejection of the bids of De Cola and Martino, you verified the accuracy of your information? A.—Yes, sir.

Q.—How did you do that? A.—I telephoned to the contract clerk, who had a similar position to that of Mr. Reilly, who was here.

Q.—As a matter of fact, an entry had been made pursuant to the rejection by the President of the Borough, of the bid of De Cola and Martino? A.—I didn't go into it as exhaustively as that, Mr. — what is your name, sir?

30 Q.—Hackett. A.—Mr. Hackett. I simply telephoned and asked for Mr. Buckley if it was true that such a contract had been rejected by the Borough President.

Q.—And I judge from what you said yesterday, that you did not let any grass grow under your feet. As soon as you were informed, you immediately verified the accuracy of the information? A.—I think I did that immediately.

Q.—Immediately. Well, immediately, within a few minutes. A.—Yes, sir.

40 Q.—So you had no reason to think that had you called an hour sooner, that you might not have had the information before your informer? A.—No, I have no reason.

Q.—Then, when the bids had been rejected, you went with Phillips to introduce him to your client or customer Sigretto? A.—Exactly.

Q.—You went to East Orange, I think, for that purpose? A.—Yes, sir.

Thomas F. Purcell for plaintiff recalled (cross-examination).

Q.—And after that introduction, bids were called for and the contract for the work was awarded to Sigretto, is that correct? A.—I don't think so.

Q.—No. In any event, after this introduction Sigretto did bid on work to be done in the Borough of Queens? A.—Yes.

Q.—And was awarded contracts? A.—Yes, sir.

10 Q.—And on these contracts you supplied the bonds required by the Borough? A.—Some of them.

Q.—Some of them. You were on the bond of the contract for a sewer on 51st Street? A.—For the first year I was.

Q.—Yes. That contract was ultimately assigned by Sigretto to Creem? A.—Yes, sir.

Q.—And you were able, and without difficulty, I understand, to convince your companies that Creem was a satisfactory risk? A.—That is true. But I didn't convince Mr. Creem that the companies were satisfactory to him.

20 Q.—Mr. Creem explained that yesterday by saying that he was in a position to give cash or its equivalent in municipal bonds of the borough to the treasurer, and thus do the unpardonable sin, or commit the unpardonable sin, of deriving full benefit of what would otherwise be an insurance premium? A. Exactly.

Q.—And I suppose that is what he did after the expiry of the bond? A.—Yes, sir. The records will show that.

30 Q.—I also understood you to say that after a date in '17 or '18 Sigretto ceased to bid on work, sewer work, in Queens? A.—After '17 or '18?

Q.—Yes, sir. A.—I am not positive of the date.

Q.—I understood from your testimony that at one time Sigretto had done much work in Queens? A.—Yes. But earlier than '17 or '18.

Q.—Much. And that during that earlier period you had written at least a substantial part of his bonding business, and that at a later date after you had introduced Sigretto to Phillips he came back to Queens. A.—Yes, sir.

40 Q.—And after coming back he vanished again and did not continue to be a factor in the construction of sewers in Queens. That is correct, is it not? A.—That is right.

Q.—And consequently you wrote no more bonds for Sigretto? A.—Yes, I wrote many more.

Q.—In Queens? A.—On account of him getting out of Queens, not for Sigretto.

Thomas F. Purcell for plaintiff recalled (cross-examination).

Q.—No. A.—But it was very beneficial to get out of Queens, for me.

Q.—When did your friendship for Phillips cease? A.—I never had any friendship for him.

Q.—Well, do you mean that you were his enemy? A.—No. But I have very few friends.

10 Q.—Well, apparently at one time you were prepared to go to some inconvenience to be friend Phillips? A.—Only for the purpose of be friending my friends.

Q.—Yes; but you had so few friends it was hardly worth while? A.—Well, I had De Cola and Martino and Sigretto.

Q.—For whom did you write bonds other than Sigretto and Creem, in the Borough of Queens, from 1918 on; for what contractors? A.—I can't recall now, Mr. Hackett, unless you refresh my memory.

20 Q.—All right. From the opportunity I have had of reviewing the contracts, you appear to have disappeared from the bonding business in so far as sewer contracts were concerned, for a few years after Sigretto withdrew the second time from the Borough of Queens? A.—No. I continued in business.

Q.—You continued in business? A.—In Queens.

Q.—But you did not write any bonds on sewer contracts awarded by the Borough of Queens? A.—Oh, yes, I did.

Q.—Will you give me the names of some? A.—Well, Joseph Rotti.

30 Q.—What is the year? A.—I don't remember the year; but it was after Sigretto had left Queens.

Q.—Yes, but how long after? A.—Shortly thereafter.

Q.—Anybody else? A.—I don't recall now.

Q.—No. Is it not a fact, Mr. Purcell, that with the disappearance of Sigretto, your business, in so far as it resulted from bonding the execution of contracts for the construction of sewers in Queens, practically ceased for some years? A.—I wouldn't say that. I have written bonds every year in the Borough of Queens.

40 Q.—Yes. Now, do I understand you to say that every year you have written bonds guaranteeing the execution of sewer contracts in Queens beginning with the year that Sigretto disappeared for the second time, about 1918; disappeared from the Borough contracting business? A.—I have written a great many bonds. I don't know whether I wrote them every year or every month, but I wrote bonds for different contractors in the Borough of Queens from 1907 right up to the present date.

Thomas F. Purcell for plaintiff recalled (cross-examination).

Q.—Yes, but you see you made a moment ago the statement, the definite statement, that you had written bonds guaranteeing the performance of sewer contracts A.—Yes, sir.

Q.—Every year. And I put it to you again, did you write bonds every year after the disappearance of Sigretto from the sewer contracting business in the Borough of Queens, about 1918, on? A.—Well, Mr. Hackett, my only business was not bonding
10 business. I also write all kinds of insurance.

Q.—So that there will be no confusion or opportunity for misapprehension, is it not a fact, Mr. Purcell, that when Sigretto ceased to get contracts for sewer construction in Queens, about 1918, you ceased to write bonds guaranteeing the performance of the contractor in the Borough of Queens? A.—Entirely ceased to write bonds, you mean?

MR. HACKETT: Just read the question.

20 (Question read by clerk).

A.—I ceased to write Sigretto's bonds in the Borough of Queens.

Q.—And did you not cease to write bonds of contractors building sewers in the Borough of Queens, from the period that Sigretto disappeared? A.—No, sir. I wrote bonds in the Borough of Queens for contractors other than Sigretto.

Q.—And the only one that you can remember is Rotti? A.—No. I have another one.

30 Q.—Yes; who is it? A.—Charles M. Lahy.

Q.—Do you remember what year? A.—No, I don't remember.

Q.—And do you remember what year Rotti was? A.—No, I do not.

Q.—And I put it to you again, did not the disappearance of Sigretto give rise to animosity on your part towards Phillips? A.—No. I wouldn't say that, because it increased my business.

40 MR. HACKETT: You just explained in detail to what extent. That is all, thank you.

MR. COOK: No examination.

THE WITNESS: Is that all, gentlemen?

Thomas F. Purcell for plaintiff recalled (redirect examination).

REDIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—Mr. Purcell, with the permission of the learned counsel for the defendants, if you were shown tabulation of contracts wherein appear contracts awarded in the Borough of Queens from 1917 and 1918 on, would that help you to recollect if you did bond a contract other than the two that you remember, that
10 you mentioned there? A.—I think it would.

MR. O'DONNELL: Defendants object to any verbal evidence from this witness with regard to Exhibit C-1 or C-11; under reserve of all objections which have been made with regard to the said documents. Furthermore, it is entirely improper for this witness to refresh his memory from them.

Q.—I now show you sheet No. 5 of Exhibit C-11, wherein appear contracts awarded in the Borough of Queens from the
20 year 1918 on, and here appear in this first column the titles of the contracts, meaning the avenue or the street on which the sewer was built, and you have here the names of the contractors. By looking through, will you state if you could recollect? A.—Here is one right there, the Ajax Drainage Contracting Corporation.

Q.—Contract signed on July 30, 1918, is that right? A.—Yes, sir.

MR. HACKETT: Just a minute. July 13th, 1918?

30 MR. GOUDRAULT: Yes, sir.

MR. HACKETT: And it was awarded, apparently — The contract was signed July 30, 1918, and that immediately follows the contract awarded to Joseph L. Sigretto, does it not?

THE WITNESS: Yes, sir.

MR. HACKETT: On the 12th of July, 1918.

40 THE WITNESS: Yes, sir.

BY MR. GOUDRAULT:

Q.—Now, would you go on and see if there is any other? A.—I wrote the insurance, compensation insurance and public liability for Rotti and Loncale.

MR. HACKETT: But that was not the bond?

Thomas F. Purcell for plaintiff recalled (redirect examination).

A.—That was not the bond.

Q.—Insurance for the Liberty Avenue contract. Is not that right? A.—Exactly.

Q.—And that is dated August 1, 1918? A.—Yes, sir.

Q.—Any others, Mr. Purcell? A.—I wrote a number of bonds for Frank L. Paino Construction Co., Inc., but whether or not I wrote the bond or bonds that this sheet shows, that I do not recall. But I recall having written bonds for Frank L. Paino Construction Co., Inc.

MR. HACKETT: Frank L. Paino had been a contractor there for some years?

THE WITNESS: Yes, sir.

Q.—Do you remember if it was in 1919, for Frank L. Paino?

MR. HACKETT: He said he does not.

A.—I don't remember the year. The only name I recall is the name of the contractor, and having written bonds for that concern.

Q.—Any other, now, Mr. Purcell, that you remember now? A.—Not on there.

Q.—Not on that sheet. Now, will you look at sheet 6 of Exhibit C-11.

MR. COOK: Was that sheet 5?

MR. HACKETT: Yes.

Q.—(Continuing) — where we come to the years 1923, 1924, and 1925, apparently; sheet No. 6. Could you recollect there any bonds that might have been written by you? A.—Well, there is one there, Frank L. Paino, rejected. After it was given to Booth & Flynn. It is possible I may have written that one.

Q.—The date of the signature of contract A.—No, not at that late date, 1923. No, sir.

Q.—You did not? A.—No, sir.

Q.—Any others? A.—Are these all 1923 and 1924?

Q.—1923 and 1924, here, and 1925 down there (indicating). A.—I saw a name here a moment ago, Welch Brothers, Welch Brothers Contracting Company.

Thomas F. Purcell for plaintiff recalled (redirect examination).

Q.—Do you remember that one? A.—I wrote some bonds for those people.

BY MR. HACKETT:

10 Q.—Yes, but did you write a particular bond, and can you so indicate it? A.—No, I can't say that, Mr. Hackett. The only thing I can say is that I wrote considerable business for Welch Brothers even after Sigretto and DeCola and Martino stopped bidding in the Borough of Queens.

Q.—Yes, but that may have been compensation insurance or something else as you wrote for Rotti? A.—No. I know that I wrote bonds for Welch Brothers, but I can't at this time say what particular bonds I wrote.

Q.—You can't say in what year you wrote them? A.—No, I can not, sir.

20 BY MR. GOUDRAULT:

Q.—But you said a minute ago that it was after nineteen.

MR. HACKETT: He didn't say that.

MR. GOUDRAULT: I think he did.

MR. HACKETT: Let him point it out, then.

MR. GOUDRAULT: All right.

30 Q.—You just told us that you did write some insurance bonds for Welch Construction Company. Without stating the year, did you tell us when a minute ago? A.—I can't say when, Mr. Goudrault.

MR. GOUDRAULT: Would you kindly read the question and the answer to Mr. Purcell where he refers to Welch Construction Company the first time?

(Question and answer read by Clerk).

40 Q.—Was that bonds for the Borough of Queens, to the best of your recollection, for the Welch Construction Company? A.—Welch Brothers Construction, — Welch Brothers Contracting Co., Inc., was the proper name of the corporation.

Q.—Was that in the Borough of Queens? A.—Yes, sir.

Thomas F. Purcell for plaintiff recalled (recross-examination).

BY MR. HACKETT:

Q.—Will you just show me that bond, please? Show me the contract? A.—I can not, Mr. Hackett.

Q.—You don't remember what year it was in? A.—No.

Q.—And you know that Welch Brothers did business there before 1918? A.—Oh, yes. They did business there practically all their lives.

Q.—Yes. And you were unable, with the tabulation before you, to pick out any contract on which you wrote the bond for Welch Brothers, after 1918? A.—I can't pick it out.

Q.—No. A.—But if you gentlemen are anxious to find out, you can get those records from the National Surety Company.

BY MR. GOUDRAULT:

20 Q.—They would tell? A.—Yes, sir.

Q.—Will you look now at sheet No. 7 of Exhibit C-11 and tell us if you there see any contractors or contracts for which you may have written bonds in the Borough of Queens? A.—What year?

Q.—That's 1925, 1926 and 1927. A.—I notice the name of Welch Brothers here again, in two places.

MR. HACKETT: But you can add nothing to what you have already said about them, can you?

30 THE WITNESS: No.

Q.—I understand all those records are in the hands of the National Surety Company, Mr. Purcell, of those bonds? A. Well, they should be, unless they have destroyed them.

MR. GOUDRAULT: I see. That is all. Thank you.

RECROSS EXAMINATION BY MR. HACKETT:

40 Q.—Now, Mr. Purcell, I understand that you would like to modify your cross-examination by saying that the business which you wrote for Rotti after Sigretto disappeared, was employers' liability insurance, and not a bond? A.—I wrote a bond for Mr. Rotti on what is known as the Grand Street sewer.

Q.—Yes, but that was before July 12th, 1918. A.—I don't recall, Mr. Hackett.

Joseph L. Sigretto for plaintiff (direct examination).

Q.—Well, then to summarize, having gone over contract by contract every one that was awarded from the 12th of July 1918 until the end of 1928, you are unable to point out a single contract in which, under your oath, you can state the bond for the fulfillment of it was secured through you?

10 MR. GOUDRAULT: I object to the form of the question, inasmuch as it is not a question but it is an answer, and it repeats facts as stated previously by the witness, if you refer to his cross-examination and redirect-examination.

MR. HACKETT: Mr. Commissioner?

THE COMMISSIONER: I will allow the answer subject to counsel's objection and reservation.

20 A.—My answer to that, Mr. Hackett, is that the records of the National Surety Company will speak for themselves.

MR. HACKETT: Thank you.

MR. GOUDRAULT: Thank you very much, Mr. Purcell.

DEPOSITION OF JOSEPH L. SIGRETTO.

30 JOSEPH L. SIGRETTO, age, 62; residence, 246 Ridge Road, Rutherford, New Jersey, Bergen County; occupation, contractor, a witness produced, sworn and examined on the part and behalf of the People of the State of New York, the plaintiff, deposeseth and saith as follows:

DIRECT EXAMINATION BR MR. GOUDRAULT:

Q.—Do you know any James Sigretto, who lives at 246 Ridge Road, Rutherford, New Jersey? A.—No, sir.

40 Q.—Do you know of any James Sigretto at all who was contracting in the Borough of Queens? A.—No, sir.

MR. GOUDRAULT: Plaintiff's wish to amend that name. It is purely a clerical error.

MR. HACKETT: You have identified him sufficiently. I don't think there is any difficulty about that.

Joseph L. Sigretto for plaintiff (direct examination).

MR. GOUDRAULT: The James who appears on our motion list is Joseph L. Sigretto, in reality.

THE COMMISSIONER: And that is acceptable to counsel?

MR. HACKETT: Quite.

10 BY MR. GOUDRAULT:

Q.—How long have you been a contractor, Mr. Sigretto?

A.—About 35 years.

Q.—Do you remember contracting in Queens Borough?

A.—I done a lot of work in Queens.

Q.—I see. What kind of work? A.—General construction and sewers.

20 Q.—Do you recollect the year that the first contracts were executed by you in the Borough of Queens? A.—Have you got any names specially?

Q.—I know of some, but I would like you to tell if you can remember? A.—The last contract I did, that is, that I constructed myself in Queens, was Collins Avenue.

Q.—That is the last one? A.—That is the last one up to 1930.

Q.—But previous to the Collins Avenue? A.—Previous to that, I was right along in Queens from the year of consolidation.

30 Q.—Did you know contractors by the name of DeCola and Martino? A.—Well, they were my partners at one time.

Q.—What was the name of the firm? A.—First, Sigretto, my name, and then it was Joseph L. Sigretto & Company.

Q.—And that comprised as partners yourself and these two gentlemen? A.—Yes, sir.

MR. HACKETT: I object to this evidence as it is not the best evidence.

40 Q.—Did you have any contract, partnership contract of any sort, with DeCola and Martino? A.—That's way back. It was Sigretto & Company, then we changed it, we part and I change it to my own name, and then Joseph L. Sigretto & Company.

Q.—And when it was changed to your name of Joseph L. Sigretto & Company, who were the partners? A.—They were

Joseph L. Sigretto for plaintiff (direct examination).

the partners before that. After that I didn't have any, and I have never had any since.

Q.—I understood you to say a minute ago that the last contract you had in Queens was the Collins Avenue contract.
A.—Yes, sir. It was done by Joseph L. Sigretto & Company.

Q.—Do you know a man by the name of Thomas Purcell?
A.—Thomas Purcell, yes. He used to be my bondsman.

10 Q.—Do you know a man by the name of John M. Phillips?
A.—I used to know him, yes.

Q.—How did you come to know Phillips, do you remember?
A.—I was working in Jersey the first time I seen Jack Phillips. He come over to me on the job.

Q.—Do you remember the year? A.—I do not. That must have been around 1915, 1915 or 1916; about 1915.

Q.—How did he come to see you? A.—He come down to see me. He said there was a lot of work coming out in Queens
20 and wanted me to come back in Queens.

MR. HACKETT: I object to any verbal testimony of conversations between Phillips and the witness, for the reasons given.

MR. COOK: I object also.

THE COMMISSIONER: The answer will be taken subject to counsel's objections and reservations.

30 Q.—Had you been out of Queens for some time then? A. Yes, I was out for over a year and a half.

Q.—Who was with him when he came in to see you? A.—If I remember correct, it was Purcell with him.

Q.—Was that the first time that you met John M. Phillips? A.—The first time in my life, yes.

Q.—Just tell us what took place at that first meeting of you and Phillips and Purcell? A.—Just as I said, he wanted for me to come back in Queens. The boss wants to see me, he like to see me back again.

40 Q.—Who did he say? A.—The boss, that was Connolly. And I said you can tell him just what happened between him and I. He said "I will prove it to you, you can come back any time you want."

Q.—What did you say then? A.—I said "I don't believe, except if you will show me something it would be possible if he forget what he said." "Well", he said, "What do you want me

Joseph L. Sigretto for plaintiff (direct examination).

to prove?" I pull out a drawer, and I said "Here is specifications of the manufacture of a pipe. If the pipe, this pipe on the specification, then I know he want me to come back." He took the specification, and two days after he come back.

Q.—Was he alone the second time he came to you? A.—When he come back he was alone. Purcell was not with him.

10 Q.—Do you remember that plan and specification you are speaking about? A.—That was the specification of the manufacturer of the Lock Joint Pipe Company, Ampere, New Jersey. I was using their pipe then.

Q.—You were using their pipe then in other contracts? A.—Yes.

Q.—Will you tell us what happened when Phillips came back to you? A.—When he come back to me he said "Well, here is the specification", he says. "The boss.

20 MR. COOK: I don't understand the witness, Mr. Commissioner, and I object to this as irrelevant and immaterial evidence, conversation with Mr. Phillips.

THE COMMISSIONER: The answers will be taken and reduced to writing subject to your objections, exceptions and reservations.

BY MR. GOUDRAULT:

30 Q.—State to us, Mr. Sigretto, just simply the facts, what did actually happen then? A.—What happened, just a short word, he come back with the specification of the city of Queens, and he said, "Here's an addenda, and just a couple of words, monolithic pipe may be omitted." And I said, "All right, I will come back to Queens."

Q.—What happened after that? A.—It was two jobs coming out. I went over and bid, and I win the both jobs.

Q.—Do you remember what jobs? A.—I remember one plainly. That is Collins Avenue.

40 Q.—Will you look at this Plaintiff's Exhibit C-9, which is the original contract for the Collins Avenue sewer, and state if that is the job that was awarded to you? A.—Yes, I think that is.

Q.—Your name appears here? A.—Yes.

Q.—Will you look at the plans and specifications as regards the requirements for pipes and types, and tell us what the said plans call for?

Joseph L. Sigretto for plaintiff (direct examination).

MR. COOK: One moment.

MR. O'DONNELL: Objected to, inasmuch as the said plans speak for themselves.

10 MR. COOK: And I object to any evidence in regard to this Collins Avenue, as illegal, and irrelevant and outside of the issues between the parties, and I also object to any evidence in regard to this agreement, for the same reason.

MR. HACKETT: I join in the objection.

THE COMMISSIONER: The answers will be taken subject to the objections and reservations of counsel.

MR. GOUDRAULT: What is the question now for Mr. Sigretto to answer?

20 (Question read by clerk.)

Q.—(Continuing) In the Collins Avenue contract? A.—Now, do you want to know?

Q.—Please. I want to know first if those are the plans and specifications that you speak of for the Collins Avenue? You have not got the plans here. These are just the specifications on the contract.

Q.—Yes, just the specifications on the contract. Does that contract call for monolithic or precast? A.—It calls for both.

30 Q.—It calls for both? A.—Yes. But I believe a contractor could put a bid on which he thinks, either monolithic or precast pipe.

Q.—And you bid? A.—On the precast pipe.

Q.—Precast pipe. And you were awarded the contract? A.—Yes, sir.

Q.—Did you take notice of the advertising for this contract anywhere? A.—I seen it in the City Record.

(Discussion off the record.)

40 MR. GOUDRAULT: I will withdraw that question.

Q.—Where did you secure your pipe for the execution of the Collins Avenue contract?

MR. HACKETT: I object to that unless the contract is produced.

Joseph L. Sigretto for plaintiff (direct examination).

MR. O'DONNELL: We object on the ground that it is immaterial and irrelevant.

THE COMMISSIONER: The answer will be taken subject to the reservations and objections of counsel.

BY MR. HACKETT:

10 Q.—Was it a written contract? A.—For the pipe, you mean?

Q.—Yes. A.—Yes.

BY MR. GOUDRAULT:

Q.—Have you got that contract, Mr. Sigretto? A.—No, I haven't.

Q.—Do you know where it is? A.—I do not.

20 Q.—Do you remember, — of course you remember seeing the contract? A.—I remember seeing the contract, and I had it up to the time of the first investigation, at which they got everything but they never sent it back.

Q.—Who did furnish you the pipe, precast pipe?

MR. O'DONNELL: Same objection, inasmuch as the contract speaks for itself.

A.—It was built right on the site of the work, from the company themselves.

30 Q.—What company? A.—The Lock Joint Pipe Company.

Q.—Do you know the officials of the Lock Joint Pipe Company at that time? A.—Only one man that I know. The other one isn't there any more. That is Hirseh, the man who I had to deal with.

Q.—I see. And he is the one that you had the contract with? A.—He is the one I had the contract with.

Q.—You said that you had a contract with Hirsch's company. Was that for pipe generally?

40 MR. HACKETT: I object to any evidence concerning a contract that is not produced, as not the best evidence, and we cannot cross-examine without it, and verbal evidence is illegal and futile.

THE COMMISSIONER: I will allow the answer subject to your exception and objection.

Joseph L. Sigretto for plaintiff (direct examination).

MR. GOUDRAULT: What is the question?

(Question read by clerk.)

MR. COOK: Is that your question? I want to make an objection.

10 MR. GOUDRAULT: Question withdrawn in that form.

MR. COOK: Well, all right.

MR. O'DONNELL: Don't put leading questions and withdraw them.

