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UNIVERSITY OF LONDON  
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58,1939

1070 OF 1909

NO. 956.

**Court of King's Bench**  
(APPEAL SIDE)

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

*The People of the State of New York,*  
(Plaintiffs in the Court below)  
APPELLANTS

—vs—

*Heirs of the late John M. Phillips,*  
(Defendants in the Court below)

—&—

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

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

RESPONDENTS

—&—

*The Montreal Safe Deposit Company,*  
TIERS-SAISIS

**C A S E**

**VOLUME 2. — PAGES 501. TO 1000.**

**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.

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

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*Paul W. Paulsen for plaintiff recalled (direct examination).*

DEPOSITION OF PAUL W. PAULSEN  
(recalled)

PAUL W. PAULSEN was recalled as a witness and further testified:

10 MR. GOUDRAULT:

Q.—Mr. Paulsen, will you now look at Exhibits C-52, C-53 and C-54 —

MR. COOK: We object to any questions in regard to these three exhibits, on the ground as stated in the objection to their production by the witness, Mr. Reilly; and to all evidence in regard to them.

20 MR. HACKETT: I associate myself with that objection.

Q.—(Continuing) And tell us if you know anything about the jobs they refer to?

MR. O'DONNELL: Objected to as being entirely irrelevant, for the reasons already stated.

A.—I bid on one of those jobs.

Q.—Which one of the three I just showed you? A.—Foch Boulevard.

30 Q.—And your bid therein appears? A.—Yes.

MR. O'DONNELL: Objected to as not being the best evidence of any such bid.

MR. HACKETT: Same objection.

Q.—Do you remember the time of the letting or advertising of these contracts?

MR. O'DONNELL: Same objection.

40 A.—Yes. It was in the spring of 1926.

Q.—You stated a minute ago that you bid on the Foch Boulevard sewer. Do you recollect any other sewer whose letting was advertised for the date of the 7th of April, 1926, appearing on these exhibits C-52, C-53 and C-54?

MR. O'DONNELL: Objected to as irrelevant.

A.—Jamaica Avenue section was advertised the same time.

*Paul W. Paulsen for plaintiff recalled (direct examination).*

Q.—Did you bid on that one also? A.—Yes.

Q.—Now, did you have any conversation with anybody before you put in your bids on the Foch Boulevard and the Jamaica Avenue?

MR. O'DONNELL: Objected to as being entirely irrelevant.

10 A.—Yes.

Q.—Where was that conversation?

MR. COOK: Was it with his nurse, or his who?

MR. GOUDRAULT: I am asking him where, and then we will know with whom.

Q.—If you wish to put it otherwise, with whom did you have such conversation? A.—With Decker.

20 MR. COOK: With whom?

THE WITNESS: Decker.

MR. HACKETT: I object to any evidence or testimony as to conversations with Decker, as irrelevant.

MR. GOUDRAULT: I am just asking the fact, not the conversation.

30 THE COMMISSIONER: The answer will be taken subject to counsel's objection.

Q.—Where did that conversation take place? A.—In Jamaica.

40 MR. COOK: Mr. Commissioner, really we are going very far. I must object again. We will never get through if we go into all the conversations of all these contractors with every Tom, Dick and Harry regarding their various bids, and arrangements, and purchases of pipe, and everything else. We will never get to the end of this thing. We will be here to next year.

MR. GOUDRAULT: I hope to shorten this.

MR. COOK: No, Mr. Goudrault, this is too much.

MR. GOUDRAULT: The question, then?

(Question and answer read by Clerk).

*Paul W. Paulsen for plaintiff recalled (direct examination).*

10 MR. HACKETT: Mr. Commissioner, we are at the end of the second week of this testimony. My friend has alleged conspiracy. It is pretty nearly time that he begin to buckle up. I object to the irrelevancy of these conversations and meetings and greetings of people in whom we have no interest, and which have no bearing upon the litigation. I ask that this testimony be excluded until it is shown that it has some relevancy.

MR. GOUDRAULT: If you will let me put the question, then we may show the relevancy of the questions and answers.

THE COMMISSIONER: I will allow the answer, subject to counsel's objection.

BY MR. GOUDRAULT:

20 Q.—How did it come that there was such a meeting with Decker? A.—I went there by appointment.

MR. O'DONNELL: Same objection.

Q.—Who asked you to go there? A.—Decker.

Q.—What particular place in Jamaica? A.—At the Jamaica station of the Long Island Railroad. At that time we had an office in a bank building, Corn Exchange Bank Building, right across from the station.

Q.—Your company had an office there? A.—We had a room there while we were doing this work.

30 Q.—Do you recollect the date on which you put in your bids with the Borough of Queens, for those two jobs, the Foch Boulevard and the Jamaica Avenue? A.—The date?

Q.—Yes. A.—No.

MR. O'DONNELL: Objected to as not being the best evidence of said bids or the dates thereof.

40 Q.—This C-53, which is a summary of proposals for the Foch Boulevard is dated the 7th of April, 1926. Did you have that meeting with Decker previous, or on what date, about? A. Previous to that, within two weeks previous to that; between the time it was advertised in the City Record and the time of receiving bids.

Q.—Your bid on Foch Boulevard appears here on C-53 as being \$679,428.

*Paul W. Paulsen for plaintiff recalled (direct examination).*

MR. O'DONNELL: Objected to as not being the best evidence of the bid.

Q.—Do you recollect how much of that was for pipe?

MR. O'DONNELL: Objected to as entirely irrelevant.

10 MR. HACKETT: I object to any evidence, — Mr. Commissioner, after all, haven't we got to settle some time what is going into this record? You will be here and we will be here for many weeks unless we can limit this to what everybody here knows to be legal evidence.

MR. GOUDRAULT: Question withdrawn.

20 With your permission, Mr. Commissioner, I wish to confer with Mr. Moore on a very important matter, that we wish to cut short and everybody will benefit by it. But it means a few minutes conference, and we will shorten it.

THE COMMISSIONER: Do you wish to adjourn now?

MR. GOUDRAULT: Yes, until 11 o'clock tomorrow morning.

THE COMMISSIONER: It is seven minutes to four now.

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30 (Whereupon, at 3:53 o'clock p. m. an adjournment was taken to tomorrow, Friday, January 30th, 1931, at 11 o'clock a. m.).

Depositions of witnesses, sworn and examined on the 30th 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: The witness, Charles H. Harrington, is here, and I ask that he be requested to be here at eleven o'clock Monday, February 2nd, 1931, unless otherwise notified.

THE COMMISSIONER: Mr. Harrington, will you please be in attendance at this office at 11 o'clock on Monday. If there is any change, the Attorney General will advise you, but unless the Attorney General advises you otherwise, you are directed to be here at eleven o'clock on Monday.

30 MR. GOUDRAULT: This is another witness, John F. O'Rourke, and I wish that he be directed to wait in the witness room, that he may be called this morning.

THE COMMISSIONER: Mr. O'Rourke, you will please wait in the next room until you are called.

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DEPOSITION OF PAUL W. PAULSEN.  
(recalled)

40 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:  
(CONTINUED):

Q.—Mr. Paulsen, we produced yesterday as Exhibits C-52, C-53 and C-54, summaries of proposals for the construction of

*Paul W. Paulsen for plaintiff recalled (direct examination).*

sewer on Hempstead Avenue, Foch Boulevard and Springfield Boulevard, and according to these summaries of proposal, these three contracts went to the Highway Improvement & Repair Co., Inc.? A.—Yes, sir.

MR. O'DONNELL: Objected to as not being the best evidence.

10

Q.—We also have in evidence, on page 651, by Mr. Reilly, that he could not find the summary of proposals for Type B for the construction of the sewer on Jamaica Avenue. Do you know to whom that contract went? A.—Highway Improvement and Repair Company.

Q.—So the four contracts went to the same company? A. Yes, sir.

Q.—Do you know who was the president of that company? A.—I understand Cliff Turner. I don't know.

20

MR. HACKETT: If you don't know, I ask that it be stricken from the record.

Q.—Do you know a man by the name of Cliff Turner? A. I met him.

MR. GOUDRAULT: You met him. We will speak of him later.

Q.—I understood you to say you had also bid on one or two or three, or the four of these jobs. Which one did you bid on? A.—Foch Boulevard and Jamaica Avenue.

30

MR. HACKETT: Mr. Goudrault, I notice you have produced as Exhibits C-52, C-53 and C-54, summaries of Type B. Where are the summaries of Type A?

MR. GOUDRAULT: The official custodian of these summaries of proposals has been requested to produce them; and he is making searches and will produce them if he finds them.

40

MR. HACKETT: The record is incomplete without them.

MR. GOUDRAULT: I understand that.

Q.—Do you recollect what was your bid for the Foch Boulevard proposal?



*Paul W. Paulsen for plaintiff recalled (direct examination).*

MR. COOK: Your bid was in writing, wasn't it, Mr. Paulsen?

THE WITNESS: I don't recollect.

MR. COOK: Answer my question. Was your bid in writing, or not?

10 THE WITNESS: It had to be.

MR. COOK: Well, it had to be. I object, on the ground that this is not the best evidence.

THE COMMISSIONER: You may proceed with your answer subject to counsel's objection.

Q.—Do you recollect the circumstances of you making your estimates in order to prepare your bids?

20 MR. O'DONNELL: Objected to as being entirely irrelevant.

A.—The jobs were advertised for letting.

Q.—What is that? A.—The jobs were advertised for bidding, and I got plans, prepared my figures on two of these jobs.

Q.—And you did some work for the two jobs. I mean you prepared estimates for both jobs? A.—Certainly.

Q.—Now, do you recollect what your figure was for the Foch Boulevard bid?

30 MR. COOK: Same objection.

THE COMMISSIONER: The answer will be taken subject to counsel's objection.

A.—The total figure?

Q.—Yes. A.—I don't recollect the exact figure. Somewheres around \$700,000; a little less.

Q.—Do you remember what was your bid for the Jamaica Avenue construction work?

40 MR. COOK: Same objection.

A.—A little over a million dollars.

Q.—Tell us in a word how you proceed to estimate your prices?

MR. O'DONNELL: Objected to as entirely irrelevant.

*Paul W. Paulsen for plaintiff recalled (direct examination).*

Q.—(Continuing) To have your figure come to a lump sum. A.—Well, you figure out over the units, estimate the cost of each unit, and add on what you want for profit, and see what your total lump sum is. Multiplying all the unit prices by the unit quantities, and your lump sum is arrived at from that.

10 MR. COOK: I also object to this evidence as entirely irrelevant. I can not see what possible interest we have in knowing the details regarding the bids that this gentleman put in, when, on his own statement, his bids were rejected.

The evidence is absolutely irrelevant. We are wasting time.

MR. GOUDRAULT: We are trying to find out why they were rejected.

20 THE COMMISSIONER: I will allow the answer, subject to counsel's objection.

Q.—Now, Mr. Paulsen, do you remember speaking to anybody about this contract that you wished to put in bids for, for Foch Boulevard and the Jamaica Avenue sewer? A.—About what? Speaking about what?

Q.—About your contract that you wished? A.—I had no contract.

30 Q.—No. I mean about your bids? A.—Naturally you talk it over with your own organization, your own office organization.

Q.—I see. You did, in those two instances? A.—Yes.

Q.—Did you speak to anybody else about that? A.—I spoke to Decker about it.

Q.—Where did you meet Decker? A.—I met him in Jamaica.

Q.—Was that before you put in your bids for the Foch Boulevard and the Jamaica Avenue sewer? A.—Yes.

40 Q.—Tell us what happened then? A.—I met Decker by appointment and he gave me the price of the pipe. Phillips was at the time reported to be in Florida.

MR. HACKETT: I object to any testimony of a conversation with Decker, as not being the best evidence and being hearsay. Decker is not a party to the suit.

THE COMMISSIONER: I will allow the answer, subject to counsel's objection. Will you proceed, please?

*Paul W. Paulsen for plaintiff recalled (direct examination).*

MR. GOUDRAULT: Yes, sir.

Q.—Don't report any conversation, but simply tell us the facts of that special occasion. What happened then when you met Decker? A.—Decker told me the price of the pipe on any of those sections was \$40. a foot, and he told me that I would get one of the jobs.

10 Q.—Did you know Decker well? A.—Oh, I had met him on one or two occasions.

MR. COOK: I object to that. This can not possibly be evidence against the Estate of the late Mr. Phillips. Mr. Decker tells him how to get one of the jobs, and that is proof conclusive that Phillips stole money — it is ridiculous, Mr. Commissioner.

THE COMMISSIONER: The answer will be taken subject to counsel's objection. Will you please proceed now?

20 MR. GOUDRAULT: There is no question now. Just remarks from Mr. Cook.

Q.—You told us a minute ago that the four contracts mentioned went to the Highway Improvement & Repair Company? A.—Yes, sir.

Q.—You also told us you had met one Cliff Turner. When did you meet Cliff Turner?

30 MR. HACKETT: Objected to as irrelevant. And again, my lord, I want to assert that we are on the tenth day of this inquiry, and we have got conversations with dead men, and whisperings with other men, and nothing has been done to tie this up in any way.

MR. GOUDRAULT: Your irrelevant objections are unjustified, a large percentage of which will be thrown out in a very few minutes before the Montreal Court. That is one of the reasons for this Commission sitting so long.

40 THE COMMISSIONER: I will take the answer subject to counsel's objection.

Q.—Answer the question. A.—How far did I get in the answer? Repeat that, please.

(Question and answer read by clerk).

THE WITNESS: I met him first in Phillips' office.

*Paul W. Paulsen for plaintiff recalled (direct examination).*

Q.—Where? A.—49 Jackson Avenue.

Q.—Do you know when? A.—In 1925.