MR. GOUDRAULT: All right. The question is there. Put in your objection.

MR. COOK: All right. I have objected, Mr. Goudrault, before to that form of question.

20 BY MR. GOUDRAULT:

Q.—Explain why you have not got the.

MR. COOK: You put leading questions and then withdraw your questions having done all the damage. It is not fair, you know.

MR. GOUDRAULT: I want him to explain something.

30 MR. COOK: Don't do it again.

MR. GOUDRAULT: He has to.

Q.—Go on, Mr. Sigretto, where is the contract? A.—I said that before. I don't know. I brought those contracts, I think, on the first investigation. And they promised me when they got through they would send everything back, but I never got it.

Q.—I am speaking of the contract with Hirsch. A.—Oh, the contract with Hirsch?

Q.—Yes, sir. A.—That was stolen from my safe.

40 Q.—I wanted you to explain why you could not produce it. That was the contract for precast pipe that you had with the Lock Joint Pipe Company of which Hirsch was an official? A.—He was the treasurer, I believe, or the president; one or the other.

Q.—I see. And that contract you say was stolen? A.—Was stolen from my safe.

Joseph L. Sigretto for plaintiff (direct examination).

MR. O'DONNELL: I object to this evidence as entirely irrelevant.

Q.—Where was your office? A.—In the Collins Avenue field office.

Q.—Who was then working with you in the office? A.—
10 Only one man was working in the office outside myself. That was my engineer and general superintendent. That was.

MR. HACKETT: Decker?

THE WITNESS: He was here the other day; a big tall fellow. He worked for me for about ten years, and I can't think of his name. I have it on the tip of my tongue.

Q.—As your engineer and superintendent? A.—Engineer and superintendent, yes. He was here the other day.

Q.—Well, when you think of it you will give his name.
20 A.—Decker. Albert Decker.

MR. HACKETT: That's the name I put to you.

Q.—Do you remember the year in which the contract disappeared from your safe? A.—What?

MR. O'DONNELL: Objected to as entirely irrelevant.

Q.—Do you remember the year? A.—We was almost
30 complete on Collins Avenue when I missed the contract.

Q.—Do you remember the prices that were or that appeared in that contract with the Lock Joint Pipe Company?

MR. O'DONNELL: Objected to as not being the best evidence.

A.—Well, it is so far gone, but I think I can recollect the three large sizes.

Q.—Could you tell us.

40 MR. COOK: One minute. Now, Mr. Commissioner, it is going very far, first to establish that there was an agreement and then to establish the terms of the agreement by verbal evidence without the production of the contract. I object, on the ground that the evidence is irrelevant, and in any event this is not the best evidence and should not be permitted. We will be here from now until next January if we go on with evidence of this sort.

Joseph L. Sigretto for plaintiff (direct examination).

MR. HACKETT: Don't call this evidence.

MR. COOK: Well, I don't call this evidence.

MR. GOUDRAULT: Well, we will see what the court decides on this, gentlemen, in Montreal.

BY MR. GOUDRAULT:

10

Q.—You stated a minute ago that the contract had been stolen; is that right?

MR. HACKETT: He said that three times, Mr. Goudrault.

MR. GOUDRAULT: Well, I want to see if he can make evidence of that contract. You objected to the evidence of the terms of that contract on the ground that we have not the contract.

20

MR. HACKETT: Will you wait just a second?

MR. GOUDRAULT: All right.

(Discussion off the record.)

MR. GOUDRAULT: I understand the answer will be taken under the reserve.

MR. HACKETT: All right.

30

Q.—As far as you are concerned, you have not got that contract? A.—How can I have it when it was stolen?

Q.—Do you know if Hirsch has the contract?

MR. COOK: One minute. I also object to evidence in regard to this agreement with the Lock Joint Pipe Company, in as much as there has not been the slightest effort to show that any duplicate of the agreement that may be in the possession of the Lock Joint Pipe Company is not available.

40

MR. O'DONNELL: Furthermore, that it is irrelevant, in any event.

MR. HACKETT: I associate myself with that objection.

THE COMMISSIONER: I will allow the answer subject to counsel's reservations and objections. And proceed with the answer, please.

Joseph L. Sigretto for plaintiff (direct examination).

MR. GOUDRAULT: That is if he remembers the question after all this argument.

THE COMMISSIONER: Will you read the question, please?

(Question read by Clerk).

10 BY MR. GOUDRAULT:

Q.—Do you know if the contract was signed in duplicate? Do you recollect that fact? A.—Certainly it was signed in duplicate.

Q.—Now, you were speaking a minute ago of three sizes. Will you state the three sizes such as you recollect? A.—I recollect the three sizes, because I never bid on the small sizes, and I have the big sizes always in my mind. That was 72 inches, and 6 foot 6, and the 7 foot pipe.

20 Q.—Those are the three sizes? A.—The three sizes generally that I was interested in. I was not bidding on the small pipe.

Q.—I see. Do you remember the prices? A.—I remember on 72, was \$10.50.

Q.—Per foot was that? A.—That is per foot alongside the trench.

Q.—Do you remember the price of the 6-6? A.—The 6 foot 6 was an additional \$2.00.

30 Q.—That would be \$12.50? A.—Yes, sir.

Q.—Do you remember the price of the 7 foot? A.—An additional \$2.00.

Q.—That would be \$14.50. Now, will you look at this Exhibit C-14, which is a contract dated the 12th of July, 1918, awarded to Joseph L. Sigretto & Company, and state if you remember this contract being executed by you for the 51st Street job, in the Borough of Queens. A.—I think that is a contract that I signed over to John Creem.

40 Q.—Well, now, look at Plaintiff's Exhibit C-13.

MR. COOK: Is that the Assignment?

MR. GOUDRAULT: Yes.

Q.—And will you see on the first page there, a signature. Is that your signature? A.—Yes, that is my signature.

Joseph L. Sigretto for plaintiff (direct examination).

Q.—That was the assignment from Creem to yourself, wasn't it? A.—That was the assignment,—I signed the contract over to him.

Q.—Well, now, look at the approval here, dated September 4, 1918. A.—I didn't see that.

10 Q.—You did not see the approval? A.—No, sir. And I was not interested, either. I was interested, I got a check for \$25,000, and I signed it over, before they made that approval, I had to give that to Jack Phillips.

MR. HACKETT: I object to any evidence concerning payment, unless the best evidence is produced.

Q.—What was the price of your assignment?

MR. O'DONNELL: Objected to, inasmuch as the agreement speaks for itself.

20 Q.—How much did you receive for that assignment? A.—Now much the contract amounted to?

Q.—No. I mean to say, how much was the price for the assignment, consideration for the assignment? A.—\$30,000.

Q.—And did you receive payment? A.—What?

30 Q.—Did you receive payment of the \$30,000? A.—I received \$25,000, first check, which I had to sign over, before that assignment was made, to Phillips. And then it was in two payments that I got the other \$5,000, and out of the \$5,000 I had to give half of it to Phillips. So I got \$2500 out of the deal. And \$5,000 I sold a machine to Creem.

Q.—What check was it that you received in payment; from whom did the check come? A.—From Mr. Creem.

Q.—What did you do with the check when you received it? A.—What?

Q.—What did you do with the checks when you received them? A.—Put them in the bank.

Q.—Do you know a Mr. Titcomb? A.—Titcomb, at that time, was my attorney.

40 Q.—Where did he have his office? A.—Court and Montague.

Q.—Where is that? A.—Brooklyn. Over the Mechanics' Bank.

Q.—Do you remember going there in connection with a certain contract? A.—The time I had to go over there, when Creem give the check to sign over to them.

Joseph L. Sigretto for plaintiff (direct examination).

Q.—Do you remember exactly the amount of the check that you received, or the check that you received, for the assignment of that 51st Street contract?

MR. HACKETT: I object again to verbal evidence of checks.

10 MR. O'DONNELL: And furthermore, the witness has already testified to that.

THE COMMISSIONER: The answer will be taken subject to the objections and reservations of counsel.

A.—I already said that I received one check for \$25,000, the first check. A check was for \$5,000 for the machine, and part of the \$5,000,—if I remember right, the first payment I got, \$7,000 which I had the check direct to me,—\$7,500.

20 MR. COOK: That was for the 51st Street contract?

THE WITNESS: The 51st Street contract, yes.

Q.—Will you look at a letter dated Brooklyn, N. Y., September 5, 1918, addressed to John J. Creem and produced as Exhibit C-16, and state if that is your signature therein appearing? A.—That is my signature.

Q.—Will you read this letter, please, not in evidence, just read this letter in order to refresh your memory as to the facts.

30 A.—I can't read it. You read it.

MR. GOUDRAULT: May I read it?

MR. COOK: Yes, you read it.

Q.—It is dated September 5, 1918, and that is your signature? A.—That is my signature.

40 MR. GOUDRAULT: (Reading): "Mr. John J. Creem, 899 Green Ave., Brooklyn, N. Y. Dear Sir: Referring to the agreement dated September 3, 1918, between yourself and us, by which we sold you our contract for building a sewer in 51st Street, in the 2nd Ward, Borough of Queens, for the consideration of \$15,000 and a sum equal to 4 per cent. of each and every payment to be made by the City on account of the said contract, we hereby acknowledge receipt of the \$15,000. this date paid by you, and hereby direct and request that after you have paid us on account of said 4 per cent. payments the amount of \$6,900,

Joseph L. Sigretto for plaintiff (direct examination).

that you pay to John M. Phillips, of 112 Academy Street, Long Island City, the balance of said 4 per cent. payments and charge the same to our account.

“We should be glad to have you acknowledge the receipt of this letter and advise us that you will make the payments to Mr. Phillips after the payment of the \$6,900 to us, as directed.
10 Yours very truly, Joseph L. Sigretto & Company, by Joseph L. Sigretto, President.”

THE WITNESS: No, sir, I don't remember anything of the kind of that letter.

Q.—You don't? A.—No.

MR. COOK: May I look at it, Mr. Goudrault?

MR. GOUDRAULT: Yes.

20 Q.—Now, will you look at a letter also dated September 5, 1918, filed as Exhibit C-15, and which I will now read to you: “Joseph L. Sigretto & Co., Gentlemen: Agreeable to your request in your letter of even date, I will make payment from the 4 per cent. mentioned in our agreement of the 3d inst. to you until they aggregate \$6,900, after that all payments to be made to John M. Phillips. I am enclosing check for \$500. payment in full of my share first year's premium. Very truly yours” — signed “John J. Creem”.

30 Q.—Do you recollect this letter addressed to you, Mr. Sigretto? A.—No, sir.

Q.—Will you now look at Exhibit C-2, Plaintiff's Exhibit C-2, which purports to be an agreement between Joseph L. Sigretto & Company and John J. Creem, and state if you there recognize this signature as being yours? A.—That is my signature. It looks like it, yes.

Q.—And do you remember Mr. Creem's signature? A.—I know my own signature.

40 MR. COOK: What is the date of that, Mr. Goudrault? The 3rd of September?

MR. GOUDRAULT: 3rd of September, 1918.

Q.—I do not wish to read this document right through, but I may tell you that I can read the consideration part of the

Joseph L. Sigretto for plaintiff (direct examination).

assignment, if you wish, just to refresh your memory. "For and in consideration of said assignment—"

MR. HACKETT: I object to any evidence purporting to contradict the written agreement.

10 MR. GOUDRAULT: The question is not for purpose of any contradiction of the writing, which speaks for itself, but in order to refresh the memory of the witness as regards the payment of the assignment money.

MR. COOK: Give him the paper.

Q.—Will you please read the paper? A.—I couldn't read it.

MR. GOUDRAULT: You can not read it. Then I will read it to you in full.

20 "This agreement, made the 3rd day of September, 1918, between Joseph L. Sigretto & Company, a corporation existing under the laws of the State of New York, the first party, and John J. Creem, of the City and State of New York, Borough of Brooklyn, the second party, witnesseth: That

30 "Whereas, the said first party has made and entered into a contract with the City of New York, acting by and through the President of the Borough of Queens, for a sewer and appurtenances in 51st Street, from Lurting Street to Waldron Street, 2nd Ward, Borough of Queens, for which bids were opened June 24, 1918, which said contract was subsequently awarded to Joseph L. Sigretto & Company; and

"Whereas, the said first party has made an assignment of said contract for said sewer to the said second party;

"It is therefore mutually agreed as follows: That

40 "For and in consideration of said assignment, and when and at the time The City of New York, acting by and through said Borough President, shall have fully accepted and recognized said John J. Creem as said assignee and contractor, the said party will pay to the first party the sum of Fifteen thousand Dollars (\$15,000.00); and shall thereafter, on the payment of each estimate and certificate made and filed with the City of New York by the said City, and within five days after the receipt of said payment from said city by John J. Creem, pay to the first party four per cent. (4%) of each and every payment, including the final payment on account of said work, for labor and materials so estimated and certified."

Joseph L. Sigretto for plaintiff (direct examination).

That is the first page of the said exhibit which refers to the payment.

Q.—Now, do you remember or recall the way you were paid? A.—I can't recall. There was \$25,000 paid the first payment.

10 Q.—So you are in no position to state whether the direction that you gave to Creem in that Exhibit C-16, and in answer you received that letter C-15, you are in no position to state, or are you, whether that was carried out or not? I just read this to you. A.—I know you did. It always was in my mind that John Creem's first payment was \$25,000. Anything to the contrary is new to me, or else I am crazy.

MR. O'DONNELL: I object to the question inasmuch as it endeavored to elicit an answer which would contradict the plaintiff's own witness.

20 MR. HACKETT: As well as a contradiction of the document.

MR. O'DONNELL: Yes.

MR. GOUDRAULT: The attorneys for the plaintiff wish to state that the sole purpose of questioning the witness, who can not read the said documents, is solely to refresh his memory as regards the payment he received, and not to contradict at all said documents, which speak for themselves.

30 Q.—Coming back to that contract for the construction of the Collins Avenue sewer by your company, dated 1917, do you recollect any particular change in the contract after it was signed?

MR. O'DONNELL: We object to any verbal evidence as to changes.

A.—I don't remember any change in that contract.

40 Q.—Do you know a man by the name of Hogan, Francis Hogan? A.—No.

Q.—You don't recollect? A.—I don't recollect.

Q.—Will you then look at Exhibit, this Exhibit C-9, and there look at this agreement dated the 14th of February, and state if this is your signature appearing at the end of the document? A.—That is my signature, yes.

Joseph L. Sigretto for plaintiff (direct examination).

Q.—Do you know the signature of Maurice E. Connolly?

A.—No.

Q.—Don't you remember making any request as regards the construction of that particular sewer on Collins Avenue, after the contract was originally signed? A.—Not as I can recollect. There was nothing to make any change on; because I bid on monolithic,—I mean on cast pipe.

10

Q.—Precast pipe? A.—Yes.

MR. O'DONNELL: Same objection. Irrelevant and illegal.

Q.—You told us a minute ago that you met Purcell and Phillips, or Phillips through Purcell. Do you remember meeting Mr. Purcell somewhere else? A.—We used to meet pretty near every other week. To audit the payroll, almost pretty near every week, no later than two weeks.

20

Q.—I see. This original contract appears under your signature and agreement as regards modification of that Collins Avenue contract. A.—I said that looks like my signature, but I never remember there was any modification of that contract.

Q.—Well, the modification is there. A.—It is there. It looks there, but I can't recollect.

MR. O'DONNELL: Objected to as tending to contradict the plaintiff's own witness.

30

MR. HACKETT: I join in that objection.

Q.—Do you admit your signature there? A.—Just let me get my glasses.

Q.—That will be better. A.—I think that is my signature.

Q.—That is at page 37? A.—Yes.

Q.—That is your signature to the contract? A.—Yes.

Q.—Now, will you come to this document which I now show name, yes.

40

Q.—That is your signature? A.—That is my signature.

MR. GOUDRAULT: All right, sir.

MR. COOK: What is that contract, Mr. Goudrault?

MR. GOUDRAULT: I will have to read it to him, Mr. Cook. In one word, in this original contract for the Collins Avenue sewer, awarded to Mr. Sigretto, or Joseph L. Sigretto &

Joseph L. Sigretto for plaintiff (direct examination).

Company, there was subsequent to that a modification which is part of the contract, and which I now offer as evidence.

MR. O'DONNELL: He doesn't remember it.

MR. COOK: It is all in evidence.

MR. GOUDRAULT: It is all in.

10

MR. COOK: Mr. Sigretto, you can not read that?

THE WITNESS: No, sir.

MR. GOUDRAULT: Anyway, the paper speaks for itself. I want it to be understood that each time we do offer a contract, it is all in evidence, the whole file is. But I point out a particular part of the contract.

MR. COOK: You better particularize it definitely to
20 Mr. Sigretto, because he does not understand it, Mr. Goudrault. And it is only fair that you should, to the witness. If you are going to ask him any question, he should know what the question is.

Q.—This is part of the contract which I referred to, dated the 14th of February, and that is the contract which you recognized as being signed by you, a minute ago. Is that right? A. Yes, sir.

Q.—Underneath the said part of that agreement is another document signed by Francis J. Hogan, and it is therein
30 stated that on the 14th of February an acknowledgment of your signature was taken by the said Francis J. Hogan. A.—Was what?

Q.—An acknowledgment of your signature was taken by the said Francis J. Hogan. He was the notary. A.—I don't remember that.

Q.—You don't remember? A.—No.

MR. GOUDRAULT: Mr. Sigretto, could you be excused
40 for a few minutes, because I want to prove other documents were your name appears as contractor in the Borough of Queens, by Mr. Tully, and then you will come back, please.

THE WITNESS: All right.

MR. GOUDRAULT: I will recall you.

Eugene J. Tully for plaintiff recalled (direct examination).

DEPOSITION OF EUGENE J. TULLY
(recalled)

EUGENE J. TULLY was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposes and saith as follows:

10

DIRECT EXAMINATION BY MR. GOUDRAULT:
(CONTINUED):

Q.—Will you look at this file of papers and describe it, Mr. Tully, please? A.—This is contract No. 47341, between Joseph L. Sigretto & Company and the City of New York, for the construction of a sewer and appurtenances in McComb Place, etc. The date of award of contract is April 10, 1917. The date of contract is April 23, 1917.

20

MR. GOUDRAULT: I now offer as evidence, as Exhibit C-28, this contract.

MR. O'DONNELL: Defendants object to the production of this document as entirely irrelevant and illegal, and object to any evidence in connection therewith.

Q.—Is this an original? A.—That is an original contract, yes, sir.

30

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-28, of this date).

Q.—Will you now look at this file of papers, and state what it is? A.—This is contract No. 47342, between Joseph L. Sigretto & Company and the City of New York, for constructing sewer and appurtenances in Atlantic Avenue (north side) and in Hatch Avenue.

Q.—What is the date of the award? A.—The date of the award is April 10, 1917.

40 Q.—And the date of contract? A.—Date of contract is April 23, 1917. This is an original contract.

MR. GOUDRAULT: I now offer as evidence, as Exhibit C-29, the said original contract.

MR. O'DONNELL: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-29, of this date.)

Joseph L. Sigretto for plaintiff (direct examination).

THE WITNESS: Is that all, Mr. Goudrault?

MR. GOUDRAULT: That is all.

DEPOSITION OF JOSEPH L. SIGRETTO.

10

JOSEPH L. SIGRETTO, resumed:

BY MR. GOUDRAULT:

Q.—Mr. Sigretto, will you now look at this contract, which has been produced as Plaintiff's Exhibit C-28, which is a contract between yourself, or your company, and the City of New York, for the construction of a sewer and appurtenances on McComb Place. Date of the contract, April 23, 1917, and state
20 whether at page 33 this is your signature that appears? A.—
Yes.

Q.—Will you now look at Plaintiff's Exhibit C-29, which is the contract between your company and the City of New York for the construction of a sewer and appurtenances in Atlantic Avenue and Hatch Avenue, date of contract being April 23, 1917, and state whether you also recognize your signature, on
page 37? A.—Yes, sir.

Q.—You also recognize your signature on page 33? A.—
30 Yes.

Q.—Do you remember if you constructed those two sewers? A.—Yes, sir.

Q.—Do you remember if you bid monolithic or precast pipe? A.—Precast. All precast.

Q.—All precast? A.—Yes.

Q.—Did you tell us that you knew Maurice E. Connolly?
A.—Yes.

Q.—Did you know him for long? A.—I knew him as soon as he was elected president, Borough President.

Q.—Borough President. Do you know one Ryan? A.—
40 Who?

Q.—A man by the name of Ryan? A.—Joe Ryan?

MR. O'DONNELL: Defendants object to this question as being entirely irrelevant.

THE WITNESS: Joe Ryan?

Joseph L. Sigretto for plaintiff (direct examination).

Q.—I don't know. Any Ryan? A.—The only one I know is Joe Ryan. That's his brother-in-law.

Q.—Whose brother-in-law? A.—The Borough President's.

Q.—Did you have any conversation with Connolly?

10 MR. O'DONNELL: Defendants object to any evidence of conversation with Mr. Connolly.

MR. HACKETT: I object also.

A.—I had no conversation with him. I had a little argument with Joe Ryan, but that was before those contracts.

Q.—I see. You had an argument with whom, did you say? A.—Joe Ryan.

20 MR. HACKETT: I object to any evidence of arguments with Joe Ryan, as irrelevant.

THE COMMISSIONER: I will allow the testimony to be taken subject to counsel's objections and exceptions.

MR. GOUDRAULT: Question withdrawn.

Q.—Did you see Connolly in connection with the award of the 51st Street sewer contract?

MR. O'DONNELL: Objected to as irrelevant.

30 A.—No.

Q.—You did not? A.—No.

MR. GOUDRAULT: I think we will have to adjourn now until tomorrow morning.

MR. HACKETT: Do you want me to cross-examine?

MR. GOUDRAULT: No. I have not finished. There are two more minutes, if you want me to go on.

40 MR. HACKETT: Yes, go on.

Q.—Who was securing your bonds for Queens County work, Mr. Sigretto?

MR. O'DONNELL: Objected to as being entirely irrelevant.

Joseph L. Sigretto for plaintiff (direct examination).

THE COMMISSIONER: The answer will be taken subject to counsel's objection and reservation.

A.—Purcell.

Q.—You spoke of Joe Ryan. Who was Joe Ryan? A.—He was a brother-in-law of Connolly, and he was an agent for a bonding company, too, but I never done any business with him.

10 Q.—You never did any business with him? A.—No, sir. That's what the trouble was.

Q.—What was the trouble?

MR. HACKETT: I object to any trouble which Mr. Sigretto may have had with Mr. Joe Ryan, or.

MR. GOUDRAULT: Question withdrawn.

20 MR. HACKETT: And I object also to the method of asking a suggestive question merely for the purpose of prompting the witness after it is withdrawn.

MR. GOUDRAULT: What is the question?

(Question read by clerk).

MR. GOUDRAULT: I am not speaking of your trouble with Ryan.

30 THE COMMISSIONER: We will declare ourselves adjourned until ten thirty tomorrow morning, and you will be in attendance tomorrow, Mr. Sigretto, at ten-thirty.

BY MR. HACKETT:

Q.—Now, you know you must not talk to anybody about your testimony. A.—What do you mean?

Q.—I mean it is not competent for you to speak to anybody about the testimony you are to give here, between now and the time you are recalled tomorrow morning. A.—I have got nobody to talk to.

40 Q.—I just want you to remember that. A.—I have got nobody to talk to.

(Whereupon, at 4 o'clock p. m. an adjournment was taken to tomorrow, Wednesday, January 28th, 1931, at 10:30 a. m.)

Depositions of witnesses, sworn and examined on the 28th day of January in the year of Our Lord one thousand nine hundred and thirty-one, at ten-thirty o'clock in the forenoon, in the office of DeCoursey Fales, 40 Wall Street, in the County of New York, State of New York, United States of America, by virtue of this commission issued out of His Majesty's said Superior Court, to us DeCoursey Fales, a lawyer, of 40 Wall Street, City and State of New York, directed for the examination of witnesses
10 in a cause therein pending between The People of the State of New York, plaintiff and Heirs of the late John M. Phillips, et al., Defendants: — I, the commissioner acting under the said commission, and also the clerk by me employed in taking, writing down, transcribing and engrossing the said depositions, having first duly taken the oaths annexed to the said commission, according to the tenor and effect thereof and as thereby directed heard the following depositions:

20 (Daniel Enright, a witness, appeared but was not sworn)

MR. GOUDRAULT: Mr. Enright has been subpoenaed and appears today. I wish that he be called upon to come in here at an hour that we will notify him by phone. We will put it as, say, the 3rd of February.

(Arthur F. Holmes, a witness, appeared but was not sworn)

30 MR. GOUDRAULT: Mr. Holmes has been subpoenaed and he appeared once, and now he is here a second time. And unfortunately I did not have time to notify him. He will be required to come next week, the 3rd of February. And we will let you know by phone, Mr. Holmes.

DEPOSITION OF JOSEPH L. SIGRETTO
(recalled)

40 JOSEPH L. SIGRETTO was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposeth and saith as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT: (Resumed)

Q.—Mr. Sigretto, as a contractor you know quite a lot about this precast pipe, don't you? A.—I have to know.

Joseph L. Sigretto for plaintiff recalled (cross-examination).

Q.—Did you use precast pipe elsewhere than in Queens?

A.—Well, in Queens I couldn't tell much about the price.

Q.—No, I am not speaking about the price. Just your knowledge of that kind of particular pipe used in the construction of sewers? A.—Well, before 1915 it used to be monolithic. After that, and I believe up to now, is cement pipe.

10 Q.—You mean? A.—Precast.

MR. GOUDRAULT: Well, I am satisfied.

MR. COOK: Now, that is your examination?

MR. GOUDRAULT: Yes, that is my examination.

MR. COOK: That is all?

MR. GOUDRAULT: That is all.

20 MR. HACKETT: You have finished with him?

MR. GOUDRAULT: I have finished with the witness, under all reserve, but I don't think I will put any other questions to him.

MR. HACKETT: Well, I have no cross-examination.

CROSS EXAMINATION BY MR. COOK:

Q.—Mr. Sigretto, you had contracts for sewers in Queens, a number of them? A.—Yes, sir.

30 Q.—Prior to 1915. Twenty-five or thirty of them, hadn't you? A.—I think it was between 1916 and 1917, the last contract I had down there.

Q.—1916 and 1917 was the last contract that you had? A.—The last contract I had was the one I sold to John Creem. Exactly I don't know the date.

Q.—Before that, Mr. Sigretto, you had a number of contracts, hadn't you? A.—Before that I used to build all the sewers in Queens, from the year of consolidation.

40 Q.—And Mr. Purcell was the gentleman who used to supply your bonds. Is that correct? A.—No, he never supplied me the bonds. He was a broker. The National Surety Company supplied my bonds. I generally got the bonds myself.

Q.—But they were supplied through Purcell? A.—No sir. I got the bonds direct and then the name who the broker is.

MR. COOK: I see.

William H. Hastings for plaintiff (direct examination).

MR. HACKETT: And you named Purcell?

THE WITNESS: Named Purcell.

MR. HACKETT: For all your bonds?

THE WITNESS: All the bonds, yes.

10 MR. COOK: That is all. Thank you, Mr. Sigretto.

THE WITNESS: That is all?

MR. GOUDRAULT: Thank you very much, Mr. Sigretto.

MR. HACKETT: That is all.

20

DEPOSITION OF WILLIAM H. HASTINGS.

WILLIAM H. HASTINGS, age 41; residence, 150-70-87th Avenue, Jamaica, Queens County; occupation, president H. J. Mullen Contracting Co., Inc.; a witness produced, sworn and examined on the part and behalf of the People of the State of New York, the plaintiff, deposeth and saith as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT:

30 Q.—Is this company still in existence, Mr. Hastings? A. Yes, sir.

Q.—And you are still its president? A.—Yes, sir.

Q.—Did you ever build any sewers in Queens? A.—I did.

Q.—Do you remember the sewers which your company built? A.—Well, we built quite a few sewers in Queens. I don't remember all the contracts.

Q.—If you were shown the contract, you could tell? A. A.—Yes, sir.

40 MR. GOUDRAULT: Will you excuse us just a minute. We will have Mr. Tully in, and then we will call you back.

THE WITNESS: All right.

Eugene J. Tully for plaintiff recalled (direct examination).

DEPOSITION OF EUGENE J. TULLY
(recalled)

EUGENE J. TULLY was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposeseth and saith as follows:

10

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—Mr. Tully, will you look at this file of papers, and tell us what that is? A.—This is contract No. 77,425, between H. J. Mullen Contracting Co., Inc., and the City of New York, for the construction of a sanitary sewer and appurtenances in 158th Street, from 150th Avenue, etc. The date of award of the contract is November 13, 1925. The date of the contract is December 3, 1925.

20

MR. GOUDRAULT: Will you produce this contract as Plaintiff's Exhibit C-30?

MR. O'DONNELL: We object to the production of that document, and any evidence in connection therewith, as irrelevant and illegal.

MR. HACKETT: I avail myself of that objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-30 of this date).

30

Q.—This is the original contract, Mr. Tully? A.—That is the original contract, yes, sir.

Q.—Now, will you look at this file of papers, and state what it is? A.—This is contract No. 61,239, between H. J. Mullen Contracting Co., Inc., and the City of New York, for the construction of a sewer and appurtenances in Norwood Place, etc. The date of award of the contract is May 2, 1922. The date of the contract is May 22, 1922. This is the original contract.

40

MR. GOUDRAULT: Will you produce this as Plaintiff's Exhibit C-31?

MR. O'DONNELL: Defendants object to the production of this document, and all the evidence in connection therewith, as being irrelevant and illegal.

MR. HACKETT: I avail myself of that objection.

William H. Hastings for plaintiff recalled (direct examination).

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-31 of this date).

Q.—This is the original, Mr. Tully? A.—I testified to that before.

MR. GOUDRAULT: Thank you, Mr. Tully.

10

DEPOSITION OF WILLIAM H. HASTINGS
(recalled)

WILLIAM H. HASTINGS was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposed and saith as follows:

20 DIRECT EXAMINATION BY MR. GOUDRAULT (re-
sumed):

Q.—Mr. Hastings, here is a contract which has been produced as Exhibit C-30, which purports to be a contract between your company and the City of New York for the construction of a sewer on 158th Street. I see that the signature here appears on several pages of one William H. Hastings, as Treasurer of H. J. Mullen Contracting Co.; at page 5 and then at page 35. Will you state if that is your signature, Mr. Hastings? (indicating)

30 A.—That is my signature, yes, sir.

Q.—Also on page 35? A.—Yes, sir.

Q.—Would you recollect the quantity of pipes and the sizes of pipes that were used in the construction of that sewer, Mr. Hastings? A.—No, I don't recollect.

Q.—Could you recollect the prices that you paid? A.—I can recollect the lump sum prices paid Phillips for that pipe.

40 MR. O'DONNELL: Defendants object to any verbal evidence as to payments made to Phillips, as not being the best evidence.

MR. HACKETT: I avail myself of that objection.

THE COMMISSIONER: The answer will be taken subject to counsel's reservations and objections.

Q.—I understand that you paid Phillips for pipe. Therefore it was a type B sewer or — A.—Type B.

William H. Hastings for plaintiff recalled (direct examination).

Q.—And by type B you mean precast pipe? A.—Precast.

Q.—Do you recollect the lump sum that you paid to Phillips for the pipe? A.—I do.

MR. O'DONNELL: Objected to as irrelevant and not being the best evidence.

10 THE COMMISSIONER: You may answer subject to counsel's objection.

Q.—What would be the price you paid for the pipe? A. Approximately \$131,000.

Q.—How did you pay Phillips? A.—By check.

Q.—By check. Have you those checks, Mr. Hastings? A. No, sir.

MR. HACKETT: That was for 158th Street?

20 MR. GOUDRAULT: 158th Street.

Q.—Where are those checks, Mr. Hastings? A.—They are in the Department of Justice, at Washington.

Q.—How long have they been there? A.—Two years.

Q.—How did they come to be there? A.—Why, special agents from the Department of Justice came around and asked for them, and gave me a receipt for them.

Q.—And they have held those checks since? A.—They have.

30 Q.—Now, have you any check stubs or bank book in which the payment of that lump sum would appear? A.—I have.

MR. O'DONNELL: Defendants object to any verbal evidence in connection there with, as not being the best evidence of payment.

MR. HACKETT: I avail myself of that objection.

Q.—Will you kindly let us see them, Mr. Hastings? A. I will.

40 Q.—This contract for the 158th Street sewer is dated December 3, 1925. Will you therefore look at your bank books and check stubs and see if you can approximate the date of the payments or tell us the date of the payments to Phillips for the pipe?

MR. O'DONNELL: Defendants object to any evidence of this nature, as not being the best evidence.

William H. Hastings for plaintiff recalled (direct examination).

MR. HACKETT: I avail myself of that objection.

THE COMMISSIONER: Let him answer, subject to counsel's objections and exceptions.

A.—On August 9, 1926 —

10 Q.—Before you read that paper, will you tell me what that is, Mr. Hastings? A.—This is a copy of checks made payable to Phillips on the 158th Street sewer.

MR. COOK: May I see it, Mr. Goudrault?

MR. GOUDRAULT: Yes.

Q.—Who prepared this, Mr. Hastings; this document? (indicating)

MR. COOK: What document, Mr. Goudrault?

20 Q.—What is this document, will you say, first? A.—It is a copy of the checks, — a copy of the amounts of checks given to the Federal Agents; and a copy of the receipt.

Q.—Will you file that copy as Plaintiff's Exhibit C-32?

MR. HACKETT: I object to the production of this copy prepared by some unknown or undeclared person, because it is not the best evidence, and is not evidence at all.

MR. COOK: I join in that objection.

30 THE COMMISSIONER: I will accept it subject to your objections.

MR. GOUDRAULT: I now offer as evidence the said copy, as Plaintiff's Exhibit C-32.

(The said papers, consisting of three sheets, were thereupon received in evidence and marked Plaintiff's Exhibit C-32 of this date).

40 MR. GOUDRAULT: May we have a photostatic copy of those three sheets made, and with the permission of counsel for the defendants I will produce, instead of that receipt, a photostatic copy. That is our agreement.

MR. COOK: Yes.

MR. GOUDRAULT: Under reserve of all objections.

MR. HACKETT: I am agreeable.

William H. Hastings for plaintiff recalled (direct examination).

THE COMMISSIONER: Photostatic copies may be substituted, by consent of all counsel.

Q.—On sheet 1 of the Exhibit C-32 appears the signature of the official, Special Agent, who took the original? A.—Yes.

MR. O'DONNELL: Objected to as not being the best proof of the signature.

Q.—Now, will you look at sheet No. 2, where you have a total amount of \$131,390 appearing to have been paid to J. M. Phillips for pipe.

MR. O'DONNELL: Same objection.

Q.—(continuing) And will you state to us if that is the sum that you meant when you referred to the payment to Philips for pipe for the 158th Street job? A.—Yes, sir. That is the amount of money I paid to Philips for the pipe on that particular job.

Q.—Now, have you the stubs of your checks which correspond to those payments, Mr. Hastings? A.—I have.

Q.—Are those very valuable to you, those stubs? A.—All my papers are valuable to me, in the light of various investigations.

Q.—I mean this, Mr. Hastings: We are trying our best to accommodate you; on the other hand, we have a case to make. If they are allowed to be produced in the record, they become an official document, and then we can return them to you after the case is over. They are under the guardianship of our courts in Montreal. A.—You see, the Department of Justice has taken checks away two years. I haven't got them back yet. Now, if they take these check books and wait another two years there may be some other cases coming up into the meanwhile, and I will be at a total loss. If you can give me some assurance when you will return them, I will be only too glad to let you have them.

Q.—I couldn't tell you the definite date when they will be returned. A.—I don't want any definite date, but I want some assurance that I am going to get them back.

MR. GOUDRAULT: I will offer you my receipt, or Mr. More's receipt. He is from the Attorney General's Office.

THE COMMISSIONER: He is the Assistant Attorney General of the State of New York.

THE WITNESS: Yes.

William H. Hastings for plaintiff recalled (direct examination).

BY MR. GOUDRAULT:

Q.—Mr. Hastings, have you look at the stubs? A.—I have, yes, sir.

Q.—And will you turn to the stubs for the payments which appear on Exhibit C-32?

10 MR. O'DONNELL: Defendants object to this evidence as being entirely illegal.

MR. HACKETT: So do I.

A.—On August 9, 1926, there is a stub of a check made out to John M. Phillips for \$20,000, charged against 158th Street for pipe.

MR. HACKETT: Wil you wait a minute?

20 THE WITNESS: Yes.

(Discussion off the record.)

BY MR. GOUDRAULT:

Q.—Are the entries appearing here for the amounts of checks and the dates, the same as they are in your stubs there? A.—Yes, sir.

Q.—You have compared them, have you? A.—Yes, sir, I have compared them.

30 Q.—And they are exactly the same? A.—Exactly.

Q.—All the stubs are there? A.—Yes, sir.

MR. O'DONNELL: This is all under the same objection.

MR. GOUDRAULT: Then I will relieve you of the obligation to file those, and you can take them back.

40 Q.—We spoke a minute ago about sizes of pipe; and the amount of precast pipe that went into the 158th Street sewer you didn't recollect. I now read from the record the following quantities: Type B 3531 linear feet, 2 foot 6 reinforced concrete pipe. 3295 linear feet 2 foot 3 inches reinforced concrete pipe.

MR. COOK: Are you referring to another contract now, Mr. Goudrault?

MR. GOUDRAULT: No, that is not the right one. I wish to correct the figure. I read from the original contract, Type B required 3531 linear feet of 2 foot 6 inches reinforced

William H. Hastings for plaintiff recalled (direct examination).

concrete pipe, and 639 linear feet 24 inch reinforced concrete pipe, for the 158th Street sewer.

BY MR. GOUDRAULT:

10 Q.—And that amount of pipe was required, naturally enough. Now, can you state if it was all for that sewer, for that 158th Street sewer? A.—Yes, sir. The quantities may not be exactly as you read them, because there might be a small variation.

Q.—But of any importance? A.—No importance.

Q.—Now, will you look at the same contract. Do you recollect what the specifications called for as regards the concrete mixture to be put in the sewer?

MR. O'DONNELL: Objected to as not being the best evidence. The specifications speak for themselves.

20 Q.—Will you therefore look at page 60 of Exhibit C-30 and state to us, by reading Section 132 of the contract, what kind of concrete mixture it called for? A.—“Reinforced concrete pipe shall be constructed at the site of the work, in a shed if the weather requires, and the pipe shall be made by a manufacturer of established reputation, who shall have had previous experience in the manufacture of reinforced concrete pipe. The cement, sand, stone or gravel shall conform to the specifications of the Division of Sewers, Bureau of Engineering Construction. The forms shall be of steel and the reinforcing steel shall be held
30 at all times against displacement in tamping. Concrete shall be an accurate 1-1-2 mix. Each pipe shall be stamped as made with date of manufacture.”

Q.—That called for a concrete mixture of 1-1-2? A. Yes, sir.

Q.—Will you now please tell us if your pipe was made differently from any pipe from 1924 down?

MR. O'DONNELL: Objected to as being irrelevant.

40 A.—Except Phillips told me he made that pipe for the wet jobs a little better than the specifications called for.

Q.—Was your pipe made differently, — did he tell you the mixture? A.—I don't recall.

Q.—You don't recall? A.—No.

Q.—Did he tell you the mixture he was using? A.—I don't recall.

William H. Hastings for plaintiff recalled (direct examination).

Q.—Have you any experience in the manufacturing these pipes, Mr. Hastings? A.—I have never made precast pipe. I have made pipe in the trench.

Q.—Could you tell us if a concrete mixture of 1-1-2 is a better mixture than 1-1½-2? A.—A 1-1-2 mixture is the better mixture than 1-1½-2½, yes, sir.

10 Q.—That is a correct answer, except you did not get my figures right for the second concrete mixture. I stated if 1-1½-2, — the difference between that and 1-1-2? A.—The 1-1-2 is the better mixture; better pipe.

Q.—I see. Could you tell us, in a word, why! A.—Why, there's more cement in it and there's less voids.

Q.—Now, will you look at Exhibit C-31, which is the contract for the construction of the Norwood Place sewer in the Borough of Queens, and tell us if you remember doing that job in Queens County, and the Borough of Queens, Mr. Hastings? A.—I do.

20 Q.—Your company? A.—Yes, sir.

Q.—Will you look at page 33, where appears the signature of your firm per F. B. Mullen, Vice-president. Do you know Mr. Mullen? A.—Yes, sir.

Q.—Can you recognize this signature? A.—I can identify that signature.

Q.—Now, do you recollect the sizes of pipe that were used or that the specifications called for, the construction of the Norwood Place sewer? A.—I think it was —

30 MR. O'DONNELL: Objected to as not being the best evidence.

A.—(continuing) I think it was 8 foot; 7 foot 6, 5 foot 6, some smaller pipe that I don't recollect.

40 Q.—I see. I now read from the record that for the type B sewer the specifications called for 4406 linear feet 8 foot reinforced concrete pipe sewer; 982 linear feet 7 foot 6 inches reinforced concrete pipe, and 228 linear feet 5 foot 6 inches reinforced concrete pipe, and 50 linear feet, 5 foot 6 inches reinforced concrete pipe. Do you recollect the prices which you paid for these pipes?

MR. O'DONNELL: Objected to as not being the best evidence.

MR. HACKETT: I object also.

William H. Hastings for plaintiff recalled (direct examination).

A.—I remember the first size was \$52. I don't remember the other prices.

Q.—You don't remember the other prices? A.—No.

Q.—Now, to whom did you pay that, or your company pay that?

MR. O'DONNELL: Same objection.

10 THE COMMISSIONER: I will allow him to answer, subject to counsel's objection.

MR. HACKETT: I object to that as not being the best evidence.

THE WITNESS: Perhaps I didn't understand the first question, the question previous to this.

20 Q.—I will put it again. From whom were you getting your precast pipe that you were using for the construction of the Norwood Place sewer? A.—From John M. Phillips.

Q.—To whom did you pay for the pipe used in the construction of the sewer, the Norwood Place sewer? A.—I paid to Daniel Creem, assignee of Phillips for the pipe.

Q.—Do you remember the amount you paid?

MR. O'DONNELL: Same objection.

A.—I paid \$30 for the big pipe, big sizes, and \$20 for the smaller sizes, per linear foot.

30 Q.—I know the manner of calculation, but would you remember the total you paid for the pipe used in the construction of the Norwood Place sewer? A.—I do not.

Q.—You do not? A.—No.

Q.—And when you state the big sizes? A.—I mean the 8 foot and the 7 foot 6.

Q.—And then we had a 9 foot 6 proposition in there?

MR. HACKETT: No, no.

40 MR. O'DONNELL: 7 foot 6.

BY MR. GOUDRAULT:

Q.—I mean 5 foot 6. Do you recollect the price you paid for that? A.—\$20.

MR. GOUDRAULT: May I state that I was reading these specifications as regards the number of feet of pipe, and

William H. Hastings for plaintiff recalled (direct examination).

sizes of pipe, from the page next to page 1 of the original contract.

Q.—Do you recollect the concrete mixture that was called for in the specifications for the construction of the Norwood Place sewer? A.—I do not.

10 Q.—Will you just look at page 56 of this Exhibit C-31, and just read it over and tell us, — read it over and just tell us in a word what was the concrete mixture called for?

MR. O'DONNELL: The specification speaks for itself.

A.—The concrete mixture called for 1-2-4 mix.

Q.—Now, as regards your payments for the pipe that was used in that Norwood Place sewer, have you got any checks?

A.—No, sir.

Q.—Your company has any checks, Mr. Hastings? A.—No, sir, we have no checks.

20 Q.—Where are those checks? A.—In the Department of Justice, at Washington.

Q.—Have you got a list of those checks? A.—I have.

Q.—Will you show it to us, please? A.—Yes.

Q.—Would the list of checks here appearing on what seems to be sheet No. 1 of this Exhibit C-32, be the checks you are referring to? A.—Yes, sir.

MR. O'DONNELL: Same objection, as not being the best evidence of payment.

30 MR. GOUDRAULT: I understand this sheet is already in evidence as C-32.

Q.—I suppose you have no objection, for easier reference if we mark these sheets here 1, 2 and 3? A.—No, sir.

Q.—Will you now look at sheet No. 1 and state if the numbers of checks and those checks appearing to have been paid to one Daniel Creem, are the payments that you referred to about pipes?

40 MR. O'DONNELL: Same objection.

A.—The checks made out according to this slip to Daniel Creem are the checks that we made out in payment for the pipe on Norwood Place sewer.

Q.—And we will get the total in a minute of those checks that you paid for pipe used in Norwood Place and paid to Daniel Creem. But have you the stubs of your checks? A.—Yes, sir.

William H. Hastings for plaintiff recalled (cross-examination).

Q.—Do I understand that the list of checks appearing on sheet 1 of this Exhibit C-32 was prepared from the stubs of your check books? A.—Well, I don't know that.

Q.—You don't know that. Did you verify these various amounts corresponding to the numbers appearing on the stubs of your check books? A.—I did.

Q.—And are they accurate? A.—Yes, sir.

10

MR. O'DONNELL: Same objection, as not being the best evidence of payment.

MR. HACKETT: I join in that objection.

Q.—Did you do the work yourself of checking these entries? A.—I did.

Q.—And what is the total amount paid for this pipe for the Norwood Place sewer? A.—\$153,240.

20

MR. O'DONNELL: This is under the reserve of the same objection.

MR. GOUDRAULT: That is all.

CROSS-EXAMINATION BY MR. HACKETT:

Q.—How long have you been engaged in the contracting business and what experience have you had in the construction of sewers? A.—I have been in the contracting business since 1911, and I have built sewers in various parts of Queens County, various types of sewers, including precast pipe sewers and monolithic sewers, vitrified pipe sewers; in fact, all the different types of sewers that are called for in Queens County.

30

Q.—We are now discussing the job which H. J. Mullen Contracting Co. did on 158th Street and on Norwood Place. Will you state whether the execution of this work was difficult or otherwise? A.—The execution of the job on 158th Street was a very difficult piece of construction.

40

Q.—Why was it difficult? A.—We had 12 feet of water which we had to get out of our trench before we could lay any pipe.

Q.—Was the trench a deep one? A.—The trench ran from 18 to 20 feet, and about 2,000 feet of it was alongside the trolley track of the trolley that runs to Rockaway Beach, or Far Rockaway, and there were houses on either side and we had to shore and be careful our pumps did not suck the sand from the foundation of the buildings. It was a treacherous piece of work.

William H. Hastings for plaintiff recalled (cross-examination).

Q.—And the soil, the strata through which you were making your cut, was not very stable, was it? A.—It was quicksand; sand saturated with water made it of a quicksand nature.

Q.—And you had difficulties due to the proximity of these other works, in assembling your materials? A.—Yes, sir.

Q.—And incidentally there was difficulty in manufacturing this pipe alongside, I suppose? A.—Well, I didn't manufacture the pipe.

Q.—But it is apparent that there was trouble. A.—Yes, sir.

Q.—Now, just at this time there was a good deal of labor unrest and uncertainty as to prices, was there not?