Q.—Do you know on what occasion? A.—I don't recall on what occasion. I was introduced to him then.

Q.—You were introduced to him by whom? A.—By Jack Phillips.

10 Q.—Without reporting any conversation, tell us what happened on that particular occasion when you met Cliff Turner? A.—I don't recall any conversation at that time.

Q.—I don't want you to recall any conversation. Just facts. A.—About Cliff Turner?

Q.—Yes, Mr. Paulsen. A.—You asked me if I met Cliff Turner, and I met him at Phillips' office. I was introduced to him by Jack Phillips then. We had no business dealings then.

Q.—I see. Did you meet him subsequent to that? A.—Yes.

20 Q.—On what occasion? Where? A.—Shortly after the opening of the bids on those four contracts you just mentioned.

Q.—Where did you meet him, then? A.—At 49 Jackson Avenue.

Q.—And do you remember who were there? A.—Jack Phillips, Decker, Angelo Paino, and Mr. Kennedy, or Mr. Smith, I don't know which, of the firm of Kennedy & Smith.

Q.—Who were they, contractors also? A.—Yes. That was the first time I ever met them.

30 Q.—Now, without stating any conversation, what did occur on that occasion that you are speaking of? A.—What did occur?

Q.—Yes. A.—Phillips had asked to come to his office.

MR. O'DONNELL: Objected to, any evidence of conversation with Phillips.

A.—(Continuing) by telephone; I came there by appointment.

Q.—I see. A.—And when I came there, he says, Cliff Turner was coming over and he was going to have it out with him, and ask him why he bid on those contracts.

40 Q.—What happened next? A.—Cliff Turner came in and him and Phillips were arguing about those contracts for a while.

Q.—In your presence? A.—Yes.

Q.—Was anything done then? A.—Nothing done, except we were listening to their argument.

Q.—Did you act there, did you do anything yourself there personally, or on behalf of your firm? A.—No.

*Paul W. Paulsen for plaintiff recalled (direct examination).*

Q.—Any papers there signed by you? A.—No. None whatever.

Q.—Any arrangement made there in writing by the parties, that you saw? A.—I didn't see any.

MR. HACKETT: Objected to as leading and suggestive.

10 MR. GOUDRAULT: I wish to point out, Mr. Commissioner, that paragraph 9, of our declaration, reads thus, partly.

MR. COOK: Read it all.

20 MR. GOUDRAULT: That "The said John M. Phillips, Maurice E. Connolly, and Frederick C. Seeley, did unlawfully, wilfully, knowingly and corruptly conspire, combine, confederate and agree together with each other, and with divers other persons, to plaintiffs unknown, to cheat and defraud the City of New York out of property, and did cause the City of New York, through its duly constituted officers, to pay large sums of money for work done and material and equipment supplied to construct pipe sewers in the said Borough of Queens, in excess of the fair, reasonable and proper cost thereof".

MR. HACKETT: We are all aware of that, Mr. Goudrault.

MR. GOUDRAULT: Well, it did not seem so by some of the objections.

30 MR. HACKETT: We have waited ten days for you to make some headway with your proof.

MR. GOUDRAULT: Well, we will get along.

MR. HACKETT: Yes, but when?

MR. GOUDRAULT: When the objections cease; that is, useless objections.

40 Now, will you please stand aside for a few minutes, Mr. Paulsen, and we will file the originals of those contracts that went to the Highway Improvement & Repair Company. Mr. Tully, please.

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*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

MR. COOK: Now, one minute, before Mr. Tully is examined, Mr. Commissioner, I wish to object on behalf of the defendants.

20

The defendants object to the evidence of this witness being suspended from time to time in this manner, as improper and illegal, and suggest that if counsel for the plaintiff desire to produce further original documents through Mr. Tully, or anybody else, that these documents be produced all at one time, in order that there may be no delay in the examination of this or other witnesses in the future. It is extremely difficult for counsel for the defendants to conduct their defense properly when the evidence of the witness is constantly interrupted to permit other witnesses to testify as to the accuracy of documents which are not yet in the record.

MR. GOUDRAULT: We quite agree to that suggestion.

BY MR. GOUDRAULT:

30

Q.—Mr. Tully, will you look at these four documents, and tell us what they are? A.—This is contract No. 79048, between the Highway Improvement & Repair Company, Inc., and the City of New York. It is for the construction of a sanitary sewer to be used temporarily as a combined sewer in Hempstead Avenue, etc. The date of award of this contract is April 21, 1926. The date of the contract is April 26, 1926. This is the original contract.

40

MR. GOUDRAULT: I offer as evidence, as Plaintiff's Exhibit C-55, said contract.

MR. O'DONNELL: Defendants object to this document as entirely irrelevant and illegal, and defendants object also to any verbal evidence in connection therewith.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-55 of this date).

*Eugene J. Tully for plaintiff recalled (direct examination).*

BY MR. GOUDRAULT:

Q.—Before we leave this Exhibit C-55, tell me, please, in your description what type of sewer was constructed by virtue of said contract, C-55?

10 MR. HACKETT: He said it was a temporary sanitary sewer.

MR. O'DONNELL: Combined sewer. Sanitary sewer to be used temporarily as a combined sewer.

Q.—Would the contract state if it was a Type A or Type B, Mr. Tully? A.—It is a temporary sewer. That is the description for the construction of a sanitary sewer, to be used temporarily. The conditions would be in the contract.

MR. O'DONNELL: It speaks for itself.

20 THE WITNESS: It is not in the description.

This one is contract No. 79049 between the Highway Improvement and Repair Company, Inc., and the City of New York. It is for the construction of a sanitary sewer to be used temporarily as a combined sewer in Springfield Boulevard, etc. The date of award of this contract is April 21, 1926. The date of the contract is April 26, 1926. This is an original contract.

30 MR. GOUDRAULT: I offer same as evidence, as Plaintiff's Exhibit C-56.

MR. O'DONNELL: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-56, of this date).

40 THE WITNESS: This is contract No. 79,050, between the Highway Improvement & Repair Company, Inc., and the City of New York, for the construction of a sanitary sewer to be used temporarily as a combined sewer in Foch Boulevard, etc. The date of award of this contract is April 21, 1926. The date of contract is April 26, 1926. This is an original contract.

MR. GOUDRAULT: I offer as evidence, as Plaintiff's Exhibit C-57, said original contract.

MR. O'DONNELL: Same objection.

*Jefferson J. Reilly for plaintiff recalled (direct examination).*

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-57, of this date).

THE WITNESS: This is contract No. 79,051, between the Highway Improvement & Repair Company, Inc., and the City of New York, for the construction of a sanitary sewer to be used temporarily as a combined sewer in Jamaica Avenue, etc.  
10 The date of award of this contract is April 21, 1926. The date of contract is April 26, 1926. This is an original contract.

MR. GOUDRAULT: I offer as evidence this original contract, as Plaintiff's Exhibit C-58.

MR. O'DONNELL: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-58 of this date).

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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 and saith as follows:

30 DIRECT EXAMINATION BY MR. GOUDRAULT:  
(Continued):

Q.—Mr. Reilly, will you look at this sheet, and tell us what it is, Mr. Reilly? A.—Summary of proposals for sewer in Springfield Boulevard, from Foch Boulevard to Hempstead Avenue, 4th Ward, under type B. Bids opened April 7th, 1926.

MR. GOUDRAULT: I now offer as evidence this summary of proposals as Plaintiff's Exhibit C-59.

40 MR. O'DONNELL: Objected to as not being the best evidence of any such bids.

THE COMMISSIONER: It will be taken in evidence, subject to counsel's objection.

(The said summary of bids was thereupon received in evidence and marked Plaintiff's Exhibit C-59 of this date).



*Jefferson J. Reilly for plaintiff recalled (direct examination).*

BY MR. GOUDRAULT:

Q.—In your evidence yesterday, Mr. Reilly, you stated that you could not find the summary of proposals for the Springfield Boulevard, and you now state you have been able to find same and produce it? A.—Yes, sir.

10 Q.—This summary of proposals was prepared in the same manner as the others? A.—Yes, sir.

Q.—And in the way that you stated previously? A.—Yes, sir.

MR. O'DONNELL: Same objection to this as the defendants have already made to similar documents.

20 Q.—At the request of the attorneys for the defendants, will you kindly produce the summary of proposals for Type A for the same four jobs; Springfield Boulevard, Foch Boulevard, Jamaica Avenue and Hempstead Avenue? A.—Were those the ones you requested?

MR. GOUDRAULT: Yes. The summary of proposals for Type A; also summary of proposals, Type A, for 150th Street, and summary of proposals for Brinkerhoff Avenue, Type A.

(Witness makes memorandum).

30 Q.—Now, will you look at this paper and state what that is? A.—This is the summary of proposals for a sewer in Brinkerhoff Avenue, from 180th Street to 193rd Street, 4th Ward, Type B, bids opened July 14, 1926.

MR. GOUDRAULT: I now offer as evidence, as Plaintiff's Exhibit C-60, this summary of bids.

MR. O'DONNELL: Same objection.

THE COMMISSIONER: Same ruling.

40 (The said summary of proposals was thereupon received in evidence and marked Plaintiff's Exhibit C-60).

MR. GOUDRAULT: To this Exhibit C-60, I am informed that two sheets are attached.

Q.—Now, will you look at this paper and tell us what it is? A.—This is a summary of proposals for a sewer in Brinkerhoff Avenue, from 180th Street to 193rd Street, 4th Ward, Type B. Bids opened October 18th, 1926.

*Jefferson J. Reilly for plaintiff recalled (direct examination).*

MR. GOUDRAULT: I now offer as evidence, Plaintiff's Exhibit C-61, such summary of proposals.

MR. O'DONNELL: Same objection.

THE COMMISSIONER: Same ruling.

10 (The said summary of proposals was thereupon received in evidence and marked Plaintiff's Exhibit C-61, of this date).

Q.—Will you look at Exhibit C-61, Mr. Reilly, and state if you recognize this pen writing there? A.—Yes.

Q.—Whose is it? A.—M. E. C. — Maurice E. Connolly.

MR. O'DONNELL: Same objection to the evidence of handwriting of Mr. Connolly, as the objection to similar documents previously filed.

20 Q.—What does it say before M. E. C.? A.—It says "Awarded, Maurice E. Connolly."

Q.—Now, I understand that both these last two exhibits filed by you, C-60 and C-61, were prepared in the same manner that you already testified to? A.—Yes, sir.

Q.—Will you now look at this letter and state what it is; letter from whom to whom, and the date? A.—Letter from Clifford B. Moore, Consulting Engineer, to Maurice E. Connolly, President of the Borough of Queens, relative to sewer in Brinkerhoff Avenue from 180th Street to 193rd Street, Type B.

30 Q.—The date of the letter? A.—There is no date here.

MR. COOK: May I see it, please?

(Mr. Cook examines letter).

MR. GOUDRAULT: I now offer in evidence said letter, as Plaintiff's Exhibit C-62.

MR. O'DONNELL: Objected to as entirely irrelevant.

40 (The said letter was thereupon received in evidence and marked Plaintiff's Exhibit C-62, of this date).

BY MR. HACKETT:

Q.—As a matter of fact, Mr. Reilly, on calling for bids a second time, offers were obtained to do the work for \$60,000 less than the bids on the first calling; is not that true? A.—I

*Jefferson J. Reilly for plaintiff recalled (direct examination).*

think, if that is relative to that letter, the letter so states, but off hand I could not tell you.

Q.—Yes. But it would be easy enough to ascertain by comparing the two Brinkerhoff summaries, Exhibits C-60 and C-61, would it not? A.—Yes.

BY MR. GOUDRAULT:

10 Q.—Now, will you look at Exhibit C-62, this letter from Clifford B. Moore to Maurice E. Connolly, and will you read what there appears in pen writing at the end of said letter? A. Yes, sir. “Reject and readvertise, dividing the contract”.

Q.—And signed? A.—It is not signed.

Q.—Will you now look at this sheet and state what that is? A.—This is a summary of proposals for sewer in Brinkerhoff Avenue, from 180th Street to 193rd Street, Type B, bids opened August 24, 1926.

20 MR. GOUDRAULT: I now offer as evidence this sheet, as Plaintiff’s Exhibit C-63.

(The said sheet was thereupon received in evidence and marked Plaintiff’s Exhibit C-63, of this date).

MR. COOK: I take it, Mr. Goudrault, that all these documents are subject to our objection.

MR. GOUDRAULT: Yes, sir.

30 Q.—In describing this Exhibit C-63, Mr. Reilly, you stated that according to that document the bids were opened on August 24, 1926. Will you tell us who appears to be the lowest bidder on said C-63, for the job on Brinkerhoff Avenue? A.—Paulsen Construction Corporation.

Q.—Now, will you look at a latter and state from whom to whom, and the date? A.—This is a letter from Maurice E. Connolly, president of the Borough of Queens, to the Hon. Charles W. Berry, Comptroller of the City of New York, dated July 29, 1926.

40 Q.—In reference to what particular contract? A.—In reference to Brinkerhoff Avenue, from 180th Street to 193rd Street, 4th Ward.

MR. GOUDRAULT: I now offer as evidence, said original letter as Plaintiff’s Exhibit C-64.

*Jefferson J. Reilly for plaintiff recalled (cross-examination).*

(The said letter was thereupon received in evidence and marked Plaintiff's Exhibit C-64 of this date).

Q.—Do you recognize the signature appearing on that exhibit C-64? A.—Yes, sir.

Q.—Whose is it? A.—Maurice E. Connolly's.

10 MR. O'DONNELL: Objected to as not being the best evidence of the said signature.

Q.—You have filed so far, Mr. Reilly, in connection with the Brinkerhoff Avenue sewer, two summaries of proposals? A. Yes, sir.

20 MR. GOUDRAULT: It would appear that there was a third letting before the contract was awarded. So will you kindly seek and produce the summary of proposal for that same Brinkerhoff Avenue, — it is here. That is withdrawn. But Mr. Hackett suggested that you have a summary of proposals for the Type A; July 14, 1926, August 24, 1926, and October 18, 1926.

Q.—I understand that all these summaries of proposals were prepared in the same manner as that stated previously by you, Mr. Reilly? A.—Yes, sir.

MR. GOUDRAULT: That will be all that will be required from you, Mr. Reilly, in connection with the examination of Mr. Paulsen.

30 MR. COOK: I understand that Mr. Goudrault asked Mr. Reilly to produce a summary of the proposals for Brinkerhoff Avenue, the 3rd letting. And whether Mr. Reilly produced that or not, I don't know.

MR. HACKETT: Yes. It is C-61.

CROSS EXAMINATION BY MR. HACKETT:

40 Q.—Mr. Reilly, with regard to Brinkerhoff Avenue, you have produced summary of proposals of bids opened July 14, 1926, as C-60; summary of proposals of bids opened August 24, 1926, as C-63; and summary of proposals of bids opened October 18, 1926, as C-61 — all type B. These proposals were all, I understand, for the same work, on the same street? A.—All those on the same street?

Q.—Yes. A.—Yes, sir.

Q.—And the same work? A.—Yes, sir.

*Jefferson J. Reilly for plaintiff recalled (redirect examination).*

Q.—The low bid among the bids opened July 14th, was Sigretto, \$349,201.10. These bids appear to have been rejected. The low bid among the bids opened August 24, was put in by Paulsen Construction Corporation, \$296,496. All the bids put in and opened on the 14th of July and the 24th of August, appear to have been rejected by Connolly. That was his right, of course? A.—Yes, sir.

10 Q.—And then the bids put in and opened on the 18th of October, 1926, in which the low bid was \$170,975 was Muccini & Decker appears to have been finally accepted? A.—Yes, sir.

Q.—So that by rejecting the bids of the 24th of August, Connolly appears to have saved the Borough about \$126,000, and by rejecting the bids of the 14th of July he appears to have saved the Borough about \$179,000, as shown by these exhibits? A.—Yes, sir.

20 Q.—I suppose the discretion was placed in the President of the Borough for the purpose of protecting the people of New York? A.—Yes, he had discretion to act to the best interests of the City.

Q.—And he could reject all bids for reasons in the interest of the City? A.—Yes.

BY MR. COOK:

30 Q.—And it undoubtedly was in the interest of the City in the cases that we are now discussing, that the bids should have been rejected, Mr. Reilly?

MR. HACKETT: That is apparent.

MR. GOUDRAULT: That is a matter of argument, not evidence.

REDIRECT EXAMINATION BY MR. GOUDRAULT:

40 Q.—On the 1st of the proposals, that of July 14, 1926, Mr. Reilly, it appears that the lowest bidder was Joseph L. Sigretto & Company, Inc., for \$349,201.10. On the second summary of bids, that of August 24th, 1926, it appears that the lowest bidder was Paulsen Construction Corporation, for \$296,496. The third summary of proposals, of the bids opened on October 18, 1926, it appears that the lowest bidder was Muccini & Decker, to whom the contract was awarded, \$170,975, total amount.

*Jefferson J. Reilly for plaintiff recalled (redirect examination).*

Are you in a position to state, Mr. Reilly, whether the specifications for the Brinkerhoff Avenue on each of these three biddings, were similar? A.—No, sir.

Q.—What is that? A.—I could not state that.

Q.—Do you know by your experience, if the original bid of the last bidder who finally is awarded the contract, is attached in the said contracts and forms part of the same? A.—  
10 Up to the last five years I think it is. But they are filed in the Comptroller's office. We must forward the original bid sheet to the Comptroller's office.

Q.—You did not get my question right. You have produced a series of contracts with the City of New York and contractors for the construction of sewers in the Borough of Queens. I want to know from you if you know if the successful bidder, if his bids are attached and form part of the contract? A.—If his bid? The Bid sheet?

Q.—The bid sheet. A.—The bid sheet as originally submitted by him?  
20

Q.—Yes. A.—That is what I am trying to tell you. For the last five years the Comptroller rules that we must forward the original bid as filed by the contractor with the notice of award. We must file the complete contract. We do not have any original low bid sheets any more. We forward them to the Comptroller's office.

Q.—And my question is, do they then form part of the contract? A.—Yes, sir.  
30

Q.—And are they attached to the original contract? A.—In the Comptroller's office, yes; not in ours.

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MR. GOUDRAULT: Mr. Commissioner, we wish Major O'Rourke to be advised to come back this afternoon.

THE COMMISSIONER: Major O'Rourke, will you be back this afternoon at two o'clock, under the request of Mr. Goudrault, and I have the authority to direct you to be here, if you please.  
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*Paul W. Paulsen for plaintiff recalled (direct examination).*

DEPOSITION OF PAUL W. PAULSEN.

PAUL W. PAULSEN, resumed:

DIRECT EXAMINATION BY MR. GOUDRAULT:

10 Q.—Mr. Paulsen, there have been produced, as Plaintiff's Exhibit C-55, C-56, C-57 and C-58, four original contracts awarded to the Highway Improvement & Repair Company for the construction of the four jobs of sewers that you have already spoken of. Will you look at them and state if what you said in your evidence referred to the said company and the said contracts? A. This is Hempstead Avenue, (indicating); this is Springfield Boulevard (indicating); this is Foch Boulevard (indicating); this is Jamaica Avenue (indicating).

20 Q.—Is there anything else you know about these contracts, Mr. Paulsen, in addition to what you have said? A.—You ask if I know about the contracts after they were in the form of a contract?

Q.—No. Leading to the award of these contracts. A.—No, I don't know anything about leading to the award of them.

Q.—Did you know what kind of construction work this company, the Highway Improvement & Repair Company, was doing at the time these contracts were awarded to it?

MR. O'DONNELL: Objected to as irrelevant.

30 A.—Yes, sir. They were doing paving.

Q.—Paving? A.—Yes.

MR. COOK: Objected to as irrelevant.

MR. HACKETT: Have you ever done any paving?

THE WITNESS: No.

40 Q.—Do you know anything about the assignment of these contracts? A.—I know they were assigned.

MR. HACKETT: Objected to as not the best evidence.

MR. O'DONNELL: Objected to as not the best evidence of any such assignments.

THE COMMISSIONER: You may answer subject to counsel's objections.

*Paul W. Paulsen for plaintiff recalled (direct examination).*

A.—I know they were assigned. I seen that in the records in the Comptroller's office.

MR. O'DONNELL: Same objection.

Q.—Did you hear of any assignments before they were actually assigned? A.—I heard they were going to be assigned.

10 MR. O'DONNELL: Objected to.

Q.—Tell us the facts about that. A.—I don't know the facts about the assignment, except what I seen in the records.

Q.—Now, Mr. Paulsen, we take up the Brinkerhoff Avenue contract. Do you know about the Brinkerhoff Avenue contract, Mr. Paulsen? A.—Yes, sir.

Q.—Were you a bidder for that job? A.—Yes.

Q.—Yourself or your company? A.—My company.

20 Q.—What was the name of your company? A.—Paulsen Construction Corporation.

Q.—So that is a new corporation, that you have not yet spoken of? A.—Yes.

Q.—Was that an incorporated company? A.—Yes, under New York State.

Q.—What was your official position with that company? A.—I was president of it.

Q.—And besides that? A.—I owned all the stock in it.

30 Q.—Now, we have had produced here, three sheets containing the summary of proposals for Type B, pertaining to the construction of sanitary sewer in Brinkerhoff Avenue. Will you look at same and tell us on what date your company put in its bid?

MR. HACKETT: To expedite, it is apparent from the exhibit itself.

MR. GOUDRAULT: Yes.

40 Q.—So it would appear that it was for the bids to be opened on August 24, 1926, that the Paulsen Construction Corporation did file its bid? A.—It filed one bid then, and filed another bid at a later date. The first bids were rejected and it was readvertised.

Q.—And when it was readvertised, your company did bid, and it appears there to have been the lowest bidder? A.—The first time.



*Paul W. Paulsen for plaintiff recalled (direct examination).*

Q.—No; I am speaking of the second time. A.—The second time we were not the lowest bidder. The second time I bid on it. This was advertised for letting three times.

Q.—I know three times; but on the second letting, that was the first time your corporation did bid? A.—Yes.

Q.—And your bid was then. A.—Low bidder.

10 Q.—And the bid was. A.—Rejected.

Q.—On the third letting, that was the second time that your corporation did bid, and then what was the rank of your bid? A.—We were not low bidder.

Q.—You were second lowest bidder? A.—Yes. It appears there.

MR. O'DONNELL: That is all under the reserve of the objections, as not being the best evidence of the bids.

20 (Whereupon, at 1:00 o'clock p. m. a recess was taken to 2:00 o'clock p. m.)

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AFTER RECESS. 2:00 p. m.

PAUL W. PAULSEN, resumed:

DIRECT EXAMINATION (CONTINUED) BY MR. GOUDRAULT:

30 Q.—Precast pipe was to be used on Type B, or could be used on Type B for the construction of that sewer, according to that bid, wasn't it, Mr. Paulsen? A.—It called for precast pipe, type B.

Q.—At the time that you did put in your bid for the Brinkerhoff sewer, were you or your company owing any money to Phillips for pipe? A.—No.

MR. O'DONNELL: Objected to as absolutely irrelevant.

40 Q.—Before putting in your bids, did you see Mr. Phillips to have a price on pipes for the Brinkerhoff Avenue sanitary sewer? A.—No.

MR. O'DONNELL: Same objection.

Q.—Mr. Paulsen, what are chambers and manholes in sewer construction? A.—Chambers as a rule is built where there is a branch line entering a trunk line.

*Paul W. Paulsen for plaintiff recalled (direct examination).*

Q.—Manholes? A.—Manholes is built at different intervals so that you can enter the sewer from the street.

Q.—Was precast pipe ever used in a chamber of that kind? A.—You can't use it. The chamber as a rule is rectangular in shape and pipe is circular.

10 Q.—What are the sizes of the manholes, generally? A.— Well, there is different sizes, depending on how you design it.

MR. HACKETT: Objected to as irrelevant.

A.—(Continuing) No general sizes.

Q.—Now, in building a precast sewer or a monolithic sewer, would the chambers and manholes be just the same in each case? A.—Yes, they were on this work that I built.

MR. O'DONNELL: Objected to. The specifications are the best evidence.

20 Q.—Well, I mean in your experience as a sewer contractor? A.—I have had no experience with this type of construction, except in Queens, about the Type A and the Type B, asking for bids like that. That is the only place that I have had the experience to build that way.

Q.—Will you look at the plan and profile, sheet 1 of 150th Avenue sewer. Your company did construct this sewer, didn't it, Section 2? A.—Yes.

Q.—And by subcontract, part of Section 1? A.—Right.

30 Q.—Now, you have already testified as regards waterproofing membrane in manholes and chambers — I mean as regards the waterproofing membrane in the barrel of the sewer? A.—Yes.

Q.—As a constructor of sewers, if you were called upon to build a Type A, that is to say, a monolithic sewer, would you consider it advisable to put in such a waterproofing membrane as called for on the plan and profile? A.—No.

MR. O'DONNELL: Objected to as entirely irrelevant.

40 Q.—You have also taken communication of the notes appearing on C-3? A.—Yes.

Q.—Would you state briefly your reasons and your objections to a waterproofing membrane entering on a monolithic type of sewer?

MR. COOK: Mr. Commissioner, I object to this. This man is not even an engineer, and quite incompetent to give an

*Paul W. Paulsen for plaintiff recalled (direct examination).*

opinion of this sort, and it is of no value, and I submit the evidence is quite irrelevant and illegal.

MR. HACKETT: I associate myself with that objection.

THE COMMISSIONER: The answer will be taken subject to the objections and reservations of counsel.

10 A.—The waterproofing in the center of the concrete as outlined in the plans has a tendency to weaken the concrete. That is one objection.

Another objection is, it is very expensive, and takes a long time to build, especially where it is wet work. The specification here reads “No waterproofing to be placed until concrete in invert and side walls has been set seven days and thoroughly dry. Waterproofing to be placed in separate layers. Arch forms to be kept in place twenty-one days”.

20 Q.—Will you proceed to state your objections and your reasons? A.—The waterproofing in the center of the concrete is bound to make two separate bodies of concrete, as there can be no form in the concrete on the inside and the outside between the waterproofing.

BY MR. COOK:

Q.—That is your opinion as an outside engineer, isn't it?

A.—I am not an engineer.

30 Q.—Oh, you are not an engineer? A.—I am giving this as my opinion.

MR. COOK: Oh, yes, very interesting.

BY MR. GOUDRAULT:

Q.—You stated that your practice as a contractor of sewers dates back as far as 1914, Mr. Paulsen? A.—The first time I built sewers was in 1919. I built a lot of drainage work, which is similar work as we are speaking about sanitary sewers.

40 Q.—And you said it would be costly. Why would it be more costly?

MR. COOK: We object to that.

A.—The specification requires for the concrete to be seven days old before waterproofing can be applied. That would necessitate two sets of forms. It would be necessary to build the outside of the wall and the invert first, with a separate set of

*Paul W. Paulsen for plaintiff recalled (direct examination).*

forms; leave that seven days to set until the waterproofing can be put on, then proceed with a different set of forms, different shape of forms and build inside of the invert, according to the instructions on the plans. That is obvious.

MR. HACKETT: I object to this testimony as irrelevant, illegal, the witness having not qualified to express an opinion.