MR. GOUDRAULT: Objected to as not arising from the examination in chief of the witness now on the stand.

A.—There was considerable unrest.

Q.—I read from a memorandum of Deputy Comptroller Henry Smith, of the City of New York, — a memorandum for Deputy Comptroller Smith, signed by the Chief Auditor of the Department of Finance of the City of New York, in which it is stated: "The reason given for the proposed modification of the contract is that the present coal strike will probably cause a shortage of steel and cement and the consequent delay in the manufacture of pipe if the pipe is to be made as the work progress, and that the modification will expedite the work by getting all of the precast pipe on the site so that the contractor may start in several sections at once and then not be delayed after the work starts."

Would these labor difficulties and the enhanced price of coal and cement, and the uncertainty of obtaining either, have a bearing upon pipe prices?

M. GOUDRAULT: Wait, don't answer. Objected to, inasmuch as it is calling from the witness the expression of an opinion. And further, it is also appearing by this file, from the letter read to the witness, that it is also an expression of opinion and not an expression of fact.

MR. HACKETT: Mr. Commissioner?

THE COMMISSIONER: The witness may answer, subject to counsel's exceptions, objections and reservations.

William H. Hastings for plaintiff recalled (cross-examination).

A.—Yes.

Q.—Do you know enough about the workings of the Borough system to know that all accounts and payments for work of this kind have to be approved not only by the Borough but by the Department of Finance of the City of New York? A. Yes, sir.

10 Q.—So they are scrutinized by two departments of finance, at least, before they are made? A.—Yes.

MR. GOUDRAULT: Objected to as not being the best evidence.

Q.—And that is true of the contract and specifications?

A.—Yes.

20 Q.—I also read from Exhibit C-30 a communication dated July 13, 1928, and addressed to Charles W. Berry, Comptroller Department of Finance, Municipal Building, New York City: “Delay in completing this contract was caused by the following unforeseen difficulties encountered during the actual construction of these sewers, water in considerably greater quantities than anticipated was encountered in the trench during the progress of the work. This caused delay in assembling a plant adequate to combat water conditions as they actually existed. The failure of the City to remove a condemned building which was in the right-of-way of the sewer construction and which had to be underpinned with unusual care, inasmuch as it was occupied.” Are these statements of fact to your knowledge true?

30 A.—Yes, sir.

Q.—“In New York Avenue sewer was constructed for a distance of 2,500 feet adjacent to trolley tracks of the Jamaica Central Railway. As this trolley company was carrying considerable traffic the contractor was compelled to use unusual care in protecting his trench. It is the custom of the railroad companies to shift their tracks. This could not be done in New York Avenue, however, because of lack of room, and it is for the above reason that an extension of time was granted.”

40 Did these conditions above recited also hamper the manufacture of the pipe alongside the trench?

MR. GOUDRAULT: Objected to inasmuch as the witness is not the proper man to testify as to that, he having told us that he was no precast pipe manufacturer.

THE COMMISSIONER: He may answer, subject to counsel's objection.

William H. Hastings for plaintiff recalled (cross-examination).

A.—I don't know.

Q.—You were on the job frequently, Mr. Hastings? A. Yes, sir.

Q.—And was the work of the pipe manufacture in progress? A.—The pipe was delivered to the job, and those conditions would hamper the delivery of the pipe to the job.

10 Q.—When you tendered for these jobs did you have any pre-arrangement with Phillips for the purchase of pipe? A.—I got a price from Phillips for the pipe.

Q.—Naturally you got a price, because you used it. But did you get it before or after you had put in your bid? A.—I got a price before I put in the bids, from Phillips.

Q.—Did you at any time disclose to him the amount of your bid? A.—I did not.

Q.—Or to anybody else? A.—No, sir.

20 Q.—Did you pay anybody or any amount, or pay any amount to Phillips, other than the stipulated price of the pipe?

MR. GOUDRAULT: Objected to as not arising from the examination in chief, the witness having been called to testify only as to payments to Phillips for the precast pipe, that part of the material used in the construction of those sewers.

THE COMMISSIONER: You may answer subject to counsel's objection.

30 A.—I paid no money to anybody. And I paid money to Phillips only for the pipe that he furnished.

MR. O'DONNELL: For the pipe he actually furnished?

THE WITNESS: I paid a lump sumprice for the pipe he actually furnished.

MR. HACKETT: All right. That is all.

MR. COOK: I have no cross-examination.

MR. GOUDRAULT: That is all. Thank you.

40

Paul W. Paulsen for plaintiff (direct examination).

DEPOSITION OF PAUL W. PAULSEN.

PAUL W. PAULSEN, age 42; residence, Irvington, New Jersey, Essex County; occupation, contractor; a witness produced, sworn and examined on the part and behalf of the People of the State of New York, the plaintiff, deposeth and saith as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—Are you still a contractor, Mr. Paulsen? A.—No, I have no work at present. I am working for another contractor.

Q.—What company did you work for, say in 1916, 1917? A.—My own company.

Q.—What was the name of that company? A.—That was personally; no corporation.

20 Q.—That was during what year? A.—From 1915 to 1920.

Q.—And what happened in 1920? A.—I incorporated a company, — I went in partnership with a party by the name of John J. Hammen and Fred Bisballe.

Q.—Under what name? A.—We operated under Hammen & Company.

Q.—How long did that company last? A.—All of the assets of Hammen & Company were turned over to a corporation.

30 Q.—Known as? A.—In 1924, January, 1924, known as Hammen & Company, Incorporated.

Q.—Where was the head office of that company? A.—Detroit, Michigan.

Q.—That company was in existence from January, 1924, you said, until when? A.—That went into the hands of receivers in 1928.

Q.—From 1924 to 1928 what position did you occupy with the Hammen Construction Company? A.—That was Hammen & Company, Incorporated.

40 Q.—Incorporated, rather. A.—I was vice-president. At the same time there was another corporation formed, by the name of Hammen Construction Company, for the purpose of taking contracts outside of the State of Michigan.

Q.—But the Hammen Construction Company, Inc., operated where? In New York? A.—In Michigan only.

Q.—Michigan? A.—Hammen & Company, Inc.?

Q.—Yes. A.—Yes.

Paul W. Paulsen for plaintiff (direct examination).

Q.—Where did they operate? A.—In the State of Michigan, Detroit, primarily.

Q.—I mean the Hammen Construction Company? A. The Hammen Construction Company operated in New Jersey, New York, Kentucky, Milwaukee, — Wisconsin; several places.

Q.—Were you connected with both companies? A.—Yes, sir.

10 Q.—Now, limiting ourselves to the State of New York, what company operated here in the State of New York? A. Hammen Construction Company.

Q.—All right. Where was its head office? A.—Detroit, Michigan.

Q.—Did that Hammen Construction Co. build any sewers in Queens Borough? A.—Yes.

Q.—By contract or subcontract? A.—Both.

Q.—And do you remember the years? A.—1925, 1926.

20 Q.—Did you know, in his lifetime, John M. Phillips? A. Yes.

Q.—Do you remember when you first met John M. Phillips? A.—Yes.

Q.—Where was that? A.—Either No. 9 or 11 Jackson Avenue, Long Island City.

Q.—What place is that? A.—That is a drug store.

Q.—Do you remember the year? A.—1923; in the fall of 1923.

30 Q.—Was anybody with you at the time you first saw Phillips? A.—Why, I was introduced to Phillips by Andy Zorn.

Q.—Did you know Andy Zorn long? A.—I met Andy Zorn the first time at that meeting, or prior to that meeting with Phillips.

Q.—Where did you meet Andy Zorn prior? A.—49 Jackson Avenue.

Q.—That is the same avenue, in the same city, as the place where you met Mr. Phillips? A.—It is practically on the opposite side of the street, about a block from there.

40 Q.—And then what took place? A.—Why, nothing particular, except that I told Phillips, —

MR. COOK: Objected to.

A.—(continuing) Phillips asked me —

MR. HACKETT: I object to any evidence of conversation between this witness and Phillips.

Paul W. Paulsen for plaintiff (direct examination).

THE COMMISSIONER: The answer will be taken subject to counsel's objections and reservations and exceptions.

BY MR. GOUDRAULT:

Q.—State what happened? A.—Andy Zorn introduced me to Phillips.

10 Q.—At 49 Jackson Avenue? A.—No, at No. 9 or 11.

Q.—What was that, a drug store you say? A.—Yes.

Q.—In what part of the drug store did he introduce you? A.—In the back room.

Q.—What happened then, Mr. Paulsen? A.—Well, Phillips asked me if I could build wet work.

MR. O'DONNELL: Same objection, as to conversations with Phillips.

MR. HACKETT: Same objection.

20 THE COMMISSIONER: The answer will be taken subject to counsel's objections and reservations.

(Answer read by clerk).

THE WITNESS: He meant wet sewer work. I told him I thought I could. He told me "Mr. Hirsch told me about you."

MR. O'DONNELL: Same objection.

30 MR. HACKETT: I object also.

THE COMMISSIONER: Same ruling.

BY MR. GOUDRAULT:

Q.—Did you know Mr. Hirsch? A.—Yes.

Q.—Who was that Mr. Hirsch? A.—He was president of the Lock Joint Pipe Company.

40 Q.—Had you known Mr. Hirsch long? A.—No. I had met him a couple of times probably six months or so before that time.

Q.—Anything else there on that occasion that you recollect? A.—No. Just general discussion about if I was interested in building some sewer work over there, and he wanted to know if I could handle wet work. He said "There's a lot of wet work coming up." He told me he was selling pipe there.

Paul W. Paulsen for plaintiff (direct examination).

MR. O'DONNELL: Same objection.

Q.—Over there, you mean where? A.—In the Borough of Queens.

Q.—Do you remember meeting Phillips subsequent to that first visit? A.—After?

Q.—Yes. A.—Yes.

10 Q.—Would you tell us the circumstances of your meeting with Phillips on that second occasion? A.—I went over there in answer to a telephone message from him, and he told me there was —

MR. HACKETT: Same objection concerning conversations between this man and the deceased, Phillips.

THE COMMISSIONER: The answer will be taken subject to counsel's objections.

20 Q.—You may answer. A.—He told me there was some work coming up shortly.

Q.—When you say "over there", what do you mean, Mr. Paulsen? A.—In Long Island City.

Q.—At what place exactly in Long Island City, speaking of the second visit? A.—The second visit he told me there was some work coming up.

Q.—No. You told us that you met him on the second occasion, and then you said "He called me to go over there"? A. Asked me to come over.

30 Q.—I see. But what is meant by "over there"? A.—Over in Long Island City, his office, 49 Jackson Avenue.

Q.—I see. What happened there? A.—He told me there was some work coming up shortly.

MR. O'DONNELL: Same objection.

Q.—Who was there besides Phillips and yourself, on that second occasion? A.—Phillips and Andy Zorn and Decker, Bert Decker.

40 Q.—Bert Decker? A.—Yes.

Q.—Did you know Decker? A.—That was the first time I met him.

Q.—Was he introduced to you? A.—Yes.

Q.—By whom? A.—Phillips.

Q.—How was he introduced to you? A.—He told me Decker was his engineer.

Paul W. Paulsen for plaintiff (direct examination).

MR. O'DONNELL: Objected to, for the same reasons.

Q.—Did Mr. Decker protest? A.—No.

Q.—Was there anything else done on that second occasion, to the best of your recollection, Mr. Paulsen? A.—We went out over the route where there was some work coming up, on Rockaway Boulevard at a point about where the main Jamaica trunk sewer crosses at that point.

10 Q.—Who went there? A.—Phillips, Decker, myself and a driver.

Q.—Was that far from his office? A.—About seven or eight miles, I presume.

Q.—Is Jackson Avenue in Long Island City, in the Borough of Queens? A.—Yes, sir.

Q.—Now, you told us a minute ago that you went to a certain place with Phillips, Decker and the driver. What place exactly was that? A.—Approximately a point where the main trunk sewer of the Jamaica sewer system crosses Rockaway Boulevard. That was the nearest point of exit where you could drive with a car and get a good view of the line of the work.

20

Q.—Do you recollect the purpose of that visit? A.—He wanted me to see whereabouts this work was located that was coming up.

MR. O'DONNELL: Objected to as irrelevant.

THE COMMISSIONER: The answer will be taken subject to counsel's objection.

30

Q.—Were you familiar at that time with sewer construction work being done on the Jamaica and Rockaway systems in the Borough of Queens? A.—No. That was the first I heard of it. I heard of work to be done in the Borough of Queens, but not on this particular system.

Q.—Did I understand you to say that your company had afterwards occasion to contract and subcontract in Queens? A.—Yes.

40 Q.—For the construction of sewers? A.—Yes.

Q.—What kind of sewers did the Hammen Construction Company build in Queens, as regards type? A.—What kind?

Q.—Yes. A.—Al type B, or concrete pipe.

Q.—Monolithic? A.—Not pipe.

Q.—Did you have anything to do in your company with the reading of specifications for the construction of sanitary sewers in the Borough of Queens? A.—Sure.

Paul W. Paulsen for plaintiff (direct examination).

MR. O'DONNELL: Objected to as being irrelevant.

Q.—Now, what was your actual position, — I am not speaking of your official position as vice-president, but I mean your occupation in the company, in the Hammen Construction Company? A.—I managed all the work in the East here. I had full charge of any work they had in New Jersey and in
10 New York.

Q.—Are you an engineer? A.—No.

Q.—How long have you been in the construction work, personally? A.—Since 1914.

Q.—Was there any interruption in that class of work from 1914 up to date? A.—No.

Q.—Did yourself or the company that you were interested in specialize in any kind of particular contracting work? A. Yes. Sewers.

Q.—Did your company have appointed engineers? A.—
20 You mean hired engineers?

Q.—Hired, or appointed. I mean did your company have any engineers working for it? A.—No.

Q.—Did it require any for the kind of work that you were doing? A.—No.

MR. O'DONNELL: Objected to as being irrelevant.

Q.—Are you quite familiar with plans, specifications and profiles? A.—Yes.

Q.—Do you remember the main sewers that were constructed by yourself and the companies with which you were connected, in the Borough of Queens, say from 1917 on to 1927?
30 A.—Yes.

Q.—Could you name the main ones?

MR. O'DONNELL: Objected to as not being the best evidence.

A.—The Hammen Construction Company had under direct contract with the President of the Borough of Queens, Section 2
40 of 150th Avenue sewer. I don't recall the contract number.

Q.—We will get to that. The other one? A.—We had under sub contract part of Section 1 of 150th Avenue sewer.

Q.—By sub contract, you had a part of Section 1? A.—
Part.

Q.—Can you tell us what part? A.—About 2,200 feet.

Paul W. Paulsen for plaintiff (direct examination).

MR. O'DONNELL: Objected to as not being the best evidence.

Q.—Will you now enumerate any other contracts that you remember were built by you or your company in the Borough of Queens, during the above stated period? A.—There was part of Amstel Boulevard, built under sub-contract with Necaro
10 Company.

Q.—That was also by sub-contract? A.—Yes.

MR. O'DONNELL: Same objection.

Q.—Any other? A.—No.

Q.—Was yourself or your company paid by the City of New York for that work on those contracts? A.—Oh, yes. For the work, the sub-contract, we were paid by the contractors.

Q.—I see. The direct contract that you had with the City
20 of New York, Borough of Queens, was for the construction of Section 2 of the 150th Avenue sewer? A.—Correct.

Q.—Did your company receive or did you receive any complaints as regards the construction of said sewer?

MR. O'DONNELL: Objected to as being entirely irrelevant and illegal, and not the best evidence that any such complaints were received.

MR. HACKETT: I avail myself of the same objection.

30 THE COMMISSIONER: The answer will be taken subject to counsel's objection and reservation.

THE WITNESS: Will you state that question more clearly? Do you mean if we had any complaints on methods of construction, or on not doing good work, or anything of that sort?

MR. GOUDRAULT: Yes, I will put it plainer.

40 Q.—You told us a minute ago that the City of New York paid you or your company for that contract? A.—Yes.

Q.—Any complaint made? A.—By the City of New York?

MR. O'DONNELL: Same objection.

Q.—Yes. A.—About the construction?

Q.—Yes. A.—The only complaint that was made was that we were not starting as rapidly as they thought we should.

Paul W. Paulsen for plaintiff (direct examination).

Q.—But I mean after the work was completed, Mr. Paulsen? A.—None whatever.

MR. O'DONNELL: Same objection.

Q.—And you were the active general manager of the company? A.—Yes, as far as that work was concerned. I was on the job every day.

10 Q.—On the job every day? A.—Yes. Not all the time, but once every day.

Q.—Coming back to the point where we left you, in Jamaica and Rockaway, in the company of Mr. Phillips and Decker and the driver, did you inspect the territory to a large extent? A.—Just in a general way. We had no plans, except the general territory where the sewer was proposed to be built. It was more for getting an idea of how much water there would be, as this is very low land. They pour in to Jamaica Bay, and they could get a good idea of the type work it was.

20 Q.—Did I understand you to say that was on Rockaway Boulevard or nearby? A.—We drove out to Rockaway Boulevard, and that was the nearest accessible street to this work where we could go with a car. That very day it was right after a rain.

Q.—Is that 150th Avenue near the Rockaway Boulevard? A.—It crosses Rockaway Boulevard.

Q.—Is Amstel Boulevard located in the same locality or not? A.—No. That is in Rockaway. We drove there later.

30 Q.—You mean later during the same day? A.—Yes.

Q.—I see. Tell us what happened then. A.—Nothing happened except just a general survey of the ground conditions. Amstel Boulevard had not been built at the time. It appeared to be virgin land there, low land, partly water on top of it.

Q.—Did anything else happen when you reached Amstel Avenue? A.—No. We drove back to his office from there.

Q.—And then what happened? A.—He gave me a set of plans to take with me.

40 Q.—And when you say a set of plans, — by the way, have you got those plans yet? A.—No.

Q.—What kind of plans were they? A.—Blueprints.

Q.—Blueprints. Do you remember what was on the blueprints?

MR. O'DONNELL: Objected to as not being the best evidence.

MR. HACKETT: I avail myself of the same objection.

Paul W. Paulsen for plaintiff (direct examination).

THE COMMISSIONER: The answer will be taken subject to counsel's objections and reservations.

A.—Yes.

Q.—Would you tell us, in a word?

MR. COOK: What is the question?

10 MR. O'DONNELL: What was on the plans.

MR. COOK: Mr. Commissioner, I object to this evidence as improper and illegal, questioning the witness regarding plans, what was on them and what was off them.

MR. GOUDRAULT: Question withdrawn.

Q.—You stated that Phillips gave you a set of plans? A. Yes.

20 Q.—Did the plans show the work that had to be done?

MR. O'DONNELL: Same objection.

A.—They showed part of it.

Q.—As a matter of fact, did your company bid for that work? A.—At a later date.

MR. O'DONNELL: Objected to as not being the best evidence of any such bid.

30 MR. HACKETT: Same objection.

THE COMMISSIONER: The answer will be taken subject to the objections and reservations of counsel.

Q.—I want you to describe not what was in the plans, but simply tell us what they were for? A.—They represented —

Q.—Just describe them. I mean to say, did they have a name on them?

MR. O'DONNELL: Same objection.

40 A.—They were for sewer work. Sections 1 and 2 of 150th Avenue sewer, that was put on the plans.

Q.—And 150th Avenue, you already told us, was in the Borough of Queens? A.—Yes.

MR. GOUDRAULT: I understand the witness wishes to correct a few of his previous answers and describe those plans otherwise.

Paul W. Paulsen for plaintiff (direct examination).

MR. O'DONNELL: Same objections to any description of the said plans.

THE COMMISSIONER: Your objection will be noted.

BY MR. GOUDRAULT:

10 Q.—The plans of what project sewer were shown to you on that occasion, Mr. Paulsen? A.—The plans of Amstel Boulevard were given to me.

Q.—Given to you? A.—To take with me.

Q.—By whom? A.—By Phillips.

Q.—And not the plans of the 150th Avenue? A.—Not at that time.

20 Q.—What was the habit or custom of contractors or prospective contractors when a sewer was to be constructed in the City of New York, more especially in the Borough of Queens —

MR. O'DONNELL: Objected to as being entirely irrelevant.

MR. COOK: Habits and customs of the contractors are of absolute indifference to this case.

MR. HACKETT: I associate myself with that objection.

MR. GOUDRAULT: Question withdrawn. I will get what I want otherwise.

30 MR. O'DONNELL: Each man has his own particular way of doing business.

MR. GOUDRAULT: Question withdrawn.

BY MR. GOUDRAULT:

Q.—Will you tell us if any other plans and profiles or blueprints of plans and profiles were given you by Phillips?

40 MR. O'DONNELL: Same objection.

A.—Yes.

Q.—Besides those that you have already mentioned, blueprint of plan and profile for the Amstel Boulevard, tell us what other blueprints of plans and profiles were ever given you by Phillips? A.—150th Avenue sewer.

Q.—Both sections? A.—Section 1 and 2 was on one sheet or in one bundle.

Paul W. Paulsen for plaintiff (direct examination).

Q.—And do you remember if he gave you any other? A. Yes, he gave me one more.

Q.—Which was that one?

MR. O'DONNELL: Same objection.

10 A.—I don't recall the name of the street. I can explain it this way, that the job was awarded to Duit, Inc.

MR. HACKETT: Fisk Avenue?

THE WITNESS: That was Fisk Avenue.

Q.—After you secured these plans and profiles, or blueprints of plans and profiles for the Amstel Boulevard, what did you do? A.—I went home.

Q.—I mean, what happened? A.—Well, he asked me —

Q.—Who is he? A.—Phillips.

20 MR. O'DONNELL: Defendants object to any evidence as to conversations between the witness and Phillips.

MR. HACKETT: Same objection.

THE COMMISSIONER: The answer will be taken subject to counsel's objection.

30 A.—He asked me to give him an estimate what we would want for doing all the work for building the job except the price of the pipe, except the pipe. We would get the price of that later. In other words, he wanted me to give him an estimate for building that less pipe.

Q.—Did you go to work and prepare an estimate? A. Yes.

Q.—And after working out your estimate, did you meet Phillips later on? A.—No. I told him on the telephone what it would be.

Q.—Was that long after that interview? A.—Probably a month.

40 Q.— Do you recollect the figures that you gave him?

MR. O'DONNELL: We object to verbal evidence as to estimates.

THE COMMISSIONER: The answer will be taken subject to counsel's objection.

A.—No, I don't.

Paul W. Paulsen for plaintiff (direct examination).

Q.—Have you in your possession or have you kept the paper or file in which you prepared the estimates? A.—For Phillips?

Q.—For the Amstel Boulevard. A.—For Phillips, you mean?

Q.—Yes. A.—No.

10 Q.—How was that worked out, those estimates, how did you come to have a certain figure and shoot it over the telephone to Phillips?

M. O'DONNELL: Same objection; and furthermore, that it is irrelevant.

THE COMMISSIONER: I will accept the answer, subject to counsel's objections.

20 Q.—You may answer. A.—I went over the work and examined the work very carefully and figured up what I estimated the job was worth less the price or value of the pipe, or whatever the pipe would cost, omitting the pipe entirely.

Q.—Were you taking just a general survey, or were you putting down figures on a piece of paper? A.—I put down figures on a piece of paper. He gave me the plans and the quantity sheet of the job at the time.

Q.—And you have not kept those papers, have you? A. No.

Q.—Your company finally got that job, did it? A.—No.

30 Q.—It did not? A.—No.

Q.—Did you work on estimates also on the 150th Avenue? A.—The 150th Avenue, yes, at a later date.

MR. O'DONNELL: Same objection.

Q.—Now, you stated that was on another occasion. How did you come to have the plans and profiles or blueprints of same for the 150th Avenue projected sewer? A.—How did I come to what?