10

THE COMMISSIONER: I will allow the answer subject to counsel's objection.

BY MR. GOUDRAULT:

Q.—You have spoken already of the Hammels Boulevard sanitary sewer in your evidence, Mr. Paulsen? A.—Hammels?

Q.—Yes, Hammels Boulevard. A.—Yes.

Q.—Your company was a bidder there? A.—Yes.

Q.—And the contract went to Pat McGovern Company?  
20 A.—Right.

Q.—Do you remember talking to anybody in charge of the Sewer Department of Queens Borough about this plan and specification for a waterproofing membrane in the barrel of the monolithic? A.—Yes.

MR. O'DONNELL: Objected to as entirely irrelevant.

Q.—Mr. who? A.—Mr. Seely.

Q.—Anybody else? A.—No.

30

MR. HACKETT: I object to any conversation, evidence of any conversations between the witness and Seely. We are not bound by them and are not interested in them.

MR. GOUDRAULT: I do not want you to relate such conversation.

THE COMMISSIONER: I will allow the answer subject to counsel's objection.

40

Q.—Will you now look at Plaintiff's Exhibit C-7, which is the plans and profile for the construction of a sewer on Hammels Boulevard, and state if such plan and profile contains similar plan and design and specifications concerning the waterproofing membrane as that which appears on the plan and profile for the 150th Avenue sewer which is Exhibit C-3?

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

MR. O'DONNELL: We object to any verbal evidence in this regard, as the plans and specifications speak for themselves. Further, the witness is not qualified to interpret them.

THE COMMISSIONER: The witness may proceed with his answer, subject to your objection.

10 A.—It does not. The plan does not show it.

MR. GOUDRAULT: Well, that is all. Plaintiff declares to be through with the witness.

MR. O'DONNELL: Plaintiff declares his enquete closed with this witness.

MR. GOUDRAULT: Yes.

CROSS EXAMINATION BY MR. COOK:

20 (On behalf of the defendants, under reserve of all objections.)

Q.—Mr. Paulsen, just tell us about your Detroit company. What was that company? What was the name of that company? A.—The Michigan Corporation, you are referring to?

Q.—Yes, I assume so. A.—There were two companies; one Hammen & Company and one Hammen Construction Company.

30 THE COMMISSIONER: We will suspend for just a minute.

MR. GOUDRAULT: Mr. McInnes appears, and is requested to come back and give his evidence at 11 o'clock on the second of February.

THE COMMISSIONER: You will be here on Monday, at 11 o'clock.

MR. McINNES: Yes.

40 THE COMMISSIONER: The hearing room will be on the 23rd floor at that time but you can come in on the 22nd floor, and you will be directed where to go.

BY MR. COOK:

Q.—Hammen & Company is the company that did business in Michigan, is that right? A.—Hammen & Company, Inc.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

were not admitted to do business in any other state but Michigan.

Q.—Hammen & Company, Inc. did business in Michigan?  
A.—Yes, sir.

Q.—Is that right? A.—Yes.

Q.—And Hammen & Company did business in New York?  
A.—Hammen Construction Company.

10 Q.—I mean Hammen Construction Company did business in New York? A.—And several other states.

Q.—And other states. A.—I will enumerate.

Q.—I don't want to know that. And when did the Paulsen Construction Company come into existence? A.—1926.

Q.—1926. And Hammen & Company, Inc. which did business in Michigan only, is out of business? A.—Yes.

Q.—It is in the hands of a receiver? A.—Yes.

20 Q.—Have all its creditors been paid? A.—I don't know whether they have been paid in full or not.

Q.—You don't know whether they have been paid in full or not. And I suppose you don't much care?

MR. GOUDRAULT: Objected to, this last question.

THE WITNESS: Why not?

Q.—I am only asking. A.—Why that kind of examination?

30 Q.—Now, Hammen Construction Company did business in New York? A.—Hammen Construction Company.

Q.—Is that in existence today? A.—Not to my knowledge.

Q.—What is the name of the company, Mr. Paulsen, that did business in New York in connection with these sewer contracts? A.—The Hammen Construction Company.

Q.—The Hammen Construction Company. That is what I wanted to get. And is that company in business still? A.—I don't know whether they are doing any work or not at this time.

40 Q.—Is the Hammen Construction Company in the hands of a receiver? A.—Not to my knowledge.

Q.—Not to your knowledge. You are not connected with it any more, are you? A.—No.

Q.—Was the Hammen Construction Company controlled by the Michigan company? A.—Yes.

Q.—It was a mere subsidiary of the Michigan company, incorporated to do business in other states? A.—That was the purpose of the incorporation.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—That was the purpose. And the parent company is in the hands of a receiver, and you don't know whether the creditors of the parent company have been paid in full or not A.—I don't know. It is still in liquidation. They have several large claims trying to collect.

10 Q.—Now, tell me, please, about the Paulsen Construction Company. What was the object of that incorporation? A.—I bought a plant and equipment that the Hammen Construction Company had in the East here. I had an option on that, to buy that at a set figure. And I planned to incorporate a corporation here and go ahead on my own accord as soon as the Hammen Construction Company's work was finished up.

Q.—In Queens? A.—In New York and New Jersey.

Q.—And did you do that? A.—Yes.

20 Q.—And has the Hammen Construction Company's work been finished? A.—Hammen Construction Company's work has all been completed.

Q.—All been completed? A.—And accepted.

Q.—And the Paulsen Construction Company is still in business, is it? A.—No. They are in the hands of receivers.

Q.—They are in the hands of a receiver. Are they insolvent? A.—Ask the receivers. In my opinion they are not, if they can collect their claims.

Q.—You said that you were the owner of all the stock of the Paulsen Construction Company, did you not? A.—They are in the hands of receivers.

30 Q.—Answer my question, sir. A.—I am not an attorney.

MR. HACKETT: Nor an honest man, apparently.

MR. GOUDRAULT: Oh, I protest against this way of treating a witness who has been here for a day and a half and who has testified to the best of his recollection, telling the truth. I think he is an honest man.

(Question and answer read by clerk.)

40 BY MR. COOK:

Q.—Are you or are you not the owner of all the stock of the Paulsen Construction Company? A.—I am.

Q.—You are. And that company is in the hands of a receiver? A.—Yes, sir.

Q.—In other words, that company is insolvent. Is that correct? A.—Apparently.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—Apparently, yes. And its debts therefore have not been paid? A.—Not in full.

Q.—Not in full. So that of these three companies, we have the first company,—what was the name of the first company, Hammen & Company, Inc., which is in the hands of a receiver in Michigan. Is that correct? A.—Yes, sir.

10 Q.—And the debts of that company have not been paid? A.—Not to my knowledge, in full.

Q.—And we have the Hammen Construction Company, which has been operating here in Queens, and that is out of business. Is that correct? A.—I don't know whether they have any contracts for construction now or not. I have not anything to do with that corporation since I started the Paulsen Construction Company.

20 Q.—And the Paulsen Construction Company took over certain assets of the Hammen Construction Company? A.—No. I bought all of their machinery personally.

Q.—All of their machinery personally? A.—And paid for it.

Q.—And paid for it. So they are no longer in business, the Hammen Construction Company? A.—They may be. They had a plant in different places outside of here. They done work in Milwaukee and Toledo.

Q.—And you told us they are not in business in Queens or in New York? A.—It was not a New York corporation. It was a Michigan corporation.

30 Q.—I am not asking you whether it was a Michigan corporation or any other corporation. A.—That was their home office.

Q.—Are they doing business here or not? A.—What?

Q.—The Hammen Construction Company. A.—Doing business where?

Q.—In the City of New Yorw, in Queens? A.—Not to my knowledge, no.

40 Q.—And have all their debts been paid? I ask you on your oath. A.—I don't know.

Q.—And weren't you president of that company? A.—No, I was not.

Q.—You were the vice-president? A.—I was vice-president.

Q.—You were the vice-president and you don't know whether the debts were paid? A.—They were not paid when I resigned.



*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—They were not paid when you resigned, and you don't know whether they have been paid since. A.—I don't know.

Q.—Then you took over some of the assets of the Hammen Construction Company, — when I say you took over, I mean the Paulsen Construction Company. A.—No. Personally I bought what plant they had here in the East, and paid for it personally.

10 Q.—Paid for it personally, and transferred it to the Paulsen Construction Company. A.—Later.

Q.—And took all the stock of the Paulsen Construction Company in exchange for that plant. Is that correct? A.—Yes.

Q.—That is correct? A.—Yes.

Q.—And now the Paulsen Construction Company is in insolvency? A.—I presume so.

Q.—You presume so. A.—It is in the hands of receivers. I don't know the legal term you use.

20 Q.—You don't know whether their debts are paid or not? A.—I know they are not paid in full.

Q.—You know they are not paid in full. Then we have got the whole history of those three companies, haven't we?

A.—As regards the Paulsen Construction Company, I know they are not paid in full. I don't know about Hammen & Company and Hammen Construction Company, whether they are or not. You can find out by calling the receivers.

Q.—How much has been paid on account of the debt? A.—What do you refer to?

30 Q.—Of the Paulsen Construction Company? A.—Since the receivership, you mean?

Q.—Yes. A.—Approximately \$50,000.

Q.—What percentage does that represent of your debts, Mr. Paulsen? A.—The Paulsen Construction Company debt?

40 Q.—Yes. A.—Their total bills were in the neighborhood of \$77,000 or \$78,000. And there has been paid on that, to my knowledge, close to \$50,000. There is considerable claims and accounts have not been received yet by the corporation. I know of one against the City of New York for \$230,000. There is a proper claim filed with the Comptroller of the City of New York, in proper legal form.

Q.—Is that in litigation? A.—It has not started formal litigation. There has been action started on it. I don't know what terms you use. A claim has been properly presented and filed.

Q.—So, Mr. Paulsen, you will admit that at no time, from your own statements this afternoon, at no time was the fi-

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

financial position of Hammen & Company, and of the Hammen Construction Company, and of the Paulsen Construction Company, very strong?

MR. GOUDRAULT: I object to that form of question.

A.—They had good financial backing.

10 Q.—(Continuing) Was it? A.—I will have to answer your question to the best of my ability.

Q.—Surely. They had good financial backing, but they hadn't any cash, is that what you mean to say? A.—I didn't put it that way.

Q.—Well, that is what you meant to say? A.—Paulsen Construction Corporation.

Q.—Take them in order, please. A.—Hammen Construction Corporation.

20 Q.—No. Hammen & Company, Inc. A.—Hammen & Company, Inc., in 1924 had a book value of between \$300,000 and \$400,000 appraised.

Q.—And its debts are not paid? A.—At that time.

Q.—(Continuing) Not yet. Not today, as far as you know? A.—I am speaking of the time they took this work.

Q.—I am speaking about it today. A.—I don't know. I am not interested in it today. That is, I am not in that corporation. I have not been in it for over three years. I don't know about it; I don't know what has been collected, and what they have paid.

30 Q.—And the Hammen Construction Company? A.—What do you want to know about them?

Q.—What is its position today? A.—I don't know any more about that than I do about Hammen & Company, Inc.

Q.—The Hammen Construction Company is in liquidation; it is in insolvency? A.—Yes, in liquidation.

Q.—It is in the hands of a receiver? A.—In liquidation.

40 Q.—I see. Now, when did you pay Mr. Seeley the thousand dollars that was mentioned yesterday in your evidence, Mr. Paulsen? A.—I never paid him.

Q.—You never paid \$1,000? A.—No. I never agreed to pay it.

Q.—Well, when did Hammen Construction Company pay him the \$1,000? A.—I don't know whether they did or not; they did not, to my knowledge.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—They did not, to your knowledge. Well, did you not say that you had been asked to pay \$1,000 to Seeley? A.—Phillips asked me to.

Q.—Mr. Phillips asked you to? A.—Yes.

Q.—And what did you say when you were asked to pay this \$1,000. to Seeley? A.—I told him I could not pay that or agree to pay it until I took it up with my associates.

10 Q.—Who were your associates, Mr. Paulsen? A.—John Hammen and Fred Bisballe.

Q.—You said that you would like to take this matter up with your associates before handing \$1,000 to Mr. Seeley? A.—I didn't say I would like to. I told him I would have to take it up with them. I had no right to pay the company's money like that, without taking it up with them.

Q.—And did you take it up with them? A.—I did.

20 Q.—And what did they say? A.—They said there was nothing doing.

Q.—They said there was nothing doing, and so Mr. Seeley was not paid \$1,000 by you? A.—Not to my knowledge.

Q.—Well, did you not endeavor to suggest yesterday that Seeley had received \$1,000 from you as consideration for your getting a contract here? A.—No.

Q.—You did not intend to suggest that? A.—No.

Q.—Didn't you say that? A.—Not to my knowledge.

30 Q.—When you were asked for the \$1,000, did you protest about it and say you couldn't hear of it for the moment? A.—I told him I had to take it up with my associates.

Q.—Oh, you wished to take it up with your associates? A.—I didn't wish. I told him I had to take it up with them.

Q.—Why did you have to take it up with your associates? A.—Because that was the agreement we had between ourselves, that we couldn't enter into any obligation except that we take it up together.

Q.—That was your business arrangement with your associates whom you have named? A.—Yes.

40 Q.—That was the only reason? A.—That is the only reason I know of.

Q.—The only reason you know of. Well, why was Mr. Seeley to get the \$1,000? A.—I don't know.

Q.—You don't know. You had no idea, had you? A.—Phillips says that he is a good fellow, he knows how to doll these plans up, and I would like to see you take care of him. That was words to that effect he used.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—Seeley was to get \$1,000 in order that your people might get some help in getting the contract, is that correct? A. I don't know. I didn't see what Seeley could do.

Q.—You didn't see what Seeley could do at all? A.—No.