40 Q.—To get the blueprint of the plan and profile of the projected sewer on 150th Avenue? A.—Phillips called me up on the telephone and told me to come over.

MR. O'DONNELL: Same objection.

MR. HACKETT: I object also.

Q.—And was that much later after the Amstel incident? A.—About six months.

Paul W. Paulsen for plaintiff (direct examination).

Q.—Did you go over? A.—Yes.

Q.—At his office again? A.—I went to his office at 49 Jackson Avenue.

Q.—After that what happened? A.—Andy Zorn was there and told me to come with him, and we went over to No. 9 Jackson Avenue upstairs, I think on the fourth floor.

10 Q.—And who was there when you reached there? A. Phillips was there.

Q.—Who else? A.—And Decker was there.

Q.—And to simplify it, was it there that you did receive the blueprints? A.—Yes.

Q.—Did they appear to you to be the usual blueprints of those plans and profiles issued by the Borough? A.—Yes.

MR. O'DONNELL: Objected to. Defendants object to any verbal evidence of what they appeared to be, until they are produced.

20 Q.—We will be in a position, Mr. Paulsen, to show you the plans and profiles, the original, this afternoon, and do you think you could recollect them? A.—Yes.

Q.—In order to get to that as soon as possible we will take now that 150th Avenue plan and profile. There has been produced as Exhibit C-3 sheet No. 1 of plan and profile for the 150th Avenue sanitary sewer, and furthermore other sheets, original, of said plan and profile, as Exhibit C-4, C-5, and the remaining sheets as C-18, making altogether 11 sheets. Will
30 you now look at C-3 and state if you know this plan? A.—Yes, that shows detail of the Type A sewer.

Q.—For what construction? A.—It says for 150th Avenue, from pumping station at 134th Street to Judith Street, and Judith Street.

Q.—Is this original, — the blueprint that you got, was it similar to this exhibit? A.—It was a blueprint —

Q.—Yes. A.—(continuing) I presume printed off of this. This is the original.

40 Q.—If I were to show you all these pages of the same plan, would you be in a position to state if you received the blueprints? A.—Yes, I built practically all the work myself. I remember it quite thoroughly.

Q.—Oh, you did get that contract? A.—Yes.

Q.—What section? A.—Section 2 I got.

Q.—Your company built that? A.—Yes. And we built part of Section 1 under sub-contract.

Paul W. Paulsen for plaintiff (direct examination).

Q.—What type was it that you bid for and that was awarded to you? A.—Type B.

BY MR. HACKETT:

Q.—And did you bid on Type A? A.—Yes.

Q.—Higher or lower? A.—Higher.

10 (Whereupon, at 1 p. m., a recess was taken to 2 p. m.)

AFTER RECESS. 2:00 p. m.

PAUL W. PAULSEN (resumed).

BY MR. GOUDRAULT:

20 Q.—You told us that you had met Phillips on two or three occasions and that he had on those occasions given you blueprints from the Borough of Queens pertaining to the construction of sanitary sewers in the said borough. The first time if I recollect it was for the sewer to be constructed at Amstel? A. That is right.

Q.—The second time on 150th Avenue? A.—The second time was on Fisk Avenue.

Q.—The third time then was for the 150th Avenue sewer? A.—Yes.

30 Q.—You also told us about Phillips asking you to put in estimates on some of these jobs? A.—He did ask me on two.

Q.—And which are those two? A.—150th Avenue contract, Section 2, and Amstel Boulevard. He also asked me to make an estimate on the Jamaica Disposal Plant.

Q.—What disposal plant? A.—For the Jamaica system.

Q.—Is that what they call the Jamaica Disposal Plant? A.—I don't know that.

40 Q.—Was that prior or later? A.—At the same time as I got plans for the 150th Avenue contract. That was after the Amstel Boulevard and after Fisk Avenue.

Q.—Your company bid on those three jobs didn't they — Amstel Avenue, Fisk Avenue and 150th Avenue? A.—Yes.

Q.—Were you in the habit of calling at the Bureau of Queens Sewer Department?

MR. O'DONNELL: Objected to as irrelevant.

A.—I went in a couple of times.

Paul W. Paulsen for plaintiff (direct examination).

Q.—Do you know what is known as the City Record? A.
Yes.

Q.—Ever seen one before? A.—I subscribed to it.

Q.—You subscribed to it? A.—Yes.

Q.—The purpose I presume being to keep in touch with
the affairs of the City of New York? A.—Primarily to see work
advertised for letting.

10 Q.—Do you remember seeing an advertisement for the
construction of the Fisk Avenue sewer? A.—Yes.

Q.—Was that prior to your visit to Phillips or after?

MR. O'DONNELL: Objected to as irrelevant.

A.—Prior to what visit?

Q.—Prior to your reading the advertisement in the City
Record. A.—Was my visit to Phillips in regard to that deal
prior, you mean?

20 Q.—Yes. A.—Yes.

Q.—What happened when you did see him on that visit?
A.—On Fisk Avenue?

Q.—Prior to the Fisk Avenue job. A.—In regard to the
Fisk Avenue?

Q.—Yes. A.—He told me he wanted me to bid that job.

MR. O'DONNELL: Objected to.

30 Q.—What else took place as regards that job? A.—He
gave me the price of the pipe to use and he made me bid and he
told me to bid type A higher than type B.

MR. O'DONNELL: Same objection.

Q.—Did you put in the bid? A.—Yes.

Q.—Do you remember the price of the pipe he told you
to figure on?

MR. O'DONNELL: Same objection.

A.—\$40 a foot.

40 Q.—Were you the low bidder? A.—No I believe I was
second low.

Q.—Do you know of a job that the contractor Patrick
McGovern succeeded in making in the Bureau of Queens about
that time? A.—Yes.

Q.—What job was it? A.—The first section of Amstel
Boulevard.

Eugene J. Tully for plaintiff recalled (direct examination).

DEPOSITION OF EUGENE J. TULLY
(recalled)

EUGENE J. TULLY was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposeth and saith as follows:

10

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—Mr. Tully, will you please look at this file of papers and describe same? A.—It is contract No. 71,761 between Patrick McGovern Incorporated and the City of New York for the construction of a sewer and appurtenances on Hammels Boulevard from Beach Channel Drive to Amstel Avenue, etc. The date of the award of this contract is August 28th, 1924. The date of the contract is September 12th, 1924. This is the original contract.

20

MR. GOUDRAULT: I offer this contract in evidence as Plaintiff's Exhibit C-33.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-33, of this date).

MR. O'DONNELL: The defendants object to the production of the document as being illegal and irrelevant.

MR. HACKETT I avail myself to the same objection.

30

DEPOSITION OF PAUL W. PAULSEN
(recalled)

PAUL W. PAULSEN was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposeth and saith as follows:

40

DIRECT EXAMINATION BY MR. GOUDRAULT:
(Continued).

Q.—There has been introduced as Exhibit C-33 a contract covering the construction of a sewer as described in that exhibit. I notice here that you have spoken to us of Amstel Boulevard? A.—We always called it by that name. We call it the Amstel Boulevard system.

Paul W. Paulsen for plaintiff recalled (direct examination).

Q.—This is the contract and the construction that you were referring to? A.—Yes, the job built by Patrick McGovern.

Q.—Will you please look at the front page of the contract and state what type of sewer was there constructed? A.—Where?

Q.—Page 1 or wherever you can see it. A.—Yes, that is the job.

10 Q.—What type of job was it? A.—You mean what type of construction was it?

Q.—Yes. A.—Type A.

Q.—That is the monolithic? A.—Yes, type A is the monolithic.

Q.—I understand you told us this morning that you had a conversation with Phillips about the Amstel Boulevard or Hammels Boulevard construction?

MR. O'DONNELL Same objection.

20

MR. HACKETT: I also avail myself of this objection.

THE COMMISSIONER: I wil allow the answer subject to the objection and reservation of counsel.

Q.—I understood you to say this morning that you had previously visited the spot where the sewer was to be constructed? A.—Yes.

Q.—And had talked over things generally with Mr. Phillips and others? A.—Yes.

30 Q.—Did you tell us if you did bid for this? A.—I did.

Q.—Do you remember what were your bids, not as regards the amount but as regards the kind of construction? A.—I bid on both kinds.

Q.—Was that sewer to be constructed in a wet section of the Borough of Queens? A.—Yes.

Q.—To what extent? A.—It was approximately 16 feet below tide level.

Q.—You know the topographical situation and the geographical situation of the Borough of Queens? A.—Fairly well.

40 Q.—Was that considered a wet section? A.—Yes, very. Water was about four feet below the surface.

Q.—How is it you came to bid for that particular job? A. Phillips asked me to.

MR. O'DONNELL: I object to that.

MR. HACKETT: I avail myself of the same objection.

Paul W. Paulsen for plaintiff recalled (direct examination).

THE COMMISSIONER: I will allow the answer subject to the objection and reservation of counsel.

Q.—Could you tell us the facts pertaining to that question of your bidding for the construction of the Hammels Boulevard sewer? A.—Phillips asked me to bid on the job and I put in a bid on it.

10 Q.—Did you put a price for the pipe in your bids? A.—I figured the price of the pipe in my bids.

Q.—Do you recollect the price of the pipe? A.—\$25.00 a foot.

Q.—\$25.00 a foot? A.—Yes.

MR. O'DONNELL: Objected to as not being the best evidence.

20 Q.—I presume those bids would remain with the Sewer Department of the Borough of Queens? A.—Yes. I don't know whether they keep them or forward them to the Comptroller.

Q.—Anyway they are no longer your property once they are filed with the City? A.—No.

Q.—Do you recollect the size of the pipe that the specifications called for on the Type B sewer?

MR. O'DONNELL: Objected to as not being the best evidence.

30 Q.—Will you then look at the type B specifications? A. Five feet and four feet six inches.

Q.—As therein stated on the annex between page 9 and page 13 of said contract, Exhibit C-33? A.—Yes.

Q.—Do you recollect saying anything to Mr. Phillips at the time?

MR. HACKETT: I object to that.

A.—At the time of bidding?

40 Q.—When you said a minute ago that your company bid at the suggestion of Mr. Phillips? A.—Yes.

Q.—At that particular interview? A.—I told him I was afraid it would be hard to make a good joint in the pipe. I was afraid to bid on pipe unless we built a concrete cradle all around the sewer for our own protection and I was going to figure it on that basis.

MR. COOK: I object to this evidence as irrelevant, illegal and having no bearing on the issue. It is highly interest-

Paul W. Paulsen for plaintiff recalled (direct examination).

ing perhaps for us to know that a concrete cradle has to be placed around the pipe but I don't see what it has got to do with it.

MR. HACKETT: And tending to show that the terms of a written agreement were extended.

10 THE COMMISSIONER: I will allow the answer subject to the objection and reservation of counsel.

Q.—You have looked at the said plans — do they require a concrete cradle? A.—No. Phillips told me to bid on type B.

MR. O'DONNELL: I object.

MR. HACKETT: I object.

A.—(continued) He told me on more than one occasion that was necessary to get the job.

20 Q.—Did you know of any other prospective bidders at the time?

MR. O'DONNELL: I object to that as irrelevant.

A.—Phillips told me.

Q.—Who were they? A.—Phillips told me Jim Ferry and McGovern.

Q.—After getting those particulars did you prepare your estimates? A.—That was at the time when I had a telephone conversation with him.

30 Q.—Did you as a matter of fact Mr. Paulsen prepare estimates — you must have since you did bid for the job? A. Yes.

Q.—Do you recollect the figure of your bids for that particular job? A.—I don't recall.

MR. O'DONNELL: Objected to as not being the best evidence.

40 Q.—Have you kept those estimates? A.—All the estimates and papers I gave to Mr. Buckner.

Q.—You don't recollect the figure? A.—No.

Q.—Do you recollect the figure that you bid for type A? A.—I don't recollect except that it was higher than type B.

MR. O'DONNELL: The same objection, as not being the best evidence.

Paul W. Paulsen for plaintiff recalled (direct examination).

Q.—That was for the monolithic type? A.—Monolithic, yes.

Q.—What did you state to Mr. Phillips?

MR. HACKETT: I object to this evidence as illegal and hearsay.

10 THE COMMISSIONER: I will allow the answer subject to the objection and reservation of counsel.

MR. GOUDRAULT: I am asking what the witness says.

A.—I told Phillips that I could build the job at around \$75 a foot on type A. I thought type B would cost almost again as much as we were not satisfied that we could make a tight job out of pipe. We were afraid of the joints.

Q.—Then what happened? A.—He told me not to bid type A low, but bid it higher than pipe.

20

MR. O'DONNELL: The same objection.

A.—(Continued) He said "Go ahead and bid".

Q.—At what time did that take place? A.—To or three days before the bids were received.

Q.—Did you have any conversation as to what the precast pipe would cost you for type B?

MR. O'DONNELL: Same objection.

30 A.—He told me \$25 a foot.

Q.—There were two sizes of pipe, were there not? A. Yes.

Q.—The same price for both? A.—Yes.

MR. O'DONNELL: Same objection.

MR. HACKETT: I avail myself of the same objection.

Q.—Do you remember how many feet of precast pipe were necessary?

40

MR. O'DONNELL: Objected to as not being the best evidence, the specifications speak for themselves.

THE COMMISSIONER: I will allow the answer subject to the objection and reservation of counsel.

Q.—Just state, if you remember? A.—About two miles.

Jefferson J. Reilly for plaintiff recalled (direct examination).

Q.—Will you look then at Plaintiff's Exhibit C-33 and state when you state two miles how do you figure that by feet?
A.—10,500 feet.

MR. O'DONNELL: 10,560 feet.

10 Q.—I see here in the type B specifications 4,650 linear feet of 5-foot reinforced concrete pipe and 1,892 linear feet of 4 foot 6 inch reinforced concrete pipe and 1,892 linear feet of exhibit — A.—I didn't recall the exact length. That must be correct.

Q.—So the exact figure according to the specifications of the concrete pipe required was —

MR. O'DONNELL: The specifications speak for themselves.

20 Q.—(Continued) 7,452 linear feet of concrete reinforced pipe? A.—No, 6,542 feet is the correct amount.

DEPOSITION OF JEFFERSON J. REILLY
(recalled)

30 JEFFERSON J. REILLY was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposed and saith as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—Will you look at this paper and state what it is?

MR. COOK: May I see it first please, just as a matter of form.

MR. GOUDRAULT: Yes, certainly. This second sheet is type A — this is the one that got it.

40 Q.—The question is will you tell us what this sheet of paper is? A.—This is a summary of proposals received by the President of the Borough of Queens for the construction of a sewer in Hammels Boulevard from Beach Channel Drive to Amstel Avenue and in Amstel Avenue from Hammels Boulevard to Beach 62nd Street, Fifth Ward, bids for which were received under type A.

Jefferson J. Reilly for plaintiff recalled (direct examination).

Q.—You are in the contract bureau? A.—Not the sewer — all the work done by contract.

Q.—Will you then produce as Exhibit C-34 this summary of proposals?

MR. O'DONNELL: The defendants object to the production of this document as not being the best evidence.

10 MR. HACKETT: I avail myself of this same objection.

MR. O'DONNELL: Also any verbal evidence in connection therewith.

MR. GOUDRAULT: I offer in evidence this other sheet of paper which is the summary of proposals for the same job, that is the construction of the sewer on Hammels Boulevard, containing the type B proposals. I offer this as Plaintiff's Exhibit C-35.

20 MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

(The said sheets were thereupon received in evidence and marked Plaintiff's Exhibits C-34 and C-35, of this date).

MR. COOK: May I see them when you are through with them.

30 BY MR. GOUDRAULT:

Q.—Are these from the official records of the Bureau? A.—From my records?

Q.—From the official records of the Bureau? A.—They are from the Comptroller's office — they are an official record.

BY MR. HACKETT:

Q.—The Comptroller has a full record of the transactions? A.—Yes.

40 Q.—All the details go to the Comptroller? A.—Yes.

Q.—The Comptroller is a federal officer? A.—No.

Q.—I mean a federal city officer? A.—Oh, yes.

BY MR. GOUDRAULT:

Q.—You are not under his jurisdiction? A.—No, I am under the direct supervision of the President of the Borough of Queens.

Jefferson J. Reilly for plaintiff recalled (direct examination).

Q.—You are the clerk of contract? A.—Yes.

BY MR. HACKETT:

Q.—The Comptroller is an officer of Greater New York?

A.—Yes.

Q.—Of which the Borough of Queens is a component part?

10 A.—Yes.

BY MR. O'DONNELL:

Q.—You told us yesterday that the summaries might not necessarily contain all the bids?

MR. GOUDRAULT: I object to the question, as no summary of proposals had been produced with this witness yet.

MR. O'DONNELL: That is what you have now.

20 MR. GOUDRAULT: That is the first one.

BY MR. GOUDRAULT:

Q.—I understand that at one time you had those summaries of proposals prepared in your Department? A.—Yes, sir.

Q.—You received them? A.—Yes sir, direct from the Bureau affected — Highways or Sewers.

Q.—In this case it is sewers? A.—Yes sir.

30 Q.—When the proposals come in how were those summaries of proposals made up? A.—Upon receipt of bids at a given hour — we set a date for the opening of the envelopes — and the reading of the bids.

Q.—When that is done — and I suppose that date is stated in the advertisement in the City Record? A.—Yes sir.

40 Q.—When the bids are opened and read out, what is next? A.—While being read out there is a representative from the respective bureau there that takes the figure as read. From that, after being checked, he sees that there is prepared a type-written sheet, or rather sheets.

Q.—Who is that officer? A.—They might delegate any of the engineers — they are not particular about it.

Q.—Who would delegate that work? A.—The engineer in charge.

Q.—Would that be from the bureau? A.—From the respective office — the Highway Bureau or the Sewers.

Jefferson J. Reilly for plaintiff recalled (direct examination).

Q.—We are talking now only of sewer proposals so we will limit our questions to that? A.—Yes.

Q.—I understand you therefore to say that there is there an officer who upon the receiving or opening of the envelopes where the bids are instructs some clerk in the Department to make a typewritten copy of the proposals and that is what you call — A.—A summary.

10 Q.—A summary of proposals? A.—Yes sir.

Q.—Are these two exhibits, C-34 and C-35, the copies you are referring to now? A.—Yes sir.

BY MR. HACKETT:

Q.—I understood you to say, Mr. Reilly, that when the bids are opened in the bureau there is present an officer representing Greater New York, — representing the City Comptroller? A.—Yes sir.

20 Q.—He takes away notes of his own of the details of the job and the bids and later send to the Comptroller summaries like the ones which you have produced as Exhibits C-34 and C-35? A.—Yes sir.

Q.—But to enable the Comptroller to have immediate accurate, and detailed information, even before the summary could be prepared, he has his representative there at the opening of the bids? A.—Yes sir.

BY MR. GOUDRAULT:

30 Q.—According to the practice of your Department are these summaries of proposals now produced as C-34 and C-35 originals? A.—Yes sir.

Q.—Were they taken from your files?

MR. HACKETT: From the files of the Comptroller's Office of the City of New York.

BY MR. GOUDRAULT:

40 Q.—I don't want to suggest any answers to you but I understood that you stated that these copies were made at the opening of the bids? A.—(No answer)

BY MR. HACKETT:

Q.—Possibly a word of explanation from me will clarify the situation. When the bids are opened in the Borough office in the presence of the various Borough officers and

Jefferson J. Reilly for plaintiff recalled (cross-examination).

the Press there is over and above the Borough officers a representative from Greater New York — from the Comptroller's Office — who jots down himself the details of the bid — of all the bids — and runs away with them rapidly to his Chief in order that he may have the information even before it is possible to transmit it by a written document. The witness has explained that as soon as convenient a summary was made and forwarded by messenger to the Comptroller of the City of New York and that the documents C-34 and C-35 are these summaries sent by the Borough to the City Comptroller giving information concerning bids on type A and type B for the construction of a sewer on Hammels Boulevard.

That is correct, isn't it?

A.—Yes.

BY MR. GOUDRAULT:

20 Q.—You keep these summaries of proposals in your Department? A.—We keep a copy of them.

Q.—And they form part of your records? A.—Yes sir.

Q.—And these two exhibits, C-34 and C-35, are extracts from your records? A.—Yes sir.

Q.—Of your Department? A.—Yes sir.

MR. GOUDRAULT: That is all, you may cross-examine.

CROSS- EXAMINATION BY MR. COOK:

30 Q.—Are these extracts, Mr. Reilly, C-34 and C-35, prepared by you? A.—No, they are prepared under the supervision of an engineer in the Sewer Department.

Q.—They were not prepared by you actually? A.—No sir.

BY MR. GOUDRAULT:

Q.—They were checked? A.—Yes sir.

Q.—By whom? A.—By two or three men.

40 MR. GOUDRAULT: That is all, I should like to recall Mr. Paulsen.

MR. COOK: You may do so but I reserve the right of further cross examination.

Paul W. Paulsen for plaintiff recalled (direct examination).

DEPOSITION OF PAUL W. PAULSEN
(recalled)

10 PAUL W. PAULSEN was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposeth and saith as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—Mr. Paulsen, will you now look at the summary of proposals filed as Exhibit C-34 and state if there is anything there of interest to you? A.—This appears to be the summary of the bids received.

20 Q.—For that Hammels Boulevard construction? A.—Yes.

Q.—Anything that you know about more particularly? A.—Except that I remember the job was built by McGovern and I used to go on that job quite often.

Q.—Was there anything of interest to your Company? A.—There is no interest there —

Q.—But I mean — A.—They bid on the job.

Q.—It appears there? A.—Yes.

30 Q.—What is the gross amount of that bid? A.—\$1,261,885.

Q.—That was your Company's bid on what type? A.—Type A.

Q.—Wil you look at Exhibit C-35 which is the summary of proposals filed on Type B, for the same Hammels Boulevard sewer and tell us what was the bid of your company? A.—\$1,196,465.

40 MR. O'DONNELL: Objected to as not being the best evidence.

Q.—To complete your evidence on this, who was the low bidder? A.—Patrick McGovern.

Q.—On which type? A.—Type A.

Q.—Who got the job? A.—Patrick McGovern.

Paul W. Paulsen for plaintiff recalled (direct examination).

Q.—Do you know if his company built the sewer? A.
Yes.

MR. COOK: I renew my objection to the relevancy of this evidence. What possible interest we can have in learning from this witness that Patrick McGovern got a job on which he was the lowest tenderer I cannot see.

10

I submit that all evidence of this character is entirely illegal and should be rejected.

THE COMMISSIONER: The answer will be taken subject to your objections and reservations.

20

(Whereupon, at 3.00 o'clock p. m. an adjournment was taken to tomorrow, Thursday, January 29th, 1931, at 11 A. M.)

30

40

Depositions of witnesses, sworn and examined on the 29th day of January in the year of Our Lord one thousand nine hundred and thirty-one, at eleven o'clock in the forenoon, in the office of DeCoursey Fales, 40 Wall Street, in the County of New York, State of New York, United States of America, by virtue of this commission issued out of His Majesty's said Superior Court, to us DeCoursey Fales, a lawyer, of 40 Wall Street, City and State of New York, directed for the examination of witnesses
10 in a cause therein pending between The People of the State of New York, plaintiff and Heirs of the late John M. Phillips, et al., Defendants: — I, the commissioner acting under the said commission, and also the clerk by me employed in taking, writing down, transcribing and engrossing the said depositions, having first duly taken the oaths annexed to the said commission, according to the tenor and effect thereof and as thereby directed heard the following depositions:

20

DEPOSITION OF EUGENE J. TULLY
(recalled)

EUGENE J. TULLY was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, de-
poseth and saith as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT:

30 Q.—Will you look at this file of papers and describe it? A. This is contract No. 74,178, between the Hammen Construction Company and the City of New York for the construction of a sanitary sewer and appurtenances in 150th Avenue, etc. The date of award of this contract is March 10, 1925. The date of the contract is March 16, 1925. This is an original contract.

MR. GOUDRAULT: I now offer in evidence this contract as Plaintiff's Exhibit C-36.

40 MR. O'DONNELL: The defendants object to the production of this document.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-36, of this date).

Paul W. Paulsen for plaintiff recalled (direct examination).

DEPOSITION OF PAUL W. PAULSEN
(recalled)

PAUL W. PAULSEN was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposeth and saith as follows:

10

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—In giving evidence yesterday you stated that your company put in bids for the Hammels Boulevard, 150th Avenue, Section 2, and Fisk Avenue; is that right?

MR. O'DONNELL: Objected to as not being the best evidence.

20 MR. HACKETT: I also avail myself of the same objection.

A.—Yes. Do you mean by that that was all the contracts that the company bid on?

Q.—I mean just those particular three. A.—Yes, we bid on those three.

Q.—Did you have occasion to go to the Borough Hall and hear the reading of the bids when they were opened? A.—You could if you wanted to.

30 MR. O'DONNELL: That is not an answer.

MR. COOK: No, that is not an answer.

Q.—Were you there? A.—Was I there?

Q.—Yes, were you there? A.—I was there, yes.

40 Q.—In a few words, what was just the proceeding followed when the bids were opened on the occasion that you were there? A.—The bids were read in a room and the contractors, if they wished to, could tabulate and take down all the unit bids. There was never a total bid required in a bid blank, merely the unit figures.

Q.—Do you recollect on the occasion of the opening of the bids for the Hammels Boulevard — A.—No, I was not there.

Q.—For the 150th Avenue — A.—I was there on Section 2 of 150th Avenue.

Q.—And when the bids were opened for Fisk Avenue — A.—I was there for Fisk Avenue.

Paul W. Paulsen for plaintiff recalled (direct examination).

Q.—Were the bids read in public there? A.—The unit prices.

Q.—What do you mean by unit prices? A.—The unit prices of the different kinds of bids.

Q.—Would the names of the different contractors be given? A.—Yes, first.

10 Q.—And the figures? A.—Yes, for instance 4,000 feet of 4 foot sewer at \$40 a foot; 2,000 feet of 3 foot sewer at so much per foot.

Q.—Were you allowed to take notes of the particulars as they were being read? A.—Yes.

Q.—Were you and the other contractors there? A.—Yes, they are read publicly. Anyone can take them.

Q.—It was public knowledge? A.—Yes.

20 Q.—Will you look at Exhibit C-36 which has been filed and which is the original contract with the City of New York and the Hammen Construction Company for the construction of the sewer on 150th Avenue. State if this is the job that your company did? A.—Yes, this is it.

Q.—That signature is your signature? A.—Yes.

Q.—On page 31? A.—Yes.

Q.—You told us yesterday that you met on many occasions or on certain occasions at a place on Jackson Avenue in reference to some of these particulars, more particularly —

MR. COOK: Don't lead your witness.

30 MR. GOUDRAULT: The question is withdrawn.

MR. COOK: Ask him what he did.

Q.—What did you do when you went on Jackson Avenue and there met, as you stated, Mr. Phillips? A.—On what instance? I met him lots of times.

MR. O'DONNELL: Objected to as irrelevant.

40 Q.—You stated yesterday that you met him in connection with the projected construction of the 150th Avenue sewer. A. Yes, that time.

Q.—Who was there?

MR. O'DONNELL: He already testified to that.

A.—That was the first time I had been in the particular place. It was a room on the 4th floor of No. 9 Jackson Avenue. It was a suite of offices with no name on the door.

Paul W. Paulsen for plaintiff recalled (direct examination).

Mr. Andy Zorn took me there from No. 49 Jackson Avenue. Phillips was there when we came in.

Q.—Did Zorn stay there? A.—He went out and in — he came back and forth.

Q.—Who else was there? A.—Later, Mr. Seely came in and Mr. Decker came in also.

10 Q.—Do you recall anybody else? A.—No. Mr. Seely had a set of plans with him for the 150th Avenue sewer, sections 1 and 2.

Q.—What did Mr. Seely do?

MR. O'DONNELL: Objected to as being entirely irrelevant.

A.—He showed me the plans.

MR. O'DONNELL: Objected to as being not the best evidence.

20 A.—(continued) He showed me the detail of the cross-section of the Type A sewer. He explained to me in detail.

MR. O'DONNELL: Same objection.

A.—(continued) A new type of waterproofing membranes that had been put in the plans for this job.

Q.—Will you look at Plaintiff's Exhibit C-3 and state if this is the plan that you are referring to? A.—I presume this is the original. I was shown a blueprint.

30 Q.—By whom? A.—By Seely.

Q.—And for that same avenue? A.—Yes.

Q.—This is the work that your company did later on?

MR. O'DONNELL: Same objection.

A.—We did section 2 of this work.

Q.—Are both sections on the plan? A.—Sections 1 and 2 are incorporated in this entire set — the same types of chambers, construction, etc., was covered in this package of plans or was covered in one package of plans.

40 Q.—We have also produced that set of plans for the 150th Avenue, Exhibit C-4, C-5, and C-18. Will you look at these exhibits and state if they are the original of the plans shown to you on the blueprint by Seely? A.—Seely only showed me this set. This is the only one he explained to me. He gave me the entire set of plans.

Q.—You mean sheet No. 1? A.—Yes.

Paul W. Paulsen for plaintiff recalled (direct examination).

Q.—Was this occurring in Phillips' office? A.—I don't know whose office it was. It was occurring in that place at No. 9 Jackson Avenue.

Q.—Had you ever seen Mr. Seely before you met him in that group with Phillips? A.—Yes.

Q.—Where? A.—I had seen him in the Borough Hall, in the Engineering Department.

10 Q.—Had you had occasion to speak to him before? A. Yes, the first time I spoke to Mr. Seely was to ask him for standard plans for catch basins. Those standard plans apply to any job that may come up. They merely identified the type — type 2, type 3, type 4. They are standard.

Q.—You just have told us that Seely showed you the cross-section of the monolithic construction and explained the waterproofing membrane. What happened after that? A.—After that he gave me the plans and told me I could have them.

Q.—Who? A.—Seely.

20 Q.—And then? A.—You refer to Seely?

Q.—Yes. A.—Then shortly afterward we went downstairs on the street.

Q.—Whas Phillips there at the time? A.—Yes.

MR. HACKETT: Objected to as leading.

MR. COOK: I wish to record an objection now to the manner in which Mr. Goudrault is conducting this examination.

30 He first puts a leading question to the witness and then when objection is taken he withdraws his question and puts another. But he has done all the damage by the leading question.

I request my friend Mr. Goudrault to be more careful about leading his witness.

MR. HACKETT: Especially a witness who seems to be so compliant as this one.

MR. GOUDRAULT: The witness is telling the truth.

40 MR. COOK: That may be so. In the meantime my objection stands. We will discuss that later.

MR. GOUDRAULT: I will not put any more leading questions.

THE COMMISSIONER: I think, Mr. Goudrault, it would be fairer to accede to Mr. Cook's request.

Paul W. Paulsen for plaintiff recalled (direct examination).

MR. GOUDRAULT: He may be right.

Q.—Who was there?

THE COMMISSIONER: Please don't put any leading questions. I add my request to Mr. Cook's.

MR. O'DONNELL: The witness already testified who
10 was there.

Q.—(continued) At the time Seely gave you the plans?
A.—Phillips.

Q.—Anybody else? A.—I don't recall.

Q.—Do you recollect, Mr. Paulsen, what Mr. Seely told
you?

MR. O'DONNELL: I object to anything Seely may have
told him.

MR. HACKETT: I object also. Seely is not a party to
20 this suit and anything he may have told the witness is not com-
petent as evidence in this suit.

MR. COOK: I join with Mr. Hackett in the objection.

THE COMMISSIONER: I will allow the answer, sub-
ject to your objection.

A.—He told me he had changed the waterproofing, or changed
30 the design of the cross-section of the monolithic type A sewer
and put in waterproofing membranes.

He says "If you can show me where you can build a sec-
tion of that in a shorter time than 21 days you are a good one".

Q.—Any other conversation occurred there? A.—With
whom?

Q.—With anybody?

MR. O'DONNELL: Objected to as being irrelevant.

Q.—What was said and by whom? A.—Phillips spoke up.

MR. HACKETT: I object to any evidence of conver-
40 sation with the deceased Phillips.

MR. O'DONNELL: I join in the objection.

THE COMMISSIONER: I will allow the answer sub-
ject to your objections.

Paul W. Paulsen for plaintiff recalled (direct examination).

Q.—What did Phillips say? A.—He says “You want to get better acquainted with Seely, he is a fellow that can doll them up” and he indicated toward the plans.

MR. O'DONNELL: Same objection.

10 MR. COOK: I object to the evidence as illegal and improper. Mr. Phillips is dead. It is absolutely impossible to produce him in contradiction of what this witness may say and the evidence, I submit, is entirely illegal and improper and should not be allowed in the record.

THE COMMISSIONER: The answer will be taken subject to your objections and reservations and exceptions.

Q.—Anything else? A.—Phillips also told me I was to give him, Phillips, \$1,000.

20 Q.—Give whom \$1,000? A.—Give Seely \$1,000.

MR. O'DONNELL: Same objection.

Q.—Did he say what for? A.—No.

Q.—Tell us the rest. A.—Seely said “Don't do like —”

MR. HACKETT: I object to any evidence of what Seely may have said as illegal and hearsay.

THE COMMISSIONER: The objection will be noted and the answer will be taken.

30 A.—(continued) Seely said “Don't do like those screen people did. They still owe me \$5,000”.

Q.—Who said that? A.—Seely.

Q.—To whom? A.—To me.

Q.—Did he specify why? A.—What?

Q.—Did Seely specify why?

MR. O'DONNELL: Same objection.

A.—He didn't go into detail about why.

40 You mean why he didn't get the \$5,000?

Q.—Yes. A.—No, he didn't go into detail.

Q.—No? Why, the \$5,000 was promised to him. A.—He said “That was on a deal with the Rockaway Disposal Plant”.

Q.—You remember the date of this talk? A.—The date?

Q.—Yes. A.—I don't remember the date. It was in the month of January.

Paul W. Paulsen for plaintiff recalled (direct examination).

Q.—The year? A.—1925.

Q.—Was that said in the presence of Phillips?

MR. HACKETT: I object to the question as leading and suggestive and illegal.

Q.—Did you tell us that Phillips was there at the time?

10 MR. HACKETT: Same objection.

MR. O'DONNELL: Same objection.

Q.—Was there anything else said at that time on that particular occasion? A.—There was also a discussion about a sewer disposal plant coming up for the Jamaica system.

Q.—Where did that discussion take place? A.—At the same place. Seely handed me a set of plans on that.

20 MR. O'DONNELL: Same objection — that is not the best evidence.

Q.—By a set of plans you mean — A.—A set of blueprints.

Q.—What was said about the Jamaica disposal plant? A.—He said he thought that was good job if I could handle it.

Q.—Who said that? A.—Seely.

Q.—Do you recollect his words? A.—He says "It is a though job. It is wet". He mentioned something that he thought the job was worth about \$2,000,000.

30 MR. O'DONNELL: Same objection.

Q.—Who was there when that was said? A.—Phillips.

Q.—Did Phillips say anything?

MR. HACKETT: Objected to again as illegal, suggestive and leading.

40 MR. GOUDRAULT: Wait a minute. How is that leading? We have Phillips there and we have the other gentlemen there. I don't see why we can't ask what those gentlemen did.

THE COMMISSIONER: We will proceed with the answer subject to counsel's objection.

A.—He told me to make up a set of figures on both jobs and let him know how much it would be less the pipe on section 2 of 150th Avenue and all equipment on the disposal plant.

Paul W. Paulsen for plaintiff recalled (direct examination).

Q.—Then what happened? A.—Seely and I went downstairs.

Q.—Where? A.—In the street.

Q.—In what street? A.—Jackson Avenue.

Q.—What next? A.—Seely invited me into Art Lehy's drug store.

10 MR. O'DONNELL: Objected to as entirely irrelevant to the issues in this case.

Q.—What happened there? A.—We had a couple of drinks. He says.

MR. O'DONNELL: Same objection.

A.—(continued) "If you feel like taking care of that \$1,000 —"

20 MR. HACKETT: I object to any evidence of a conversation between Seely and the witness.

MR. COOK: I make the same objection.

THE COMMISSIONER: You may answer, under objection of counsel.

A.—He says "You can leave the \$1,000 with Mr. Lehy. He is all right". I told Seely I could not agree to that before taking it up with my associates.

Q.—Lehy was there?

30 MR. HACKETT: I object to the question as leading.

Q.—You told us a minute ago that you were introduced by Lehy, but —

MR. HACKETT: I object to the practice — that is leading.

Q.—Who had the drinks? A.—Seely and I.

Q.—Any further conversation there? A.—No.

40 Q.—Was there discussion in that room between you, Phillips and Seely as to any other job except the 150th Avenue and the Jamaica disposal plant? A.—Not that I know.

Q.—How did the meeting break? A.—I left the room with Seely and went to a drug store and was there about 15 minutes.

Paul W. Paulsen for plaintiff recalled (direct examination).

Q.—And then what happened? A.—I went back about my business and left the place and went to Perth Amboy, New Jersey.

Q.—Did you get your figures ready on certain of these jobs? A.—I made up an estimate and called Phillips as per the arrangements and told him what we wanted for this job less the pipe and machinery.

10 Q.—You are referring to what particular sewer construction? A.—Sections 1 and 2 of 150th Avenue, and the disposal plant, the Jamaica disposal plant.

Q.—Counting sections 1 and 2 of the 150th Avenue as two jobs and the Jamaica disposal plant as another that makes three. A.—Yes.

MR. O'DONNELL: Objected to as not being the best evidence.

20 MR. HACKETT: I associate myself with the objection.

Q.—What did he say after that?

MR. O'DONNELL: Same objection.

Q.—(continued) If he said anything.

MR. O'DONNELL: I object to any conversation between the witness and Phillips for the reasons already stated.

30 MR. HACKETT: I associate myself with the objection.

A.—Phillips told me to sit tight until the work was advertised and he would let me know whether he wanted me to bid or not.

Q.—What happened then? A.—Section 2 was advertised first.

MR. O'DONNELL: Objected to as not being the best evidence.

A.—I went and got the proposal in the Borough Hall — or proposal blank, rather.

40 Q.—What did you do after that? A.—I went to Phillips' offices and asked Phillips for the price of pipe and if he wanted me to bid this job.

MR. O'DONNELL: Same objection.

Q.—Refferring to what job? A.—Section 2 of the 150th avenue sewer.

Paul W. Paulsen for plaintiff recalled (direct examination).

Q.—Did you get that price? A.—Yes.

Q.—You recollect what it was?

MR. O'DONNELL: Objected to as not being the best evidence.

MR. HACKETT: I also avail myself of the same objection.

Q.—Did he state the price?

MR. COOK: Objected to.

MR. GOUDRAULT: Is that leading?

MR. COOK: No.

A.—He gave me a price, \$40 a foot.

Q.—What was the size of the pipe? A.—7 feet in diameter.

Q.—What happened after that? A.—In reference to what?

Q.—Always speaking of the 150th Avenue sewer. A.—I prepared a bid.

Q.—And then you had a price from Phillips on pipe? A. I prepared a bid and the date of receiving bids I filed the bids.

Q.—Were you there when the bids were opened? A.—Yes.

Q.—Were you the lowest bidder?

MR. O'DONNELL: Objected to as not being the best evidence.

Q.—Were you there with other prospective contractors at the same time? A.—Yes.

Q.—That is a matter of public knowledge that you were the lowest bidder — the figures being read? A.—After you read the unit figures anyone can multiply those unit bids by the quantities and find the result — who is the lowest bidder — in a very short time.

Q.—When you left the place where you were with the plan for the 150th Avenue sewer — or blueprints — did you —

MR. HACKETT: Be careful, you are going to ask leading questions.

MR. GOUDRAULT: Yes, but we must come to some way of getting the facts out.

Paul W. Paulsen for plaintiff recalled (direct examination).

MR. HACKETT: But you are reading them out of a book.

MR. GOUDRAULT. I object to that myself.

MR. HACKETT: Well, show you do by ceasing to do it.

10 Q.—Did you have any other conversation with Phillips?

MR. O'DONNELL: Objected to as tending to contradict the plaintiff's own witness. He testified twice there were no further conversations other than those already stated.

MR. GOUDRAULT: I don't know to what you are objecting.

20 Q.—(continued) As regard this 150th Avenue job. A.—Yes, the day of the receiving of bids I went to Phillips' office, possibly an hour after the bids were opened. I asked Phillips if he would give me a price on pipe on section 1 that had been advertised in the meantime and proposal blanks were ready for contractors the day that the bids were received on section 2.

Phillips gave me a price on pipe on that job.

MR. O'DONNELL: Objected to.

MR. HACKETT: I object to any evidence of conversations between the witness and the deceased Phillips.

30 THE COMMISSIONER: The answer will be taken subject to your objections.

A.—(continued) After he gave me the price he told me it was not the low price on pipe but "If you can win the job on this price of pipe it is all right with me. All I am interested in is to sell my pipe".

Do you remember the price?

40 MR. O'DONNELL: Objected to as not being the best evidence of such a price.

A.—He gave me the price in writing.

Q.—In writing? A.—I do not recall if it was \$55 or \$60 a foot.

MR. COOK: I object. If the price was given in writing the best evidence would be the writing. I ask that the evidence be stricken out.

Paul W. Paulsen for plaintiff recalled (direct examination).

MR. GOUDRAULT: We are willing to do that. We are willing to have that part of the evidence obtained. Inasmuch as there is a writing we agree that the body of the evidence shall not avail.

MR. COOK: Let me see it before it is produced, please.

10 MR. HACKETT: Is it your intention to attempt to produce that?

MR. COOK: When you put the question I will put the objection before Mr. Paulsen answers. Now put your question.

MR. GOUDRAULT: We agree to that.

Q.—Will you look at this paper and state if that is the paper that you were referring to in the testimony a minute ago in your previous answer?

20 MR. COOK: I object on behalf of the defendants to the production of this document in the first place because it is not an original, being merely a carbon copy of a letter bearing the name John M. Phillips at the bottom in typewriting, not addressed to anybody in particular and therefore entirely improper and illegal.

MR. HACKETT: I join in the objection.

30 MR. GOUDRAULT: Plaintiff's attorney declares that they do not intend producing this document until they find out if it is an original or not.

MR. O'DONNELL: It speaks for itself. There is no need of further evidence in connection with it until you find out.

A.—Yes.

MR. O'DONNELL: In consequence of plaintiff's attorney having stated that he would not introduce this the defendants object to the introduction of verbal evidence about the document.

40 MR. COOK: This is entirely improper. My friend produces a document which he hands to the witness. When we object to it he states that he does not intend to produce it. Then he asks the witness to testify concerning it.

MR. GOUDRAULT: That is all right.

MR. COOK: It is highly improper.

Paul W. Paulsen for plaintiff recalled (direct examination).

MR. GOUDRAULT: I don't need lessons as regards that. If you put your objection when I offer the document —

MR. COOK: I have done so as clearly as I can. You offered the document. I put in the objection. You said then that you would not produce it.

10 MR. GOUDRAULT: I would not unless it is an original.

MR. O'DONNELL: It speaks for itself.

MR. GOUDRAULT: It depends on how you describe an original.

I offer as evidence this document as Plaintiff's Exhibit C-37.

20 MR. HACKETT: I object to the introduction of the memorandum which has been offered in evidence for the reasons given by Mr. Cook and also because of the undertaking of counsel for the plaintiff to withhold it from evidence until its identity and authenticity could be further established.

Q.—Did you receive that particular paper — from whom and how?

MR. O'DONNELL: Same objection.

30 A.—I received it from Andy Zorn in Phillips' place at 49 Jackson Avenue, Long Island City, the same day that bids were received on section 2 of the 150th Avenue sewer.

MR. COOK: There is a further objection. He didn't even receive it from Phillips. It is a sort of Alice in Wonderland case, Mr. Commissioner.

THE COMMISSIONER: It is accepted in evidence subject to counsel's objection.

40 (The said memorandum was thereupon received in evidence and marked Plaintiff's Exhibit C-37, of this date).

Q.—When you made your bid for that job did you rely on those figures?

MR. O'DONNELL: Objected to as entirely irrelevant.

A.—Yes.

Q.—You figured on that basis? A.—Yes.

Paul W. Paulsen for plaintiff recalled (direct examination).

Q.—Who was the low bidder on that job? A.—Paino Brothers.

MR. O'DONNELL: Objected to as not being the best evidence of such a fact.

10 Q.—Were you there when the bids were opened? A.—
Yes.

Q.—I understand that was for section 1 of the 150th Avenue? A.—Yes.

Q.—What did you do after the bids were opened?

MR. O'DONNELL: Objection to as being entirely irrelevant.

A.—I went back to our office in Perth Amboy, if I recollect correctly.

20 Q.—And after that? A.—In regard to this section 1?

Q.—Yes. A.—I was not interested in that. I was not the lowest bidder. About a year later I sublet part of that work from Paino Brothers.

MR. O'DONNELL: The defendants object to the last answer as not being the best evidence of any such subletting. Further, in any event, it is irrelevant.

MR. HACKETT: I avail myself of the same objection.

30 THE COMMISSIONER: The answer will be taken and the exception noted.

Q.—You remember having discussed again with Phillips the getting of the pipe on the job where you were low — section 2, of the 150th Avenue sewer? A.—Yes.

MR. COOK: Same objection.

Q.—When? A.—About two weeks or so after the bids were received on section 2. Phillips called me on the telephone.

40 MR. O'DONNELL: The same objection to conversations.

A.—(continued) And told me that he wanted me to sign up an order for the pipe before he would let the job go through. He told me to bring one of my associates from Detroit to his office as soon as he could get down there.

MR. COOK: Same objection.

Paul W. Paulsen for plaintiff recalled (direct examination).

MR. GOUDRAULT: I wish to have some friendly advice from you, Mr. Cook. I have an exhibit here which I wish to produce which I should like to show to you. But shall I ask the witness about it first? It is an original document.

MR. COOK: Let me see it.

10 Q.—I hand you a piece of paper and ask you to state if you have ever seen it before and if you know the signatures on it. A.—This is a contract for the pipe used in section 2 of the 150th Avenue sewer between Hammen & Company, Incorporated, in Detroit, Michigan, and John M. Phillips.

Q.—Do you know the signatures there? A.—Yes, sir.

MR. GOUDRAULT: I offer it in evidence as Plaintiff's Exhibit C-38.

20 MR. O'DONNELL: The production of the paper is objected to as irrelevant.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-38, of this date).

Q.—Will you look at the signatures. A.—This is the signature of John Phillips. This is the signature of Fred Basballe. This is mine.

Q.—Who was Mr. Basballe? A.—He is president of Hammen & Company, Incorporated.

30 Q.—That was your company? A.—Yes.

Q.—All three signed at the same time? A.—Yes.

Q.—Do you remember now the date of the award for the 150th Avenue sewer, section 2? A.—I don't recall the date but it was about two weeks later than this.

MR. GOUDRAULT: I now offer in evidence a letter of Mr. Connolly to the Hammen Construction Company with reference to the 150th Avenue sewer as C-39. It is dated February 27, 1925.

40 (The said letter was thereupon received in evidence and marked Plaintiff's Exhibit C-39 of this date).

Q.—Where was this contract signed — Plaintiff's Exhibit C-38?

MR. O'DONNELL: Objected to as irrelevant and illegal.