Q.—You were quite willing to take up with your associates wherever they might be, the question of paying this \$1,000 to Mr. Seeley, weren't you, Mr. Paulsen? A.—What do you mean, quite willing?

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THE COMMISSIONER: Just a moment.

MR. GOUDRAULT: This is Mr. Matthews, a witness, and I request that he be back here on Monday at 11 o'clock.

THE COMMISSIONER: Mr. Matthews, you are directed to come back here on the 2nd of February, Monday, at eleven o'clock promptly, and be in attendance then.

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THE WITNESS: (Continuing): I didn't express myself as being willing. I told him I had to take it up with them before I could agree or consent to anything like that.

Q.—You did not refuse, when you were asked you did not refuse to give Mr. Seeley the \$1,000 immediately, did you? A.—I did not have the \$1,000 personal to give to him, in the first place; and if it was given, it would naturally be on behalf of the company.

Q.—When I speak of you, I speak of you or of your company or of anybody connected with you. Did you refuse to give Mr. Seeley this \$1,000 when you were asked to do so? A.—I didn't refuse. I told him I had to take it up with my associates. You can call that a refusal, or whatever you like.

Q.—If you had had the \$1,000 in your pocket, would you have given it to him?

MR. GOUDRAULT: Objected to as being illegal.

MR. COOK: It is proper on cross-examination.

A.—I am not prepared to say whether I would or not. It may not have been a good policy. It is a serious thing to do.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—A serious thing to do. A.—In my estimation it is, yes.

Q.—It wasn't serious enough to stop your consulting with your associates as to whether Seeley would get it or not? A.—A.—We were trying to get some work in the Borough of Queens.

10 Q.—You were trying to get some work in the Borough of Queens? A.—Naturally I had to have the access to them.

Q.—And the suggestion or thought that you should bribe one of the Queens officials did not strike you as something that was out of the way, did it, Mr. Paulsen? A.—There was no talk about bribe.

Q.—No talk about bribe at all? What was the \$1,000 being given for?

MR. GOUDRAULT: Objected to.

20 A.—There was nothing said about what it was for.

Q.—Nothing said about what it was for, and you had no idea what it was for? Are you in the habit of giving \$1,000 to anybody who asks for it? A.—I didn't give \$1,000 to Mr. Seeley in this instance, or to anybody else. I merely state the fact that he asked me to.

Q.—Who was there when Seeley asked you to? A.—Seeley.

Q.—Seeley was there. Apart from Seeley, who was there? A.—Possibly Andy Zorn. They went back and forth.

30 Q.—I don't want "possibly". I want who was there. A.—That is all I recall, who was there when that question was asked. There may have been others.

Q.—Who were there? A.—Seeley and Phillips.

Q.—Seeley and Phillips. And who else? A.—I couldn't say if there was anybody else present at that moment.

Q.—Were Decker and Zorn present? A.—I couldn't swear.

Q.—Will you swear that Decker was there? A.—No.

40 Q.—Will you swear that Zorn was there? A.—No.

Q.—Will you swear that Seeley was there? A.—Yes. You mean about that moment when that discussion was up about the \$1,000?

Q.—Yes, sir. A.—That is what you referred to?

Q.—Yes, sir. A.—No. I will swear that Seeley and Phillips were there.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—But you won't swear that Decker and Zorn were not there too? A.—No. They may have been there.

Q.—They may have been there? A.—They were there during the discussion of several things; they were there out and in. They came there and went out again. Whether they were there at that particular moment, I don't know.

10 Q.—When the interview started, were Decker and Zorn present? A.—When the interview started, Zorn took me over to that place. That is the first time I had been in that place.

Q.—And Decker was there? A.—No; Decker came in later.

Q.—Decker came in later during the interview? A.—So did Seeley.

Q.—So you don't know whether, when Phillips asked you to make this payment of \$1,000 to Seeley, whether there was anybody there excepting Phillips? A.—Yes, Seeley was there.

20 Q.—You are sure of that? A.—Absolutely.

Q.—Why are you sure that Seeley was there? A.—Because he went down with me when the discussion was over and mentioned the \$1,000 again, down in the drug store.

Q.—Oh, I see. A.—And he had intimated to me that if it was all right to leave that money with the man in the drug store.

Q.—And what did you say to that? A.—To what?

30 Q.—To his intimation to you that it was desirable to leave the money with the man in the drug store? A.—I didn't say anything about that. It depended upon what attitude the Corporation took of that. My associates. I was not the boss of the whole thing when it came to those things.

Q.—Weren't you shocked at the suggestion? A.—No, not a bit.

Q.—Not a bit shocked to it? A.—When I began to see the way they were doing things over there, I was not shocked.

Q.—You were not shocked at all? A.—No.

40 Q.—You know that Mr. Phillips is dead? A.—I know as far as the press is concerned he is dead.

Q.—You have heard it generally stated that he is dead? A.—Yes.

Q.—You know perfectly well that he can not contradict what you say today? A.—Yes. I have repeated this before.

Q.—That does not influence the statements you are making, does it? A.—Seeley can, as far as I know. He is alive. Or repudiate it, I mean.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—So that it comes to be a question between you and Seeley if Seeley denies what you have stated this afternoon?

A.—That is his business.

Q.—Answer my question. A.—I beg your pardon?

Q.—It is a question between you and Seeley if Seeley denies what you have said? A.—What is the question between us?

10 Q.—As to whether it is true or not. A.—I don't know, no. It is true what I am telling.

Q.—It is true what you are telling. A.—Yes, There is no question about that, so far as I am concerned.

Q.—Now, I want you to look at the agreement that has been produced as Exhibit C-38. That is the agreement, Mr. Paulsen, under which you purchased the pipe from Phillips? A.—Yes.

Q.—For the 150th Avenue sewer? A.—That's right.

20 Q.—And the agreement is apparently dated the 17th of February, 1925. I see in this contract the following under the heading of terms: "All pipe built shall be paid for in full, in cash, every 30 days, and in no case shall payment for pipe be deferred until after the 15th of each month. It is understood and agreed that the title to all pipe shall remain in John M. Phillips until paid for in full in cash. You are further to be responsible for any injury or damage to pipe belonging to me but delivered to you for use upon the work, and you shall keep the pipe properly lighted in accordance with the local ordinances. Should your work be abandoned, payment for all pipe manufactured on this contract shall be immediately due and payable". That is correct, is it not? A.—Yes.

30 Q.—Can you remember how much pipe was delivered to you under this agreement, all the pipe? A.—All the pipe used in the contract.

Q.—And on the 5th of June, 1925, you paid Mr. Phillips the sum of \$67,340, on account of the pipe that was being delivered, as appears by the receipt filed as Plaintiff's Exhibit No. 42? A.—We paid him for what pipe had been manufactured and delivered up till that time.

40 Q.—Up till that time. The account C-42 was rendered to you on the 5th of June, 1925, and payment of the account was made by you on the 22nd of July, 1925. Is that correct? A.—That is correct as the date shown there on that receipt, that the receipt was signed.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—Well, look at the documents. They are there. I am not trying to trick you in any way, Mr. Paulsen. A.—I am trying to answer your questions as near as I can.

Q.—Well, answer it as near as you can. A.—On July 22nd it was paid; a check was handed to him.

Q.—July 22nd it was paid. And this account covered delivery of pipe in the month of April and May? A.—Covered all of the pipe that had been manufactured up to that date. He manufactured that much pipe and then stopped. There was complaint that I had too much pipe laying in the streets, at the time. But the pipe were manufactured and made, the largest share was manufactured and made, some of them in April, and they stopped manufacturing the very early part of June or the early part of May, I don't recall.

Q.—For the month of April you owed the sum of \$44,400; for the month of May you owed the sum of \$22,940, making a total owing, according to the bill of the 5th of June, 1925, of \$67,340. A.—Well, as a matter of fact, there was no pipe delivered — this called for delivered prices, — there was no pipe delivered until the latter part of May.

Q.—Well, then this statement that you used the other day is an incorrect statement? A.—The total amount of it is correct, as far as the month of manufacture, that probably was manufactured, but it was not delivered. I recall that.

Q.—You recall that. And Mr. Phillips is dead and can not contradict that. A.—No; that can easily be looked up. You will have no trouble looking that fact up. I will give you the name of the inspector who knows all those things.

Q.—At all events Mr. Phillips is dead and he can not contradict you. A.—You can get a complete record of what went in on that job from start to finish; how much pipe was delivered; that is all part of the record.

Q.—Now, how much money did you owe Phillips for pipe apart from the \$67,430, which was put in on the 22nd of July? A.—On that date?

Q.—Altogether? A.—You are talking about the 22nd of July?

MR. COOK: Will you read the question, please.

(Question read by clerk).

A.—That was paid in full, what pipe was manufactured and delivered.



*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—How much pipe in addition to that did you receive from Phillips? A.—How much pipe?

Q.—Yes. A.—All the pipe necessary to complete the job.

Q.—You had received from Phillips more pipe than the pipe mentioned in this Exhibit C-42? A.—Yes.

Q.—You did receive more pipe? A.—Yes, later on in the season.

10 Q.—Did you pay for that? A.—Yes.

Q.—As called for by the contract? A.—I don't recall.

Q.—You don't recall, sir? A.—I do not.

Q.—You do recall. Don't you know that you did not pay for it? A.—As called for in the contract, you mean?

Q.—I am not going to argue with you at all. Answer my question. A.—Well, put your question reasonable. I made three different payments for the balance of the pipe. You asked me whether I made it exactly according to the contract. I don't know. 20 I think I did, as far as according to the contract. We were billed for pipe on several occasions there where it was not delivered. He probably had the pipe manufactured in his yard, I don't know.

Q.—You did not pay for the first pipe that you received, according to the contract, did you, Mr. Paulsen? A.—No. There was pipe delivered in May. That, according to the contract, should have been paid in June, by June 15th.

Q.—And it was not paid, under any circumstances, until the 22nd of July. A.—That is right.

30 Q.—That is right. So you were outside your contract there? A.—Outside of that agreement there?

Q.—Outside this agreement. A.—Yes.

Q.—You were? A.—Yes.

Q.—You were outside the terms of the agreement C-38? A.—That is right.

Q.—And then it was when further pipe was unpaid for, that Phillips said he was going to take the pipe back? A.— 40 What do you mean further pipe was unpaid for? In the latter part of June he rolled the pipe back of the City property. He did not say why he did it, but he had men moving these so that they were outside the limits of the City street. This was out in new development where there were no sidewalks or no curbs or street development.

Q.—Did you not say yesterday, under direct examination, that Phillips had removed the pipe that you had on the work, because you had not paid for it in accordance with the terms of

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

the agreement C-38? A.—I don't recall that I said that, because I had not paid for it. I know I said that he removed the pipe.

Q.—Well, had you paid for it? A.—Not until the 22nd day of July. He removed them off the work before that; part of them, but not all of them.

Q.—Didn't Phillips ask for payment three or four times before he got it? A.—Yes.

10 Q.—And didn't you swear yesterday that Phillips told you that if he took the pipe off the work, that it would cost you \$100. a foot if you had to buy it back? A.—He told me that.

Q.—He told you that? A.—Yes.

Q.—Then you knew why he was taking away the pipe? A.—No, I didn't.

Q.—You didn't know? A.—No. He was not taking the pipe away for that purpose. I know why he was taking it away, if you want to know.

20 MR. HACKETT: Did you tell us yesterday it was because he didn't trust you?

THE WITNESS: He told me he didn't.

Q.—That was too bad, wasn't it? A.—It was.

Q.—Was it because he didn't trust your financial standing? A.—I don't know.

Q.—Well, if he had been doubtful as to your financial standing, Mr. Paulsen, he would have been thoroughly well justified, from what you have told us? A.—Not on that date.

30 Q.—I see. It was later that your financial difficulties arose? A.—Yes.

MR. COOK: Mr. Hackett, I have finished my cross-examination.

CROSS EXAMINATION BY MR. HACKETT:

(Under reserve of all objections):

40 Q.—Where were you born, Mr. Paulsen? A.—Denmark.

Q.—When did you come to this country? A.—1907.

Q.—Where do you live now? A.—Irvington, New Jersey.

Q.—Did you ever live in the Borough of Queens? A.—No.

Q.—Did you take any part in the politics of the Borough of Queens? A.—No.

Q.—I beg your pardon? A.—What do you mean by "part in politics"?

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—Exactly what I say. A.—Explain yourself, what you mean by politics.

Q.—If you wish to leave it there, I am satisfied. Did you ever go to the Borough Hall in Queens? A.— On business?

Q.—On business or for other reasons? A.—No.

Q.—You never went to the Borough Hall in Queens? A. Yes.

10 Q.—Once or many times? A.—When I had business there, many times.

Q.—Throughout the whole period under review, you went there frequently? A.—When I had business there.

Q.—Did most contractors have business there? A.—I suppose so, when they worked there.

Q.—What was the nature of the business that took you to Borough Hall? A.—The Engineering Department; asked to see how a payment was coming along. In my case, a payment  
20 was not coming along sometimes so good. In one instance there was an estimate apparently lost for a period of about six weeks, payment for some \$80,000. It could not be found I finally got a duplicate of it.

Q.—But you have told us through your examination in chief that you went to the City Hall, to the Borough Hall, rather frequently? A.—Many times.

Q.—Many times. A.—Yes, sir, I went there many times. When I was through with my work I went there at least 20 times trying to obtain permit to remove my machinery off the streets and highways, trying to see the Borough President at  
30 that time. And I did meet his secretary several times, but Mr. Connolly did not show up at the appointed time. At least, he was not available.

Q.—Did you see other contractors there when you were there? A.—Very seldom. Sometimes I did.