A.—No. 9 Jackson Avenue.

Paul W. Paulsen for plaintiff recalled (direct examination).

Q.—I notice that this contract is dated February 17th. Do you know the date when the bids were opened?

MR. O'DONNELL: Objected to as not being the best evidence.

A.—I believe it was one of the early days in February, I don't just recall.

10 Q.—Did you have any conversation with Phillips between the date the bids were opened and when you went over there to get other prices and the date of this contract?

MR. O'DONNELL: Same objection to any conversation with Phillips.

MR. HACKETT: I associate myself with the same objection.

20 A.—I don't recall any.

Q.—When Mr. Basballe came down and you met on Jackson Avenue for the execution of this contract —

MR. O'DONNELL: That is leading.

Q.—Tell us what occurred there — what conversation leading to the execution of this contract?

MR. O'DONNELL: Objected to as irrelevant.

30 MR. HACKETT: I object to conversation leading up to a contract as being irrelevant. The contract being the consummation of all negotiations leading up to it.

MR. COOK: I join in the objection.

THE COMMISSIONER: The answer will be taken subject to your objection.

A.—In reference to this contract?

40 Q.—Certainly. A.—We objected, both of us, to the terms of payment of the pipe in the contract.

MR. COOK: I object to that. The contract is there. It speaks for itself. This witness is not competent to contradict his own writing.

Q.—What was said? A.—He says this was a standard form of contract that he used.

Paul W. Paulsen for plaintiff recalled (direct examination).

MR. O'DONNELL: Same objection to conversations.

Q.—Who said that? A.—Phillips.

MR. COOK: I object to conversations with Phillips for reasons previously stated.

10 MR. HACKETT: I associate myself with the same objection.

Q.—What was said? A.—“You can pay me after you have received the money from the City”.

MR. COOK: I object to the answer inasmuch as it contradicts the terms of the contract between the witness and Phillips which has been produced as Plaintiff's Exhibit C-38 and further on the ground that Phillips is dead and it is incompetent for the witness to testify concerning his arrangements with Phillips.

20 It is impossible for the defendants to contradict any such statements owing to the death of Mr. Phillips.

THE COMMISSIONER: The answer will be taken subject to your objections, reservations and exceptions.

A.—(continued) On Phillips' verbal agreement that we could pay for the pipe as we received the money from the City we signed this agreement.

30 MR. COOK: I ask that the answer be stricken out as irrelevant and improper.

MR. GOUDRAULT: The plaintiffs agree to that. We only want the circumstances before the contract.

Q.—Just state what was said. A.—He mentioned that he didn't trust us. He didn't know us very well.

Q.—What did you say?

40 MR. O'DONNELL: Same objection to any conversation with Phillips.

A.—(No answer).

Q.—Or was anything said after that? A.—That was practically the substance of the conversation at that time pertaining to this contract.

Q.—When was the contract signed?

Paul W. Paulsen for plaintiff recalled (direct examination).

MR. O'DONNELL: It speaks for itself. He cannot contradict his own writing.

MR. GOUDRAULT: The question is withdrawn.

Q.—Will you point out the particular section of the part of this contract, C-38, that you objected to?

10 MR. HACKETT: I object to everything concerning any part of the contract with which the witness was not pleased as it is irrelevant and can have no bearing on the issue.

THE COMMISSIONER: I will take the answer, subject to your objections.

A.—The paragraph under "Terms".

Q.—This contract for 150th Avenue, section 2, was signed by you on the 16th of March, 1925, as appears by Exhibit C-36.

20 A.—March 24 —

Q.—Yes, some of the documents, but —

MR. COOK: I thought it was the 16th of March.

MR. O'DONNELL: He says it was signed on the 24th.

Q.—You state that it was on March 24th? A.—Yes.

Q.—Will you now look at this page 31 — A.—We, as contractors, signed it — I signed it — on the 16th of March. The Borough President signed it on a later date.

30 MR. O'DONNELL: The document speaks for itself.

Q.—We have produced as Exhibit C-39 the letter from the Borough President, Maurice E. Connolly, to your company, dated February 27, 1925, which is a letter of award, awarding your company the contract for the construction of the 150th Avenue sewer. Is that right? A.—Yes.

Q.—The letter speaks for itself? A.—Yes.

40 Q.—The date of your contract with Phillips as regards the pipe for that particular contract is the 17th of February, 1925. Is that right? A.—The 17th.

BY MR. HACKETT:

Q.—From the day that the bids had been opened it was a matter of public notoriety that you were low bidder?

Paul W. Paulsen for plaintiff recalled (direct examination).

Anyone who would take the trouble to figure out and multiply the units would know that you knew that you were going to get the job?

MR. GOUDRAULT: Obected to

A.—You never knew when you were going to get the job.

10 BY MR. GOUDRAULT:

Q.—You told us a while ago that you also secured the blueprints for the Jamaica disposal plant? A.—Yes.

Q.—Do you recollect anything further with reference to that plan? A.—We made an estimate on the work and reported our figures to Phillips.

Q.—Who did that? A.—I did — and our engineer in Detroit.

20 MR. O'DONNELL: Objected to as not being the best evidence.

Q.—What did you do after that? A.—When the job was advertised later I called Phillips about it and he told me not bid as someone else was going to get the job. He did not tell me who it was.

MR. O'DONNELL: I object to any conversation between the witness and the deceased Phillips.

30 Q.—What was the amount paid by the City of New York for the execution of that contract C-36? A.—The total final payment?

Q.—The total payment. A.—\$424,458.50.

Q.—Have you any general recollection whether your company was paid that amount? A.—Yes.

MR. O'DONNELL: Objected to as not being the best evidence.

40 Q.—Now out of that amount of \$424,458.50 how much did you pay Phillips for the precast pipe which you used on that job?

MR. O'DONNELL: Objected to as irrelevant and not the best evidence.

A.—We paid him somewhere around \$128,000.

Q.—How much per foot? A.—\$37 per foot.

Paul W. Paulsen for plaintiff recalled (direct examination).

MR. O'DONNELL: Same objection.

Q.—Did you state if that section of the 150th Avenue job was a wet job? A.—Yes.

Q.—How much so in comparison to other jobs that you know of in the same section? A.—About the same as section 1. It was approximately 18 feet below mean tide level.

10 Q.—What system did you use in building the sewer for keeping the water out of the trench? A.—We used the well point system.

Q.—What do you mean by the well point system? A.—It is a system of well points, hooked up to manifold pipes in turn connected to centrifugal pumps. It is a method of de-watering the ground in sand or quicksand.

BY MR. HACKETT:

20 Q.—Does that mean that you dug wells? A.—No. We get in the points before we excavate. The well points are the regular well points as used like on a farm that you can put an ordinary hand pump on.

Q.—They really were Sump pits? A.—Not, just the well point which is about 4 feet long. On that is a $1\frac{1}{4}$ inch pipe the length of the depth you want the well point in. As a rule you put them in to a depth lower than the lowest point you are to excavate.

BY MR. GOUDRAULT:

30 Q.—Will you look at this photograph and state if you have seen it before? A.—This photograph was taken on section 1 — It is part of the work I built for Paino Brothers on a subcontract. This point is approximately 1,000 feet downstream from section 2.

Q.—Does that show what you mean by the well point system? A.—This is the same method used in section 2?

40 MR. GOUDRAULT: I offer this in evidence as Plaintiff's Exhibit C-40 — this photograph of section 1 on the 150th Avenue.

MR. O'DONNELL: Objected to as not being the best evidence

(The said photograph was thereupon received in evidence and marked Plaintiff's Exhibit C-40, of this date).

Paul W. Paulsen for plaintiff recalled (direct examination).

Q.—Will you look at this photograph and state what that is. Is it the same section or another section? A.—This is also section 1.

MR. GOUDRAULT: We offer as evidence this photograph of section 1 on the 150th Avenue job as Plaintiff's Exhibit C-41.

10 (The said photograph was thereupon received in evidence and marked Plaintiff's Exhibit C-41, of this date).

Q.—How much of section 1 did you build on the 150th Avenue sewer? A.—About 2,200 feet.

MR. O'DONNELL: Objected to as not being the best evidence.

A.—That was joining on the section 2 or a continuation downstream under the same system.

20 Q.—As far as the well points are concerned these two photographs taken of your work taken as a sub-contractor represent the same work done by you as a contractor? A.—The same well points and pumps were used on contract 2. This was taken at the completion of 2.

BY MR. HACKETT:

Q.—The pipes that ones sees in both pictures are the pipes leading from the well points? A.—Will you please indicate on 30 the picture.

Q.—Of course I am not referring to the sewer itself. A. This is a rubber hose that hooks into a 1¼ inch pipe at this point. In this instance the pipes were approximately 24 feet long. Then the well point was on the end of it.

Q.—To keep your trench so you could get into it you had to pump from well points at intervals of from 4 to 5 feet? A. Three feet apart — the pumps.

Q.—That is indicative of exceedingly wet ground, is it not? A.—Oh, yes.

40 BY MR. GOUDRAULT:

Q.—Was your well point system complete enough for that kind of work on section 1 and 2 of 150th Avenue? A.—We completely dried out the work — we de-watered the ground.

Q.—Have you any idea when Phillips began delivering pipe to you on that 150th Avenue sewer?

Paul W. Paulsen for plaintiff recalled (direct examination).

MR. O'DONNELL: Objected to as not being the best evidence.

A.—He began delivery in April, 1925.

BY MR. HACKETT:

10 Q.—You had to pump continuously? A.—Oh, yes, night and day, including Sundays.

BY MR. GOUDRAULT:

Q.—I now hand you a paper purporting to be a receipt signed by John M. Phillips on the date of July 22, 1925. What is it? A.—It is a receipted invoice from Phillips signed by Mr. Campbell, one of Phillips' men — one of his office men.

Q.—You know Campbell? A.—Yes.

Q.—Met him before? A.—Yes.

20 MR. GOUDRAULT: I now offer as evidence this receipt as Plaintiff's Exhibit C-42.

(The said receipt was thereupon received in evidence and marked Plaintiff's Exhibit C-42 of this date).

Q.—Does that refresh your recollection as to when Phillips started delivering pipe on that job? A.—He started delivering pipe on that job? A.—He started delivering in April, May, June.

30 Q.—Did you have any conversations with Phillips at any time in April, May or June, with reference to the payment of the pipe?

MR. O'DONNELL: Same objection with regard to any conversation with the deceased Phillips.

Q.—When was it? A.—Shortly after the opening of the bid of the 150th Street sewer.

40 Q.—That is a new contract that we are coming to? A.—It is a job up for letting in June, 1925.

MR. O'DONNELL: Objected to as not being the best evidence.

Q.—What was the conversation? A.—He was sore because we bid that job.

MR. O'DONNELL: Same objection.

Paul W. Paulsen for plaintiff recalled (direct examination).

Q.—What did he say? A.—He says “I want my money for the pipe I delivered or I will remove the pipe from the job”.

He says “If I have to take them back and sell them to you again I will charge you \$100 a foot.”

MR. COOK: I object to that as improper.

10 Q.—Did you pay him the money at that time?

MR. O'DONNELL: Objected to as not being the best evidence.

A.—No, he proceeded to roll his pipe off of the City property. He took possession of the pipe.

Q.—Do you recollect any other conversation you had with him, with Phillips, in regard to payment for the pipe delivered to the 150th Avenue sewer?

20 MR. O'DONNELL: Same objection.

A.—(No answer).

Q.—Besides the one you have just been testifying about?

A.—At the time we made the contract there were discussions about payment.

Q.—We had them in but you further told us that you had a call from Phillips that you should pay him? A.—He sent us an invoice.

30 Q.—Subsequent to this? A.—He submitted an invoice and I called Phillips on the telephone and told him we had not received any money from the City of New York and that was not in accordance with our verbal understanding with him.

MR. O'DONNELL: Objected to as being a conversation.

A.—(continued) So he says “You bid this job on 150th Street and I want my money for the pipe or I will take them away and if you want to buy them back they will cost you \$100 a foot”. He proceeded to remove them from the City property.

40 MR. COOK: I object to all this improper and illegal evidence.

Q.—You have been referring to the construction now for the 150th Street sewer. That is different from the 150th Avenue sewer, isn't it? A.—Yes.

Q.—Did you bid for the construction of the sewer on 150th Street? A.—Yes.

Paul W. Paulsen for plaintiff recalled (direct examination).

Q.—Did you speak to Phillips about that proposition of your company to bid for the 150th Street sewer?

MR. O'DONNELL: The same objection to conversation.

A.—No. Phillips was not available. I could not find him. He was not around.

10 Q.—Where did you get the plans for the 150th Street sewer? A.—Borough Hall.

Q.—What did you do once you had those plans? A.—I went to Phillips' office.

Q.—Where? A.—49 Jackson Avenue.

Q.—Then tell us what happened. A.—Phillips told me he wouldn't give me a price on pipe for that job.

Q.—And then? A.—Until I paid for the pipe on the previous job.

Q.—Which was? A.—150th Avenue job, section 2.

20 Q.—What did you say? A.—I called his attention to the verbal agreement we had with him.

MR. COOK: I object. Mr. Phillips is dead and he cannot contradict this evidence. It is all highly improper.

Q.—Did he give any figure for the 150th Street —

MR. COOK: Apart from the illegality of contradicting an agreement.

A.—He would not give me an agreement.

30 Q.—Would he give you a figure for the precast pipe which you wanted for the 150th Street sewer? A.—No, he would not give that to me.

Q.—You remember the size of the pipe required? A.—42-inch and 36-inch.

MR. O'DONNELL: Objected to as not being the best evidence.

40 Q.—Whenever you wanted to know the price of pipe in reference to the preparation of your bids for these particular constructions in the Borough — have you any letters or writings or did you discuss purely and simply the question of price?

MR. O'DONNELL: I object to the form of the question.

MR. GOUDRAULT: The question is withdrawn.

Paul W. Paulsen for plaintiff recalled (direct examination).

Q.—When you wanted to have a price for precast pipe to include said price in your bids tell us how you proceeded with Phillips.

MR. O'DONNELL: Objected to as being entirely irrelevant.

10 A.—In the Borough of Queens we asked Phillips for the price.

Q.—How did you ask him — that was usual, was it? A. That was the usual way.

MR. HACKETT: I object.

Q.—Limit yourself to the way you did.

20 MR. HACKETT: It is quite apparent that this witness quarreled with Phillips and is now endeavoring to inject into the record not only what he says he knows but what other people, according to him, did and knew. I object to this testimony as hearsay, irrelevant and illegal.

THE COMMISSIONER: I will allow the answer subject to counsel's objection.

A.—You asked how we proceeded to get a price on pipe.

Q.—Don't speak of others — you, personally. A.—On that particular job 150th Street we tried to get prices from other manufacturers. We did not succeed in getting a price from any other at that time.

30 MR. O'DONNELL: Objected to as being irrelevant.

Q.—How did you proceed? A.—We called up by telephone and asked if they would quote us on certain sizes of pipe for a certain job. We gave him the size and the number of feet, etc., on the 150th Street job. We were told that they would not quote us on pipe for a job in Queens.

BY MR. COOK:

40 Q.—Where they influenced by the fact that you had not paid Mr. Phillips for the pipe you bought previously? A.—I don't think so.

Q.—You think not? A.—It is general policy not to pay for the pipe until it is put in the ground.

Paul W. Paulsen for plaintiff recalled (direct examination).

BY MR. HACKETT:

Q.—As a matter of fact all of the companies you were associated with went into bankruptcy, didn't they? A.—No.

Q.—People lost money through you and your company, didn't they? A.—No, they paid their debts in this instance.

10 BY MR. GOUDRAULT:

Q.—What year did Hammen go into bankruptcy? A.—That is solvent.

BY MR. HACKETT:

Q.—The Hammen Construction Company was only a subsidiary of the Hammen Company, Incorporated, and is doing no work? A.—They are operating in Detroit.

20 Q.—What are they doing there? A.—They are doing some work.

Q.—You don't know what work they are doing? A.—I am not interested.

Q.—You don't know what they are doing? A.—No.

Q.—Why did you swear that you did know? A.—I didn't say I knew what they were doing now.

(Whereupon, at 1 o'clock p. m. a recess was taken until 2 o'clock p. m.)

30

AFTER RECESS, 2:00 P. M.

PAUL W. PAULSEN (resumed).

BY MR. GOUDRAULT:

Q.—Mr. Paulsen, you told us already that you had the plans at the Sewer Bureau of the Borough of Queens, for the 150th Street. And did you speak to Phillips about these plans?

40 A.—Before I got them?

Q.—After you got them.

MR. COOK: Objected to.

MR. O'DONNELL: For reasons already stated.

A.—I went to Phillips' office, yes.

Q.—With what? A.—With the plans.

Paul W. Paulsen for plaintiff recalled (direct examination).

Q.—Then have you stated what happened there? A.—He wouldn't give me a price on pipe. I asked for one. I told him I was figuring on the job.

Q.—Tell us the whole conversation, if you recollect it?

MR. O'DONNELL: Objected to, for reasons already stated.

10 Q.—(Continuing) to the best of your recollection? A.—He refused to give me a price on the pipe. He told me he wanted his money on the pipe he had delivered on section 2.

Q.—What about quotations on the pipe for the 150th Street? A.—He didn't give me no quotations.

MR. HACKETT: Who got the 150th Street job, anyway?

THE WITNESS: Oxford Engineering Co.

20 Q.—Was there any other conversation at that time? A. No. No general conversation other than he would not quote me a price.

Q.—Did you tell us about your well point pumping system being a complete system in itself, this morning?

MR. HACKETT: I object to the form of the question as suggestive.

MR. O'DONNELL: Further, it is entirely irrelevant.

30 MR. GOUDRAULT: Well, describe it, inasmuch as Mr. Leslie, the stenographer who took your answer this morning, is not here. I would like to know what you said this morning about this system of yours.

MR. HACKETT: He said about everything that was to be said, and he has produced two photographs, exhibits C-40 and C-41 in support of what he said.

40 Q.—I hand you a letter and I ask you to state whether you have ever seen this letter before?

MR. COOK: Will you let us see it?

(Counsel examine letter).

A.—Yes, I received that.

Paul W. Paulsen for plaintiff recalled (direct examination).

MR. GOUDRAULT: I offer in evidence letter from the Commissioner of Public Works Shugrue to the Hammen Construction Company, dated the 22nd of May, 1925. This letter come in later in connection with a bid that was rejected, a bid made by the Hammen Construction Company, as Plaintiff's Exhibit C-43.

10 MR. COOK: You don't have to offer an explanation of it, Mr. Goudrault.

MR. O'DONNELL: The letter speaks for itself.

MR. COOK: It can be offered without an explanation. The Commissioner of Public Works to Hammen Construction Company, — what is the date?

MR. GOUDRAULT: 22nd of May, 1925.

20 (The said letter was thereupon received in evidence and marked Plaintiff's Exhibit No. C-43 of this date).

BY MR. GOUDRAULT:

Q.—Do you remember the date of your interview with Phillips when the latter asked you for payment of the pipe for the 150th Avenue sewer? A.—I don't recall.

MR. O'DONNELL: Objected to as irrelevant.

30 THE WITNESS: It was in the time intervening between the advertisement and the receiving of bids. I don't recall the exact date.

Q.—Do you recollect the date in respect to the date of this letter Exhibit C-43? A.—It says May 22nd.

40 Q.—No, you didn't get my question. I asked you if you remembered the date of the conversation you had with Phillips as to payment of the pipe, with respect to the date of this letter? A.—I don't remember the date. It was between the time of advertisement, or, in other words, the time that this 150th Street job was advertised in the City Record, during the time of its advertisement; about a period of two weeks.

Q.—Would you recollect the date of that conversation with respect to these payments to Phillips, in respect to the date of this letter? A.—No, I do not.

MR. HACKETT: I object to the question as suggestive, leading.

Paul W. Paulsen for plaintiff recalled (direct examination).

MR. GOUDRAULT: I am just trying to refresh his memory.

MR. HACKETT: That is our sole objection, Mr. Goudrault. You have gone so far in refreshing his memory that I fear the value of his testimony is sadly impaired.

10 MR. GOUDRAULT: I think different.

Q.—Did Phillips have one or many conversations with you as regards the payment of the pipe?

MR. COOK: Objected to.

A.—He had two or three, I believe.

Q.—After receiving this letter from Shugrue, Exhibit C-43, did you go and see the Commissioner of Public Works? A. I went to see him on the date outlined in the letter, May 27th.

20 Q.—What date did you say? A.—On the date that he asked for in the letter, May 27th, I went in response to the letter.

Q.—Had you any conversation with him? A.—Shugrue?

Q.—Yes.

MR. O'DONNELL: Objected to as being entirely irrelevant.

Q.—Yes, just the fact of the conversation. Did you have any? A.—I had a conversation between Shugrue, Mr. Moore, and Mr. Perrine. They asked me —

30 MR. GOUDRAULT: No, no, that is not legal.

Q.—When you went to see Mr. Shugrue, who was there? A.—Perrine and Moore.

Q.—Who were they? A.—Moore was consulting engineer; Perrine was engineer of sewers at that time.

Q.—Of what borough? A.—Borough of Queens.

40 MR. HACKETT: Did I understand you to say, Mr. Paulsen, that these interviews with Phillips concerning the payment of pipe used by you on the second section of 150th Avenue job, were between the time bids were called for the 150th Street job and the time that bids were to be put in?

THE WITNESS: No. It was between the time of the asking for bids on the 150th Street job until the time it was paid.

MR. HACKETT: What was paid?

Paul W. Paulsen for plaintiff recalled (direct examination).

THE WITNESS: The pipe. You have a receipted bill for the pipe, (indicating).

Q.—You produced this morning, Mr. Paulsen, a receipt for what appears to be a payment to Phillips for pipe on that 150th Avenue sewer job, C-42. Will you now look at this check, which I offer as evidence to be produced as Plaintiff's Exhibit
10 C-44.

(The said check was thereupon received in evidence and marked Plaintiff's Exhibit C-44 of this date).

Q.—This is a check from Hammen and Company, Inc., to the order of John M. Phillips for \$67,340, and is in payment of the bill that is dated June 5, 1925, and which appears to have been paid here, on Exhibit C-42, on the 22nd of July, 1925? A. Yes.

20 Q.—Do you remember when you completed the second section of the 150th Avenue sewer? A.—About March 1st, 1926. I don't recall the official date of acceptance of the job.

Q.—What was the practice, when the work was completed, in the Comptroller's Department as regards final acceptance?

MR. O'DONNELL: Objected to inasmuch as the witness is not competent to testify thereto.

A.—In this instance there was a final acceptance by Mr. Perrine and Mr. Bishop, and an inspector that had been over there during the construction. And they made out a final report soon
30 thereafter.

Q.—Will you look at this file of papers and state if that is the document you are referring to in your answer?

(Defendants' counsel examine file of papers referred to).

THE WITNESS: What was the question?

(Question read by Clerk).

40 MR. O'DONNELL: Objected to because the witness is entirely incompetent to testify thereto.

THE WITNESS: Not the entire package. This page here, (indicating).

Q.—What is that page? How would you describe that page? A.—This is a final certificate. This here does not belong to that contract, (indicating).

Paul W. Paulsen for plaintiff recalled (direct examination).

MR. GOUDRAULT: Now I offer as evidence this file as it is, — I offer as evidence this portion of the file which consists of a pink sheet, as Plaintiff's Exhibit C-45.

MR. O'DONNELL: Objected to as illegal and irrelevant.

10 (The said pink sheet was thereupon received in evidence and marked Plaintiff's Exhibit C-45 of this date).

BY MR. GOUDRAULT:

Q.—How did you describe this Exhibit C-45, Mr. Paulsen?

A.—This sheet?