Q.—It was a place where contractors did resort frequently? A.—Those that had business there with the Engineering Department that they done the work under. A dispute may come up over certain difficulties that arise in the work, that you had  
40 to talk over with the engineers, ask details about permits, different departments. We had a Highway Department to get a permit from to cross a certain street, and so on. We had to get all those permits in the Borough Hall.

Q.—There were a great many engineers there? A.—Oh, yes. A great many departments.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—For instance, I see in Exhibit C-45, there was Mr. James Rice. A.—Yes.

Q.—Did you know him? A.—I knew him, but I never had occasion to go to him on any business.

Q.—He was the engineer in charge of engineering construction? A.—He was engineer in charge of all the work in the Borough.

10 Q.—Then there was Mr. J. Franklin Perrine. A.—Yes. I had on several occasions, I had business with him on the details of construction, and so forth; both with Mr. Perrine and Mr. Bishop.

Q.—And with Mr. Bishop? A.—Mr. Bishop was the division engineer in the 4th ward where this work was done.

Q.—And Perrine was the engineer of sewers? A.—That is right. There were two men that we came in contact with in fulfilling the contract.

20 Q.—Then there was Mr. J. J. Blake, the engineer of highways? A.—I had nothing to do with him, except for permits.

Q.—Permits for highways? A.—Yes.

Q.—And he had to be seen. Then there was Mr Werner, an engineer, and an inspector? A.—Werner?

Q.—Yes. A.—I never had any dealings with him or any discussions with him over anything.

Q.—Well, he apparently had something to do with you. A.—He probably was an auditor of some sort.

30 Q.—No; he was an inspector on the work. A.—Werner?

Q.—Yes. A.—He may have been a highway inspector. He was not an inspector of sewers.

Q.—And there was a Mr. William G. Harmer. Do you remember him? A.—No. He was most likely some clerk. He had nothing to do with the detail of the work.

Q.—But in any event there was a great number of engineers who had supervision over or had something to do with the construction work that was going on at that time in the Borough of Queens?

40 MR. GOUDRAULT: Objected to inasmuch as the witness is not a competent witness to testify as to the organization of the Sewer Bureau of the Borough of Queens.

MR. HACKETT: Does that appear amusing to you, Mr. Goudrault? Do you think, Mr. Goudrault, after putting a man on, your star witness, and having him for three days.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

MR. GOUDRAULT: Not three days.

MR. HACKETT: Three days. You began with him on Wednesday and this is Friday night. And when I am reading these names from your own exhibit, that that is the right kind of an objection to make?

10 MR. GOUDRAULT: I don't think that exhibit was filed. The pink sheet was.

MR. HACKETT: It was filed. I am reading from the pink sheet.

MR. GOUDRAULT: I am sorry.

MR. HACKETT: Will you read the question?

(Question read by clerk).

20 A.—The only ones that I had any dealings with, as far as the construction work on this work, was Bishop, Perrine, Moore and the inspector in charge.

Q.—Blake? A.—I don't know Blake. I don't know what his official capacity was there.

Q.—You have forgotten Rice entirely? A.—We had nothing to do with Rice.

30 Q.—He was the engineer in charge of engineering construction? A.—Well, maybe reports to him; we had nothing to do with him. We always had to take it up with the Department engineers, which was Perrine or Bishop.

Q.—Well, apart from the engineering corps, there were the Comptroller's and financial officers? A.—We had nothing to do with them.

40 Q.—Then as a matter of fact you knew there were engineers and financial men from the City? A.—Yes; they came out, but we had no dealings with them of any description, did not have to take orders from them, or anything, but we had to take orders from Perrine, Bishop, and consulting engineer Moore on details of that particular work.

Q.—You told us on the first occasion that you met Phillips, he asked you if you were experienced in what you called wet work. A.—He asked me if I though I could build wet work.

Q.—And you told him you could? A.—I told him I thought I could.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—Oh, did you or did you not hold yourself out to be a sort of an expert or experienced man in wet work? A.—I had built wet work before.

Q.—Did you tell Phillips that? A.—No. I don't believe I did, but I think someone else told him.

Q.—In any event, you have stated that all of the work in which you were interested in the Borough of Queens was wet work? A.—Yes. All the work that I had anything to do with over there was wet work.

Q.—And that you might see how wet it was, Phillips took you out on Rockaway Boulevard? A.—That's right.

Q.—To a point where you could see the territory through which sewers were to be laid? A.—Yes. We could see thereabout, that point, I should say, from a half a mile to a mile each direction.

Q.—You have told us that Phillips told you that he was a vendor of pipe, and that all he was interested in was selling pipe? A.—At his price. That is what he said.

Q.—You forgot to mention that yesterday. A.—I am telling you now.

Q.—Yes, I know. You are going to tell me a lot of things now that you forgot yesterday. A.—No, not particularly. I told yesterday what I was asked.

Q.—Yes, we noticed that. You say that Phillips told you that he was interested in selling his pipe. That being so, it was naturally in his interest that jobs should go to people who could do them, and you held yourself out as an expert in what you called wet work? A.—I did not. I did not hold myself out as an expert.

Q.—You didn't tell him or anybody else that you knew how to handle wet work? A.—Other people knew, that had dealings with him. The Lock Joint Pipe Company knew, I presume, and I was told one time by one of their men that there was a lot of work coming up in Queens, and they told me to go and see it.

Q.—Did you know the Lock Joint people before you met Phillips? A.—Yes, I knew them.

Q.—You said that Phillips told you when you met him, that Hirsch had mentioned you to him? A.—Phillips said so?

Q.—Yes. Correct? A.—Yes.

Q.—Had you used Lock Joint pipe before you met Phillips? A.—My company had.

Q.—Which company? A.—Hammen.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—Where had you used Lock Joint pipe? A.—Michigan.

Q.—When? A.—In 1923; 1922 and 1923.

Q.—In nineteen when? A.—1922 and 1923.

Q.—What part of 1923? A.—Part?

Q.—Yes, what month? A.—I don't recall. I was not in charge of that work there.

10 Q.—So personally you have not used Lock Joint pipe?  
A.—Personally?

Q.—Yes. A.—I was talking about the corporation.

Q.—But you see, your subtleties are entirely misleading to the Court, and possibly to justice. A.—I was representing a corporation.

Q.—And you are examined here as an individual and not as a corporation, and when you were asked fairly if you had used Lock Joint, you said yes. A.—I assumed you had referred to my corporation. If you refer to me personally, I have never personally used Lock Joint pipe.

20 Q.—And you had never seen it, used? A.—Lock Joint pipe?

Q.—Yes. A.—Oh, yes.

Q.—You told us yesterday that you did not think the Lock Joint pipe could be well used in wet work? A.—I said I was afraid that I could not make the joints tight.

Q.—Yes. You knew that the pipe, — A.—I had not used Lock Joint pipe on work similar to this before. Put it this way.

30 Q.—You know that the very merit of Lock Joint pipe comes from the satisfactory way in which the joints are locked or sealed? A.—No more satisfactory than other joints, in my opinion.

Q.—Do you know that there are sealing forms? A.—Yes, you can use sealing forms on any type joint if you wish. They are very simple.

Q.—Well, you with this volume of experience — A.—I wouldn't put it that way.

40 Q.—Yet, you with this volume of experience to which you have testified, felt that it was not possible to use Lock Joint pipe on wet work? A.—Yes. I felt it was possible if there was a cradle built around it.

Q.—Well, you told us yesterday, at page 572, "I thought Type B would cost almost again as much as we were not satisfied that we could make a tight job out of the pipe". A.—Without the cradle. Didn't I put that in?

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—You may have, but it is not in here. A.—That is what I referred to at the time, without building a cradle. And a cradle around that pipe would consume approximately as much concrete as Type A construction work.

10 Q.—But you did not think that it was possible to use Lock Joint pipe in wet ground? A.—Yes, I did. But I did not think it was possible to build a tight job without putting a cradle around it. I found out later that it was possible.

Q.—That it was? A.—Yes.

Q.—So then you found out that you were wrong? A.—Yes, in my estimation.

Q.—And you know that Lock Joint is still being used in wet work today? A.—Yes.

Q.—And satisfactorily used? A.—Very much so.

20 Q.—And without a cradle? A.—Yes, sir. Well, lots of places they use a cradle but not for the purpose of making it tight. May I explain my reasons for giving that on that particular job in the Rockaways?

MR. GOUDRAULT: I think you have the reason.

MR. HACKETT: I am not much interested.

You have explained for two days.

THE WITNESS: I will explain this, at the Rockaways it was not possible.

30 MR. HACKETT: Wait a minute. When I want an explanation, I shall ask for it. You are under cross-examination at the moment.

THE WITNESS: I am trying to explain my answer.

MR. GOUDRAULT: And it is your right to.

MR. HACKETT: You will have a lot of explanation before you are through.

40 THE WITNESS: All right.

BY MR. HACKETT:

Q.—You were interested in sewers in Queens for a period of time? A.—You have the period.



*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—I ask you what period of time? A.—The construction of those contracts, 1925; in building the work, 1925 and 1926. I bid on work before and after.

Q.—As a matter of fact, you only got one contract? A.—Contract with the city?

Q.—(continuing) from the Borough of Queens. A.—That is right.

10 Q.—And that was section two of the 150th Avenue? A.—That is right.

Q.—Bids for that contract appear to have been opened on the 13th of February, 1925? A.—Yes, sir.

Q.—That appears from the contract C-36. And you were present when the bids were opened? A.—On that job, yes, sir.

20 Q.—(continuing) On the 13th of February, and you knew that your bid was low? A.—I knew about an hour later, after multiplying the unit prices by the quantities of the competitor bidders.

Q.—And you were notified on the 27th of February, by Exhibit C-39, that the contract had been awarded to you? A.—It that is what that exhibit says.

30 Q.—February 27th, to Hammen Construction Company. “Dear Sirs: Please take notice that the following described contract has this day been awarded to you.” Then I find that according to another letter in this file, dated the 3rd of April, 1925, the Honorable Charles Craig, Controller of the City of New York, was told, “I beg to inform you that the contractor, Hammen Construction Company, 27 Madison Avenue, Perth Amboy, New Jersey, has been ordered to begin work on said contract within seven days.” You had not begun work apparently on the 3rd of April? A.—Yes. We began work.

Q.—You had begun work? A.—We began preparation.

40 Q.—Then I find that on the 22nd of May, Exhibit C-43, a letter addressed to Hammen Construction Company, in the following terms: “On April 7th, 1925, an order was mailed to you to begin work for the construction of the second section of the sewer to be constructed on 150th Avenue, from the pumping station at 134th Street to Judith Street”, et cetera. “Sufficient progress has not been made in connection with this contract, and I wish to see you on the morning of May 27th in connection with this work. Please bring with you at that time any orders that you have placed for equipment or material, as I would like to know what effort you have made to carry on this work.” Signed “Shugrue, Commissioner of Public Works.” I find on June 22nd,

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

10 Exhibit C-48, a letter addressed by the Consulting Engineer to Connelly, President of the Borough, a communication in the following terms: "In regard to the progress being made on the Jamaica sewer system, I desire to call your attention to a condition which I feel you should be thoroughly acquainted with. On February 27th, 1925, the contract for the 150th Avenue sewer from 134th Street to Judith Street was let to Hammen Construction Company for \$407,045. Contract time, 250 days. Commissioner Shugrue and I heard that this work was at a standstill for weeks and no effort was being made on the part of the contractor to progress same. We notified the contractor to call at the Borough Hall and explain why this work was not being pushed. He stated that he was getting the material ready such as well points, pumps, etc., and stated that at that time (which is about four weeks ago) that he would have all of the material on the job for the following Tuesday and would start to work in earnest inside of a week after that. I had an inspection made last week and there were only about six men on the work and they were accomplishing practically nothing at all. It is now nearly four months since the contract was given to the Hammen Construction Company, and I know you are aware of how we urged the different members of the Board of Estimate & Apportionment and the engineers of the board to do everything in their power to help get this work going. The point I want to bring out is the fact that on June 17th we opened bids for a sewer at 150th Street between 150th Avenue and North Conduit Avenue. 20 The Hammen Construction Company was low on this job with a bid of \$548,830. This job is approximately fifteen percent, larger than the one the contractor has now under contract. You have not awarded this latter contract as yet, and I desire to know if in your judgment good faith has been shown in the previous contract and if you think it good policy to go ahead and award the contract in view of what we know has taken place on the contract already awarded to the Hammen Construction Company."

40 I also find from your own testimony that your supplier of pipe was threatening you because you were not paying for pipe delivered on the job, and you have told us that in fact he removed some pipe from the job. I find from the next exhibit, which is the check of Hammen & Company, Inc., not of the Hammen Construction Company, which had the job, — a check for \$67,340, in payment of pipe bought by the Hammen Construction

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Company. A.—The pipe was bought by Hammen & Company, Inc., if you will look up the contract.

10 Q.—You are right. I further find that you made no progress with the work, or in fact made no claim for payment, until the 9th day of September — until the 15th day of September, when you received \$48,972, — seven months after the contract had been given to you. Apparently you don't think that these delays were sufficient reasons to call for a second lot of tenders on the 150th Street job? A.—None whatever. There is no specification or no provision in the specification where you have to complete a certain percent of the contract by a certain date, and the contract was completed, as a matter of fact, within the time limit.

20 Q.—But you did not proceed with the work when you were instructed to? A.—Yes, I did, as fast as possible to do a good job. If you would call Mr. Moore, you will find that he will probably testify to it, that it was as good a piece of work as they had built over there.

Q.—In any event, you did tender on the 150th Street, — and I would point out for the purpose of the record, 150th Street is quite different from the 150th Avenue — job? A.—Yes.

Q.—And all tenders, of which yours was the lowest, were rejected and the new tenders called for. A.—Right.

30 Q.—And the same thing happened in regard to Foch Boulevard, — no, I am wrong. The same thing happened with regard to. A.—Brinkerhoff Avenue.

Q.—Brinkerhoff Avenue. Apparently you did not bid on the tenders which were opened on the 14th of July, 1926? A.—The reletting?

Q.—At the first letting, when the low was Sigretto, \$349,201. A.—On the Brinkerhoff Avenue, you mean.

Q.—Yes. A.—No.

Q.—You did not tender? A.—No.

40 Q.—On the second letting, which was opened on the 24th of August, 1926, Paulsen Construction Corporation, which was your corporation, was low and the price was \$296,496. On the third letting, which was opened on the 18th of October, 1926, you apparently did not compete, and the low bid was that of Muccini & Decker, \$170,975. A.—That was let in two separate sections, in the third letting. They changed — there was a piece of tunnel in it under the Long Island Railroad that was let as a separate contract, and the work that had to be done in open

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

cut construction was under one contract. It was finally let in two separate contracts, in the third letting.

Q.—I see. But isn't it to your knowledge that the two separate contracts affected a savings to the Borough of something over \$60,000? A.—I believe it.

Q.—So you have no complaint? A.—I am not complaining.

10 Q.—But if you are not complaining, what was the reason for bringing out these facts and failing to explain them as they are explained in cross-examination? Was it in the hope that a half-truth might go?

MR. GOUDRAULT: I object to the form of the question as unfair.

THE COMMISSIONER: I will allow the answer subject to counsel's objection.

20 THE WITNESS: I tried to answer the question as direct as possible on direct examination.

Q.—And you also know. A.—You asked me on cross-examination why I said this, or why this was, and I am trying to explain it to the best of my ability.

Q.—You also know that on the 150th Street job, while the saving was not great, — I admit that, — the Oxford Engineering Corporation did tender on the second letting an amount less than yours? A.—If I had bid on that letting there would have been saved the city a good bit more money, I believe.

30

MR. COOK: That is not an answer to the question.

Q.—However, you know that the Oxford Engineering Corporation did put in a bid that was lower than yours? A.—Yes; I think a few hundred dollars.

Q.—Yes, that is all. Now, with regard to this 150th Street sewer, were there other people who made sewer pipe? A.—Yes.

Q.—Many of them? A.—There were three of them in this vicinity.

40

Q.—Who were they? A.—The Core Joint Pipe Company. They are at Irvington, New Jersey, and in the Bronx, two plants. The Newark Concrete Pipe Company, represented in New York City by a Mr. Harry Hart. And the Lock Joint Pipe.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—No others? A.—Not in this vicinity. There is others out in the Middle West, the Independent Concrete Pipe Company.

Q.—Now, how many of these companies did you approach for pipe when you were contemplating bidding on the 150th Street job? A.—I asked both Core Joint and the Newark by telephone if they would quote me on pipe in Queens.

10 Q.—After or before the bids were opened? A.—Before.

Q.—And you were unable to satisfy either the Core Joint or the Newark Concrete, that they wanted to do business with you?

MR. GOUDRAULT: I object to that.

THE WITNESS: I will answer that. No, I was not.

Q.—You could not satisfy them? A.—Oh, yes I could. I done business with them since, and at the time.

20 Q.—And at the time? A.—In other places, not in Queens.

Q.—And then you said Mr. Phillips was sore at you. You quarreled with Phillips? A.—Yes.

Q.—When did you quarrel with him? A.—The first time I quarreled with him was when I took out plans on this 150th Street job.

Q.—Yes. Phillips felt possibly that having helped you or being instrumental in some way in having you come to that locality and having supplied you with pipe, that you were trying to doublecross him in trying to get pipe elsewhere? A.—No. He was sore that I got plans from Borough Hall instead of coming to him first.

30 Q.—How many times did you quarrel with Phillips? A. On numerous times.

Q.—And who was the better man, you or Phillips? A.—He was.

Q.—He was? A.—Yes.

Q.—In any event, you and Phillips were at daggers drawn from that time on?

40 MR. GOUDRAULT: Don't answer now. I don't think this is derived from the examination in chief, inasmuch as no questions of quarrel took place, but question of payment.

MR. HACKETT: Don't you understand that that is the whole purpose of cross-examination?

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

THE COMMISSIONER: I will allow the answer subject to your objection, Mr. Goudrault.

THE WITNESS (answering): I didn't see no daggers.

MR. HACKETT: There you are.

10 MR. O'DONNELL: They may have been using guns.

BY MR. HACKETT:

Q.—In any event, there were not any daggers but there was a Buckner and you went to Buckner with all your information and spent days with Buckner and his agents in preparing a case, didn't you? A.—A long time after this.

20 Q.—Yes, you have a long memory. And you took to Buckner and his agents all your documents? A.—Phillips told me more than once that he was going to break me wide open. He told me a lot of dirty stuff. If he had not so much help around him as he had, he would not have said it.

Q.—And you made up your mind to break him? A.—No. I made up my mind to try to get justice.

Q.—Yes, and you have been trying ever since? A.—No.

Q.—How many days did you spend with Buckner and his agents?

MR. GOUDRAULT: I hate to interrupt, but.

30 MR. HACKETT: You better not.

MR. GOUDRAULT: But I have a right to.

MR. COOK: No.

MR. HACKETT: Buckner's name has been mentioned in this record a half a dozen times from the lips of this man, and if you interrupt now I will refuse to further cross-examine.

40 MR. GOUDRAULT: Well, here is my sole objection to the whole question.

MR. O'DONNELL: Let the witness go out if you are going to continue.

MR. GOUDRAULT: Yes.

(Witness leaves room.)

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

MR. GOUDRAULT: We have had this witness on the stand for three-quarters of an hour the first day, all day yesterday, and today.

MR. HACKETT: You began in the morning of the first day.

10 MR. GOUDRAULT: And this witness was examined, and he has told the truth according to his recollection and belief, and I think you are going a bit far in that line of examination, in all fairness to the truth and justice.

THE COMMISSIONER: We will proceed with the examination and have the witness recalled.

(Witness re-enters.)

20 MR. GOUDRAULT: Read the question, and let him answer.

(Question read by clerk.)

“Q.—How many days did you spend with Buckner and his agents”?

30 THE WITNESS: Two or three days, outside of being subpoenaed as a witness in the Grand Jury investigation and before Commissioner Shearn and Commissioner Scudder. Is that what the question relates to, how much time I spent with Buckner? Not with Buckner, but with one of his assistants.

BY MR. HACKETT:

40 Q.—I am talking of the time when you went to Buckner and spent, according to my information, something more than a week with his agents, with all your books, all your records and gave them a long story which was taken down and which served as the ground work of a criminal prosecution. A.—Buckner wrote me a letter “At my office to appear”, if I would willingly appear at his office on a certain date, in place of being subpoenaed to do so. And I went there in reply to that letter. He asked me if I would willingly give him all the information I had and what documents and stuff I had, and papers I had, from all my work in the Borough of Queens, or if I wanted to be subpoenaed on it.

Q.—And you were the star witness? A.—I don't know. I was a witness, that is all I know.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—In your transactions in the Borough of Queens you bought pipe but once from Phillips? A.—That's all.

Q.—And but once from the Lock Joint, whom Phillips represented? A.—I did not buy from Lock Joint in the Borough of Queens.

Q.—But it was manufactured by the Lock Joint? A.—It was manufactured by Phillips.

10 Q.—Surely you are not going to quibble over that. Your own contract with the Lock Joint Pipe, represented by Phillips, you knew that? A.—Payment was made payable to Phillips.

Q.—Of course. A.—It has the letter head of the Lock Joint Pipe, but we were not dealing with the Lock Joint Pipe. You could not go to the Lock Joint Pipe with your troubles. You had to deal with Phillips direct.

Q.—Because Phillips was responsible to the company for the pipe which you got and did not pay for on time. A.—I did not know what dealings he had with the Lock Joint.

20 Q.—But you knew your company was not in a position to finance that pipe at that time? A.—We were buying pipe from the Lock Joint at Ampere, New Jersey, an order of about \$60,000 at the same time, direct from the Lock Joint Pipe at Ampere, New Jersey.

Q.—That may be why you could not get any more. A.—We did not owe them no money for pipe.

Q.—And the only other work that you did in the Borough of Queens was the job that you took over from Paino when you got 2,000 feet of section one of 150th Avenue, and the other job which you took over from the DeCola, on Amstel, or some people call it, Hammels Boulevard? A.—Well, we did not supply pipe on either jobs. They supplied the pipe. We merely contracted with them for doing all the work excepting the supplying of the concrete pipe.

Q.—And you did take a hand in the elections in the Borough of Queens, didn't you? A.—What elections?

40 MR. GOUDRAULT: Does that arise from the direct examination, Mr. Hackett? I wish to ask that question now, because I think it is only fair. We never went into that question.

MR. HACKETT: Oh, are you under the impression that in a case of this kind one is restricted in cross-examination to questioning on the questions that you have put?

MR. GOUDRAULT: Not necessarily limited to that.



*Paul W. Paulsen for plaintiff recalled (cross-examination).*

MR. HACKETT: Well, I want to show, — I want this witness to tell me whether or not he did not line up politically against Phillips in the Borough of Queens.

MR. GOUDRAULT: I think your question is fair. I am sorry.

10 THE WITNESS: Against Phillips?

Q.—Yes, or the side that Phillips was on. A.—I contributed \$500 to the campaign of George Harvey. I was asked to do that by a man by the name of Berg. I was impressed by him that Harvey was going to clean up that mess they had over there, to give everybody an even break.

Q.—And whom was he running against, Harvey? A.—He was running against, what was the Borough President's name after Connelly was there for a short time? He was appointed to take Connelly's place. I forget the name.

20 Q.—And did you take that matter up with your Detroit associates? A.—I was not associated with the Detroit people at the time. That was a personal contribution.

Q.—So your conscientious scruples. A.—As a matter of fact I have not done any work in Queens since, or attempted to do any business there.

Q.—(continuing) did not restrain you at all when you were on your own? A.—Well, I was persuaded to give \$500 to George Harvey's campaign fund the first time he was elected.

30 Q.—Was that the only time actively that you engaged in. A.—Political?

Q.—Yes. A.—If you call that political, yes.

Q.—And you are willing to let the record stand as to that? A.—Yes. I am not interested in the record.

Q.—Now, you told us that you could have saved the Borough of Queens much money had you been awarded the contract at a higher figure than that for which it was awarded to the Oxford Engineering Company? A.—That I could have saved the contractor?

40 Q.—No, not the contractor. The Borough. A.—I could have saved the Borough.

Q.—Yes. A.—I did not put it that way. I put it that if I had bid the job it would have saved the city, the Borough of Queens more than what the savings showed there on that 150th Street job.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—Then you mean that you could have done the thing much cheaper than the amount for which you put in your bid, is that it? A.—No, I don't; but the fact, if I had been there, I would have bid lower. That is merely an opinion. That is what happened on the Brinkerhoff Avenue job.

10 Q.—You were a sort of public benefactor even before you met Buckner, weren't you? A.—I would not say that; but I know I saved the taxpayers a lot of money by bidding over there. I am satisfied I did, — put it that way.

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(The witness Paulsen was directed to appear again, as follows):

20 THE COMMISSIONER: You are directed to be here at 2 o'clock on Monday, Mr. Paulsen.

(The witness John F. O'Rourke, appeared, but was not sworn).

THE COMMISSIONER: Major O'Rourke, will you please be here at 11 o'clock on Monday.

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30 (Whereupon, at 4 p. m., the bearing was adjourned to Monday, February 2, at 11 A. M.)

10 Depositions of witnesses, sworn and examined on the 2nd day of February 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 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:

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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, deposeseth and saith as follows:

30 DIRECT EXAMINATION BY MR. GOUDRAULT  
(Continued):

Q.—Mr. Reilly, do you know of the Linden Street contract with the City of New York, which has been filed as Exhibit C-17? Will you look at it?

(Witness examines contract.)

Q.—Just state to whom the contract was awarded? A.—The O'Rourke Engineering & Construction Company.

40 MR. COOK: One moment, please. I make an objection, Mr. Commissioner, to the production of this contract as irrelevant to the issues between the parties, and also to all evidence in regard to the agreement in question.

MR. GOUDRAULT: It is all in already.

MR. COOK: I beg your pardon. I renew my objection, then, to that.

*Jefferson J. Reilly for plaintiff recalled (direct examination).*

MR. GOUDRAULT: Is there an answer to the question?

(Question and answer read by clerk.)

MR. HACKETT: It was awarded on the 8th of January and signed on the 19th of January, 1920.

10 Q.—Was this contract, Mr. Reilly, according to your file awarded the first time it was put up? A.—I think there were two lettings on that.

Q.—Two? A.—Yes, sir.

Q.—Do you know when the first advertisement for the work was in? A.—By looking in the record I think I can tell.

Q.—Well, look at the record. A.—I have them outside.

Q.—Well, you better get them. We are going to produce them as exhibits.

(Witness brings in document.)

20

Q.—When was the first advertisement for that work? A.—October 23, 1919.

Q.—From what book are you reading that now, Mr. Reilly? A.—From the contract ledger.

Q.—Contract ledger. A.—No. 12.

Q.—Is that an original? A.—Yes.

Q.—When were the first bids opened? A.—October 23, 1919.

30 Q.—Did you get my first question right? When did the first advertisement for that work appear in the City Record, the New York City Record? A.—Oh, I would say some days preceding this.

Q.—Give the date. A.—Well, I can't count Sundays or holidays.

MR. COOK: The 13th of October.

THE WITNESS: It would be about the 12th or 13th of October.