Q.—Yes, sir. A.—The final certificate.

Q.—For? A.—The completion of section 2 of 150th Avenue sewer.

20 MR. O'DONNELL: Objected to inasmuch as the document speaks for itself.

Q.—Signed by whom? A.—Signed by Shugrue.

Q.—In his capacity of acting president of the Borough of Queens. Will you just state the number of days that this certificate states that the work was to be completed? A.—Time consumed by contractors, 238 days. Time within which the contractor to complete work, 250 days.

Q.—And how many days did it take you to complete the contract? A.—238 days after notification to start work.

30 Q.—That means that you finished it ahead of time? A. Yes.

Q.—About how many days?

MR. HACKETT: 12.

MR. GOUDRAULT: 12 days. Right.

Q.—Did you know one Clare Schlemmer? A.—Yes.

Q.—Did you know one Muccini? A.—Yes.

40 Q.—You knew both? A.—Are you referring to Decker's partner, — Muccini and Decker?

Q.—Do you know Ernest Muccini? A.—Yes.

Q.—Who was he? A.—Decker's partner.

Q.—When did you first meet Decker?

MR. O'DONNELL: Objected to as being entirely irrelevant.

Paul W. Paulsen for plaintiff recalled (direct examination).

A.—At the time that we went over the proposed route of the Jamaica and Rockaway system.

Q.—Yes. Where did you meet him? A.—In Phillips' office.

Q.—Will you relate the conversation on that occasion that you met Decker for the first time? A.—Phillips introduced Decker to me as his engineer, at the time.

10

MR. O'DONNELL: Objected to, as to what Phillips said.

Q.—Anything else said then? A.—That is the time we went out to look over the work, or look over the ground where the Jamaica and Rockaway systems were to be built.

Q.—Where was the introduction made? A.—In 49 Jackson Avenue.

Q.—Were you there long? A.—Long?

Q.—Yes. A.—A very short while. We went out together in the car.

20

Q.—Anything else said? A.—No. I don't recall what was said except the introduction.

Q.—What did he say when he introduced Decker to you? A.—He introduced him as his engineer. He said "He is my engineer."

Q.—Is that all? A.—That is all I recall.

Q.—Did you pay for all your pipe for the 150th Avenue, to Phillips? A.—Did I pay him in full?

Q.—Yes, did you pay him in full? A.—Yes.

30

MR. O'DONNELL: Objected to as not the best evidence of any such payment.

Q.—Have you got your checks for payment of the balance?

A.—Have I got them?

Q.—Yes. A.—No.

Q.—Where are they, do you know? A.—They were given to Buckner.

40

Q.—Coming back to the 150th Street job, after your conversation with Phillips what did you do in reference to that particular job? A.—I went and looked over the ground, examined the ground where the work was going in and went ahead and prepared my figures to bid on the job.

Q.—Did you have any more conversation with Phillips about bidding on that job, that day? A.—No.

MR. O'DONNELL: Objected to, as to conversation with Phillips.

Paul W. Paulsen for plaintiff recalled (direct examination).

Q.—Any other conversation with anybody else besides Phillips, with reference to bidding on this 150th Street job?
A.—Yes.

MR. O'DONNELL: Objected to as entirely irrelevant.

Q.—Was that before you put in the bid? A.—Yes.

10 Q.—Or after? A.—Before.

Q.—With whom? A.—With Decker, Muccini and George Everett.

MR. O'DONNELL: Same objection.

Q.—Who was George Everett? A.—A contractor over in Queens.

Q.—Did you have that conversation on the very same day, or different days, or what? A.—Same day.

20 Q.—Where did you meet them? A.—Over in the Borough of Richmond.

Q.—Tell us what took place there? A.—I was building a sewer job for the Borough of Richmond. We were, —

MR. O'DONNELL: Same objection; as irrelevant.

MR. HACKETT: I object also.

A.—(Continuing) We were using well points on that job. Decker, Muccini and Everett came over to see the operation of those well points. And we went to lunch together, and during the
30 lunch Decker told me that —

MR. O'DONNELL: Objected to as irrelevant.

MR. HACKETT: I object also. Hearsay.

THE COMMISSIONER: The answer will be taken subject to counsel's objections.

A.—(Continuing) Decker told me that Phillips didn't want me to bid on this job, to lay off of it. He wanted me to agree to do that, and I didn't want to agree to do so, and I told him I didn't
40 know whether I was going to put in a bid or not.

Q.—As a matter of fact, did you put in a bid on the 150th Street job? A.—Yes.

MR. O'DONNELL: Objected to as not being the best evidence.

Paul W. Paulsen for plaintiff recalled (direct examination).

Q.—Did you state a minute ago that your company bid on the 150th Street? A.—Yes.

MR. GOUDRAULT: I now offer as evidence summary of proposals taken from the records of the Borough, for the construction of the 150th Street sewer, giving the names of the different bidders and amounts of their total bids, and unit prices; the date when bids were opened being June 17th, 1925.

MR. COOK: Put your question, Mr. Goudrault, and I will make my objection when you finish the question.

MR. GOUDRAULT: I just offer it, Mr. Cook.

MR. COOK: I object, Mr. Commissioner, to the production of this document as illegal, improper, and it does not show by whom this document was prepared so it is incompetent for the witness to produce it or to give any evidence in regard to it.

THE COMMISSIONER: It will be accepted in evidence subject to counsel's objection.

(The said summary of proposals was thereupon received in evidence and marked Plaintiff's Exhibit C-46, of this date).

MR. COOK: I also add to my objection that any evidence in regard to this document is illegal.

MR. HACKETT: I associate myself with the objection.

THE COMMISSIONER: Your objection will be noted upon the record. Proceed with the examination of the witness.

MR. GOUDRAULT: All right, sir.

Q.—Will you read from this Exhibit C-46 the bids on type B for the construction of the 150th Street sewer?

MR. O'DONNELL: Same objection.

Q.—(Continuing) The names of the bidders and the total amounts of their bids?

MR. O'DONNELL: The same objection. The document speaks for itself, for whatever it may be worth.

A.—Hammen Construction Company, \$546,830; Muccini and Decker, \$699,730; James Gallo, \$703,900.

Jefferson J. Reilly for plaintiff recalled (direct examination).

Q.—It is clear enough that you were the low bidder. A. Yes.

Q.—Your company was the lowest bidder by how many dollars, Mr. Paulsen?

MR. O'DONNELL: Objected to; the document speaks for itself.

10 A.—\$152,900.

Q.—Do you recollect your company bidding on Type A also for the construction of the said 150th Street sewer?

MR. O'DONNELL: Objected to as not being the best evidence of any such bid.

A.—I don't believe we bid on Type A. I don't recall.

20 MR. GOUDRAULT: Will you stand aside, Mr. Paulsen, for a minute. And have Mr. Reilly, in.

DEPOSITION OF JEFFERSON J. REILLY
(recalled)

JEFFERSON J. REILLY was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposeth an saith as follows:

30 DIRECT EXAMINATION BY MR. GOUDRAULT: (continued)

Q.—Mr. Reilly, will you please look at this paper and state what it is? A.—This is a summary of proposals, bids for which were opened on June 17, 1925, for sanitary sewer, etc., on 150th Street.

Q.—What type of construction? A.—Type A.

40 MR. GOUDRAULT: I offer as evidence this summary of proposals, as Plaintiff's Exhibit C-47.

MR. COOK: One moment. Did you prepare that yourself, Mr. Reilly?

THE WITNESS: No, sir.

MR. COOK: I object to the production of this as illegal and improper.

Jefferson J. Reilly for plaintiff recalled (direct examination).

MR. HACKETT: So do I.

THE COMMISSIONER: It will be allowed in evidence subject to your objection.

(The said summary of proposals was thereupon received in evidence and marked Plaintiff's Exhibit C-47, of this date).

10 MR. COOK: Defendants object to any and all evidence in regard to that document.

BY MR. GOUDRAULT:

Q.—You have already explained, Mr. Reilly, the way and the proceeding carried on toward the preparation of the summaries of proposals? A.—Yes, sir.

20 Q.—May I ask you, when the bids are opened and read, if all the particulars of the said bids then become public? A.—Yes, sir.

Q.—And bidder, whether successful or not, or any other party, may take details? A.—Yes, sir.

Q.—And, in a word, I understand that these summaries of proposals are prepared in the Borough of Queens? A.—Yes.

Q.—Are they prepared under your supervision? A.—No, sir.

Q.—Neither this particular summary of proposals, C-47, —

MR. COOK: Nor any other.

30 A.—No, sir.

Q.—Do you know who is the official clerk for that purpose; the head man who would identify it? A.—Mr. Pearson.

Q.—I mean at the time, would you recollect, in 1925 or 1926 who was then the official? A.—Yes, I think Mr. Pearson.

Q.—I have here another document which I will ask you, Mr. Reilly, to identify after I have shown same to learned counsel for defendants.

(Defendants' counsel examined document referred to).

40 MR. GOUDRAULT: I think I will withdraw that piece of evidence, the offer of same, and put it in in logical order, and have Mr. Reilly in in a few minutes.

MR. COOK: Did you ask Mr. Reilly a question on this?

MR. GOUDRAULT: I simply said that I would file it as evidence after you saw it; but I will not, now.

Jefferson J. Reilly for plaintiff recalled (direct examination).

Q.—Will you look at another document —

MR. COOK: May I see that before you put it in, Mr. Goudrault, please?

MR. GOUDRAULT: Yes, sir.

10 Q.—Will you look at another document and tell us, in a few words, what it is. I will show it to Mr. Cook and to Mr. Hackett.

(Defendants' counsel examine paper).

Q.—Tell us whom the letter is from and the date, and to whom? A.—This is a letter from Clifford B. Moore, consulting engineer, dated June 22, 1925.

Q.—Addressed to whom? A.—To Hon. Maurice E. Connolly, President of the Borough of Queens.

20 MR. HACKETT: What is the date?

THE WITNESS: June 22, 1925.

Q.—Who is Clifford B. Moore? A.—He was our consulting engineer at that time.

Q.—You knew him? A.—Yes, sir.

Q.—Can you testify as to his signature? A.—I would say that is his signature. I am not an expert, but I would say that is it.

30 Q.—Could you read us what is written in pen over his signature? A.—Yes, sir. "Reject and readvertise this contract". And that is supposed to be "M. E. C."

Q.—You recognize those? A.—Yes, sir.

Q.—Those are the initials of whom? A.—Maurice E. Connolly.

MR. O'DONNELL: Objected to as not the best evidence.

MR. HACKETT: Same objection.

40 MR. GOUDRAULT: I offer this letter as Plaintiff's Exhibit C-48.

MR. O'DONNELL: Defendants object to the production of this letter as being illegal and irrelevant.

(The said letter was thereupon received in evidence and marked Plaintiff's Exhibit C-48 of this date).

Paul W. Paulsen for plaintiff recalled (direct examination).

BY MR. GOUDRAULT:

Q.—Will you now look at this paper and state what that is, giving the date? A.—This is a bid sheet used by the contractor for the construction of a sanitary sewer on 150th Street, Type B.

10 Q.—What is the date? A.—Bids to be opened on June 17, 1925.

Q.—Is that an original or a copy? A.—Original.

MR. GOUDRAULT: I now offer, as Plaintiff's Exhibit C-49, the said bid on Type B for the 150th Street sewer.

Q.—It is, I understand, Mr. Reilly, the original bid of Muccini and Decker? A.—Muccini and Decker, yes.

MR. O'DONNELL: Objected to as being irrelevant.

20 (The said bid sheet was thereupon received in evidence and marked Plaintiff's Exhibit C-49 of this date).

MR. GOUDRAULT: Thank you, Mr. Reilly. Will you send Mr. Paulsen in?

DEPOSITION OF PAUL W. PAULSEN
(recalled)

30

PAUL W. PAULSEN was recalled and further testified:

BY MR. GOUDRAULT:

Q.—Will you look at this letter and state, Mr. Paulsen, if you have seen this letter before? A.—Yes. We received that.

40 MR. GOUDRAULT: I now offer as evidence, as Plaintiff's Exhibit C-50, letter from Maurice E. Connolly, President of the Borough of Queens, to Hammen Construction Co., dated June 25, 1925, rejecting Hammen Construction Company's bid for the 150th Avenue sewer.

MR. COOK: I object to my learned friend defining the letter. The letter, as I understand, does not merely reject the Hammen Construction Company bid, but is notification to that Company that all bids are being rejected; and our learned

Paul W. Paulsen for plaintiff recalled (direct examination).

friend should not define these documents when he puts them in. They speak for themselves.

MR. GOUDRAULT: I withdraw my description of the document which speaks for itself.

10 (The said letter was thereupon received in evidence and marked Plaintiff's Exhibit C-50, of this date.)

Q.—Do you recognize that signature on C-50, Mr. Paulsen? A.—I can not identify it. I would have to see Mr. Connolly write his signature.

Q.—Do you remember your company receiving that letter? A.—Yes, sir.

20 MR. COOK: I will add to my objection in regard to the production of C-50, that Mr. Connolly there apparently deals with no less than nine separate contracts, — nine separate bids.

MR. HACKETT: I avail myself of the same objection.

THE COMMISSIONER: Your further objection will be noted on the record. Will you please be so good as to proceed, Mr. Goudrault?

BY MR. GOUDRAULT:

30 Q.—Do you remember to what price you had calculated the prices of precast pipe that you were to use on that 150th Avenue sewer?

MR. O'DONNELL: Objected to as entirely irrelevant.

A.—I didn't have no price.

Q.—How did you come to figure out an amount when you bid for the construction of the 150th Street sewer?

MR. O'DONNELL: Objected to as irrelevant.

40 A.—Well, I took a flyer at it, you might say. I estimated that I could manufacture pipe myself if I could not get a price later, if I was awarded the job.

Q.—What figure did you use? A.—I don't recall. I haven't got my figures.

MR. O'DONNELL: Objected to, for the same reason.

THE WITNESS: I believe I bid \$64 a foot for the sewer complete.

Paul W. Paulsen for plaintiff recalled (direct examination).

MR. O'DONNELL: Objected to as not being the best evidence of such bid.

Q.—How much of that amount would be for precast pipe, in your estimate.

MR. O'DONNELL: Same objection.

10 MR. HACKETT: Objected to as not the best evidence.

Q.—Have you got your estimates? A.—No, I haven't. What paper I had relating to this work, I turned over to Mr. Buckner.

MR. COOK: You mean Mr. Buckner, who was conducting the investigation?

THE WITNESS: Yes.

20 Q.—Were you familiar with the price of precast pipe at the time?

MR. O'DONNELL: Objected to as irrelevant.

A.—Yes.

Q.—At that time had you ever used any re-enforced concrete sewer pipe in any of the sewers you had built? A.—Yes, sir.

30 Q.—Do you remember the size called for in the 150th Street sewer? A.—Largely 42-inch; three foot six.

MR. O'DONNELL: Objected to inasmuch as the specification speaks for itself.

Q.—Were you familiar with the market value of re-enforced concrete sewer pipe of that size? A.—I was familiar with the basic price by weight, per ton or per cubic yard of contents.

40 MR. GOUDRAULT: Will you please stand aside again, Mr. Paulsen. I have to have Mr. Reilly in. Mr. Reilly.

Jefferson J. Reilly for plaintiff recalled (direct examination).

DEPOSITION OF JEFFERSON J. REILLY.
(recalled)

JEFFERSON J. REILLY was recalled and testified further:

10 BY MR. GOUDRAULT:

Q.—Mr. Reilly, do you recollect this paper, and can you tell us what it is? Say what it is, first, Mr. Reilly, please. Describe it. A.—Summary of proposals for sewer of Type B construction, in 150th Street, bids for which were opened July 9, 1925.

Q.—And will you give us the names of the bidders and the total amount of their respective bids?

20 MR. O'DONNELL: Objected to. The document speaks for itself.

MR. COOK: Did you prepare this, Mr. Reilly?

THE WITNESS: No, sir.

MR. COOK: I object to the production of this exhibit as illegal and improper, and as having no bearing on the issues between the parties, and I also object to any and all evidence in regard to the exhibit in question.

30 MR. HACKETT: I avail myself of the same objection.

THE COMMISSIONER: The exhibit will be accepted subject to counsel's objections.

BY MR. GOUDRAULT:

Q.—Before I offer it in evidence, I wish, Mr. Reilly, that you read to us what appears on the said summary of proposals?

40 MR. O'DONNELL: Unless it is produced, how can he read from it?

Q.—What is at the bottom of the sheet?

THE COMMISSIONER: Is it in evidence or isn't it?

MR. COOK: Either the document is in evidence or is not in evidence. If it is not in evidence, Mr. Reilly should not

Jefferson J. Rcilly for plaintiff recalled (direct examination).

10 speak as to it. If it is in evidence, that is another question; it speaks for itself.

MR. GOUDRAULT: We will offer this as evidence as Plaintiff's Exhibit C-51.

MR. O'DONNELL: Objected to as not the best evidence.

10 (The said summary of proposals was thereupon received in evidence and marked Plaintiff's Exhibit C-51 of this date).

BY MR. GOUDRAULT:

Q.—Now, tell us what is on that document, C-51, in whose handwriting is it?

MR. COOK: My objections come in here too.

MR. GOUDRAULT: All right.

20 A.—“O. K. Award, M. E. C.”

MR. COOK: What does that mean?

THE WITNESS: That means to prepare an award and carry out the contract.

Q.—In whose handwriting is it? A.—Maurice E. Connolly.

30 MR. O'DONNELL: Objected to as not being the best evidence of Mr. Connolly's handwriting.

MR. GOUDRAULT: Will you send Mr. Paulsen in?

THE WITNESS: Yes, sir.

Paul W. Paulsen for plaintiff recalled (direct examination).

DEPOSITION OF PAUL W. PAULSEN
(recalled)

PAUL W. PAULSEN, recalled, further testified:

10 Q.—Will you look at summary of proposals, Type B, for the construction of sanitary sewer on 150th Street, dated July 9th, 1925, which has been offered in evidence as Plaintiff's Exhibit C-51, and where appear as bidders Oxford Engineering Corporation and Welsh Brothers Construction Company. Did your company put in a bid for that?

MR. O'DONNELL: Objected to as not being the best evidence of any of said bids.

THE WITNESS: That is the reletting?

20 Q.—Yes. A.—No.

Q.—Do you recollect meeting Mr. Phillips after you made that payment of sixty-seven and odd thousand dollars that you spoke about? A.—I didn't see Phillips then. I handed the check to Pete Campbell.

Q.—I mean, did you see Phillips after that? A.—Oh, yes.

Q.—Do you recollect the time? A.—Late in the Fall.

Q.—Did you make additional payments to Phillips for his pipe? A.—Yes.

30 MR. O'DONNELL: Objected to as not being the best evidence of payment.

MR. HACKETT: I avail myself of that objection.

Q.—I recollect now you told us that you have not those checks. A.—I turned everything over to Buckner. They were produced during the investigation.

Q.—Do you remember when you were paid by the City for that job on 150th Avenue?

40 MR. O'DONNELL: Same objection, as not being the vest evidence of payment.

A.—The final certificate will show.

Q.—Will you look then at Exhibit C-45 and state if that will show the date that you were paid by the City, entirely paid, the last payment?

Paul W. Paulsen for plaintiff recalled (direct examination).

MR. O'DONNELL: Same objection.

A.—This don't give the date of the voucher, when that was paid.

Q.—It does not give the date? A.—Of the voucher, of the check from the Comptroller. I don't see it there.

10 MR. O'DONNELL: The document speaks for itself, and it is not competent for this witness to give any verbal evidence in connection therewith.

Q.—Will you look at C-36, which is the original contract for that 150th Avenue job, and state if there appears the payment by the City of New York for that contract?

MR. O'DONNELL: Same objection.

20 Q.—I want to get the date, if you can get it from the original documents. A.—The final payment of \$253.27, held back for one year as guarantee of restoration of payment, it says here was paid the 18th, 11, 1926.

Q.—Was that the final payment? A.—Yes.

Q.—And the date? A.—18th November, 1926. That was one year after completion.

Q.—Now, was your pipe paid for, to Phillips? A.—Yes. He was paid even more than a year prior to that time.

MR. O'DONNELL: Objected to as not being the best evidence of said payment.

30 MR. HACKETT: I object also.

A.—My recollection of the final payment for pipe to Phillips was —

MR. HACKETT: I object to the witness's final recollections.

MR. O'DONNELL: Same objection.

40 Q.—Do you remember, Mr. Paulsen, four jobs advertised at one time in the City Record?

MR. HACKETT: Objected to as irrelevant.

MR. GOUDRAULT: Question withdrawn. And will you stand aside, Mr. Paulsen, and have Mr. Reilly come in for identification of official documents.

Jefferson J. Reilly for plaintiff recalled (direct examination).

DEPOSITION OF JEFFERSON J. REILLY
(recalled)

JEFFERSON J. REILLY, recalled, further testified:

BY MR. GOUDRAULT:

10 Q.—Now, Mr. Reilly, will you look at these three sheets and tell us what they are? A.—The first one is Summary of Proposals on Type B sewer in Hempstead Avenue.

Q.—What type? A.—Type B.

Q.—What is the date? A.—Bids were opened on April 7th, 1926. The second one is Type B, for sewer in Foch Boulevard, 4th Ward. Bids opened April 7th, 1926.

Q.—Did you state the type? A.—Yes, sir. The third one is Type B sewer in Springfield Boulevard.

20 Q.—Date? A.—Opened April 7th, 1926.

MR. GOUDRAULT. I now offer as evidence those three sheets or summaries of proposals, as Plaintiff's Exhibits C-52, C-53 and C-54.

MR. COOK: One moment. Mr. Reilly, did you prepare these yourself?

THE WITNESS: No, sir.

30 MR. COOK: And you can not say whether they are right or wrong, from your personal information, personal knowledge?

THE WITNESS: No, sir.

MR. COOK: Defendants object to the production of these documents as illegal and irrelevant and as having no bearing on the issues in the present case; and further object to any and all evidence on the part of the witness or on the part of any other witnesses with regard to these three documents, for the same reason.

40 MR. HACKETT: Same objection.

MR. O'DONNELL: Furthermore, that they are not the best evidence of the bids which they purport to summarize.

THE COMMISSIONER: They will be accepted in evidence subject to your objections, exceptions and reservations.

Jefferson J. Reilly for plaintiff recalled (direct examination).

(The said summaries of proposals were thereupon received in evidence and marked, respectively, Plaintiff's Exhibit C-52, C-53 and C-54, of this date.

BY MR. GOUDRAULT:

10 Q.—Have you made searches, Mr. Reilly, in your department concerning other summaries of proposals? A.—I have caused search to be made.

Q.—For the Hempstead Avenue sewer, for the Foch Boulevard and for the Springfield Boulevard; and what other? A. I have caused a search to be made, yes.

Q.—And what is the result? A.—I could not find any other but those.

Q.—Neither bid sheets nor summaries? A.—Neither bid sheets nor summaries of proposals.

20 Q.—Did you search or cause to be searched for summary of proposals or the bids themselves for the Jamaica Boulevard sewer of the same date? A.—Jamaica Avenue.

Q.—Jamaica Avenue, rather? A.—Yes, sir.

Q.—Did you find it? A.—No, sir.

Q.—I notice that these exhibits C-52, C-53 and C-54 have a notation here, in pen, in the left hand corner of each. Will you tell us what that is, according to your experience? A.—A notation saying "Awarded by Borough President 4-21-26", on each one of them.

30 MR. O'DONNELL: Objected to as not being the best evidence of such awards.

Q.—Those are the usual summaries of bids as prepared in the way you have already stated, Mr. Reilly? A.—Yes, sir.

MR. GOUDRAULT: Thank you, Mr. Reilly. Mr. Paulsen.