40

Q.—Will you look at the City Record, at page 5218, and state if that is the first or second advertisement of the Linden Street sewer of which you are now speaking?

MR. O'DONNELL: Defendants object to that as being entirely irrelevant.

THE WITNESS: This says Thursday, October 9, 1913.

*Jefferson J. Reilly for plaintiff recalled (direct examination).*

Q.—Well, would that be the first advertisement for that job, Mr. Reilly, according to the City Record? A.—Well, I couldn't say according to the City Record. I say according to my book. I don't know whether there was a previous one, but according to my book this was the day. Here is the date of the ad. Here.

10 Q.—Well, then, look at the date of the ad. Which is published there, and see if it corresponds with the date printed on page 5218.

MR. COOK: What is the importance or necessity of this, Mr. Goudrault? I don't wish to seem to object unnecessarily, but that is irrelevant, and I object to it.

MR. GOUDRAULT: Mr. Cook, we are trying to prove that this Linden Street sewer was advertised twice for the purpose of awarding it to a contractor. We are now proving the first advertisement of the job. Same was rejected, and we will make evidence of that. Then a certain advertisement was put in, and we will make evidence of that, and then that was granted.

MR. COOK: If you regard it as of importance, that is your case.

MR. GOUDRAULT: Yes.

MR. COOK: It is for you to make your own case.

30 MR. GOUDRAULT: Exactly.

MR. COOK: But it seems to me to be utterly unimportant.

MR. GOUDRAULT: Well, I did try to proceed without producing those, but on objections of counsel I thought I would produce those notices of advertisement.

MR. HACKETT: The Linden Street sewer appears to have been advertised and bids opened on the 23rd of October, 1919. The low bidder on Type A was Booth & Flynn, Ltd., \$894,954.45. The low bidder on Type B was Angelo Paino, \$1,000,540.50. All bids appear to have been rejected on the 28th of October. The work was readvertised and bids opened on the 19th of November, 1919. The low bidder for Type A was Booth & Flynn, Ltd., \$925,103.25. The low bidder on Type B was O'Rourke Engineering Construction Co., \$876,061.80. The contract was awarded to the O'Rourke Engineering Construction

*Jefferson J. Reilly for plaintiff recalled (direct examination).*

Co. as appears by Exhibit C-17. Does that give you what you want?

MR. GOUDRAULT: Exactly.

10 MR. HACKETT: Now, I would just go one more, and say, Mr. Reilly, it appears that on the second bidding the lowest tender was \$876,061, as against \$894,954 on the first bidding, there being a saving.

MR. GOUDRAULT: No, I would not put it "saving". I would say "difference".

MR. HACKETT: There being a difference or a reduction in cost to the city of between \$18,000 and \$20,000.

MR. GOUDRAULT: The facts are there.

20 MR. COOK: Yes. It is not a matter of argument. It is a matter of fact.

MR. HACKETT: I am satisfied that that is the story of the Linden Street work.

MR. COOK: And so am I.

BY MR. GOUDRAULT:

30 Q.—Mr. Reilly, at page 635 of the transcript of evidence we filed an exhibit, Exhibit No. C-46, which is a summary of proposals for the 150th Street sewer. It was filed through Mr. Paulsen then being examined. I wish you to look at same and tell us if that is the usual summary of proposals that is prepared in the Sewer Bureau.

MR. HACKETT: Defendant, for purposes of the record, admit that Exhibit C-46 shall avail as if produced by Mr. Reilly instead of Mr. Paulsen.

MR. GOUDRAULT: Thank you.

40 MR. O'DONNELL: Subject to the other objections.

MR. HACKETT: Yes, that is all right.

(Witness temporarily excused.)

*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.—Mr. Tully, will you look at the two documents and state, in a few words, what they are. I wish to offer them as evidence. A.—Yes, sir. This is a letter dated October 28, 1919, addressed to Charles L. Craig, Comptroller of the City of New York, by Maurice E. Connolly, President of the Borough of Queens. The contents of the letter is the rejection of all bids opened October 23, 1919, in connection with the contemplated contract for Type B Linden Street, et cetera.

20

MR. GOUDRAULT: I offer this as evidence, as Plaintiff's Exhibit C-65.

(The said letter was thereupon received in evidence and marked Plaintiff's Exhibit C-65, of this date.)

MR. GOUDRAULT: I offer as evidence, as Plaintiff's Exhibit C-66, letter dated October 28, 1919, from Maurice E. Connolly to Charles L. Craig, informing him that all bids have been rejected on Type A for Linden Street sewer.

30

(The said letter was thereupon received in evidence and marked Plaintiff's Exhibit C-66, of this date.)

MR. HACKETT. These two documents merely confirm the entries read into the record from the contract ledger.

BY MR. GOUDRAULT:

Q.—Are both these originals, C-65 and C-66? A.—They are.

40

Q.—Do you recognize the signature of Maurice E. Connolly? A.—I do, yes.

Q.—Will you look at this file of papers and state what this pink sheet is?

*John F. O'Rourke for plaintiff (direct examination).*

MR. O'DONNELL: Defendants object to the letters as irrelevant.

A.—This is an eighty-five percent payment certificate on contract 52633, payable to the O'Rourke Engineering Construction Co.

10 Q.—For what job? A.—In the sum of \$29,725.35, for sewer and appertenances in Linden Street, et cetera.

MR. GOUDRAULT: I offer in evidence this eighty-five percent certificate as Exhibit C-67.

(The said certificate, dated October 25, 1920, was thereupon received in evidence and marked Plaintiff's Exhibit C-67, of this date.)

MR. GOUDRAULT: All right, Mr. Tully. Thank you.

20 (Witness temporarily excused.)

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DEPOSITION OF JOHN F. O'ROURKE.

JOHN F. O'ROURKE, age 76, of 383 Park Avenue in the County of New York, a civil engineer, a witness produced, sworn and examined on the part and behalf of the People of the State  
30 of New York, the Plaintiff, deposeth and saith as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—Have you been also a contractor, Mr. O'Rourke?

A.—I beg pardon?

Q.—Have you been a contractor? A.—Yes.

Q.—With what company are you connected? A.—O'Rourke Engineering Construction Co.

Q.—How long has that been in business? A.—Since  
40 1902.

Q.—What kind of work does the O'Rourke Engineering Construction Co. do? A.—Foundations for buildings.

MR. HACKETT: Can't we concede all that and get to the sewers?

MR. GOUDRAULT: I will make it as rapid and as expeditious as possible, but yet I have to put certain of these ques-



*John F. O'Rourke for plaintiff (direct examination).*

tions. I will cut them short, but I think they are of importance to the case. They will come up later.

Q.—You were stating that the company builds foundations for buildings? A.—Tunnels, and public works generally. That is ordinary engineering construction.

Q.—I see. And did the company do that kind of work, particularly, in 1919 and 1920? A.—Yes.

10 Q.—You just mentioned tunnel work, did you? A.—Yes.

Q.—Well, just describe in a few words what kind of tunnel work your company was specializing in, if any? A.—We did both cast iron lined tunnels and concrete block tunnels.

Q.—Will you just name us a few of the jobs that you did with concrete tunnel blocks?

MR. O'DONNELL: Objected to as entirely irrelevant.

20 A.—The only concrete block tunnel that the company built was that Flushing Tunnel, Linden Street tunnel.

MR. COOK: One moment. I object, Mr. Commissioner, to all evidence in regard to the Linden Street matter as irrelevant and having no bearing on the issues in this case.

THE COMMISSIONER: The answers will be taken subject to your objections, exceptions and reservations. Will you proceed?

30 MR. COOK: I would ask, Mr. Commissioner, that my objection be held to apply to all this gentleman's evidence, because I don't wish to renew it again and again and unnecessarily take up time.

MR. HACKETT: I avail myself of the same objection.

MR. COOK: That is understood, Mr. Commissioner?

THE COMMISSIONER: Is that understood, Mr. Goudrault?

40 MR. GOUDRAULT: Sure.

THE COMMISSIONER: It is so understood.

BY MR. GOUDRAULT:

Q.—Do you know Mr. Seely? A.—Mr. Who.

Q.—S-e-e-l-y? A.—Yes.

*John F. O'Rourke for plaintiff (direct examination).*

Q.—Will you tell me about the first time that you met Mr. Seely? A.—I went to see him in regard to explaining the merits of the concrete block tunnel shields, and its application to the tunnel that they were at that time preparing plans.

Q.—That is the Linden Street tunnel? A.—Yes.

Q.—Where did you see Mr. Seely? A.—At his office.

10 Q.—Where was that? A.—I think that they call it Borough Hall. It was there at Hunters Point Avenue Bridge.

Q.—It was the Borough Hall of what borough? A.—Queens.

Q.—What did you do at that first meeting with Mr. Seely?

A.—I explained the method of building that type of tunnel, and its advantages.

Q.—What did Mr. Seely say?

MR. O'DONNELL: Objected to as irrelevant.

20 A.—That he would give it consideration. He was pleased with the idea.

Q.—What did he say to you, do you recollect? A.—I don't remember his words.

Q.—No, but the substance of the conversation. A.—The substance of the conversation.

Q.—At that first meeting. A.—I think, I am pretty sure at that meeting I called his attention to the fact that there was a tunnel of that description being constructed at Detroit.

30 Q.—Would you recollect the year of your first meeting with Mr. Seely in the Borough Hall of the Borough of Queens? A.—It was in 1920.

Q.—Was it before or after the letting of the Linden Street sewer job? A.—Before.

Q.—You had hear of that, or had you seen that letting advertised? A.—Yes.

40 Q.—You had heard of it? A.—Yes. It was advertised. No, let me see, I am not sure whether it was advertised or not. But I had heard of that. It was noted, no doubt, in the Engineering Journals and things of that sort where matters of interest to engineers are noted.

Q.—And then you called on Seeley personally? A.—Yes.

Q.—And at that first meeting do you recollect speaking to him of another tunnel that had been constructed by the City? A.—I just mentioned the fact, — I told him that there was a tunnel of that description under construction at the time at Detroit.

*John F. O'Rourke for plaintiff (direct examination).*

Q.—At Detroit? A.—Yes.

Q.—But I mean another one, not of concrete blocks but a tunnel that had been built here in the City of New York? A. I may have mentioned the 51st Street tunnel that was built in Queens.

Q.—Built in Queens? A.—Yes.

10 Q.—Do you remember the date it was built? A.—I am pretty sure it was built in 1913. That was one of the years, because I was at that time putting in the foundation, and so on, in the Equitable Building here, and I remember the man who had the contract, Burke.

MR. COOK: It is surely a matter of indifference as to when the 51st Street tunnel was built. If it was built in 1913, it cannot possibly have any connection with this case and I object to the evidence again as irrelevant.

20 MR. HACKETT: So do I.

BY MR. GOUDRAULT:

Q.—Do you know when it was finished, that 51st Street tunnel? A.—Several years afterward.

Q.—Would you state the number of years? A.—About two or three. I could not recall. They had several bankruptcies, I think, in connection with it.

30 Q.—At the time did you see anybody to have your concrete blocks accepted for the tunnel on 51st Street? A.—Yes.

MR. COOK: He did not say anything about the 51st Street being accepted.

MR. GOUDRAULT: Oh, yes he has.

MR. O'DONNELL: He mentioned the fact that it was built. Objected to as irrelevant.

Q.—Who was it that you saw? A.—I thing this last name was Crowell; Foster Crowell.

40 Q.—Did you succeed? A.—No.

Q.—Now we will come down to the conversation with Seely, in whatever year you said, 1919 or 1920.

MR. COOK: 1920, he said.

THE WITNESS: It might have been 1919, but I think it was 1920.

*John F. O'Rourke for plaintiff (direct examination).*

Q.—In looking at Exhibit C-17, I see that the date of award for the Linden Street sewer, — It was awarded to your company, Mr. O'Rourke, on the 8th of January, 1920. A.—Then it was 1919, I saw him.

Q.—What did Seely say? A.—What did he say?

Q.—Yes. Did you discuss with him tunnel blocks and cast iron pipe, or whatever your company used then at the time for those tunnels, Mr. O'Rourke? A.—I talked to him. It tried to get him to consider the concrete block tunnel, and as an inducement I told him about this tunnel that was being built in Detroit, and I invited him to come out there to see it.

Q.—Would that be at the first meeting? A.—I think it was because the meeting was not long. It does not take me long to tell anybody about a thing like that.

Q.—I understand that, but tell us, if you recollect what Mr. Seely might have told you, if he said anything when you did propose to him the use of the concrete tunnel blocks for the Linden Street sewer.

MR. O'DONNELL: Objected to as being hearsay and irrelevant.

A.—He was more or less receptive; his attitude was more or less receptive. But he told me that he was too busy to go to Detroit.

Q.—Now, tell us about that trip to Detroit, Mr. O'Rourke? A.—It was, —

Q.—Did it take place? A.—It did. It was finally arranged to have Seely go out there, and I wanted to get as many of the Queens engineers out there as I could, but all that was available was Mr. Decker, and we went out there on a Saturday night, intending to return Sunday night. The tunnel was being built by the Ford Motor Company.

Q.—Who went, Mr. O'Rourke? A.—I said Mr. Decker.

Q.—And who else? A.—That was all. Mr. Decker was all that went with Mr Seely.

Q.—With Seely and yourself? A.—Yes.

Q.—Now, was that all arranged at that first interview? A.—No, that was sometime afterward.

Q.—Before going to Detroit with Mr. Seely and Mr. Decker, do you recollect having one or two or more interviews with Mr. Seely? A.—I don't recall. There may have been one or two.

Q.—Did you know John M. Phillips in his lifetime? A. Yes.

*John F. O'Rourke for plaintiff (direct examination).*

Q.—Did you speak to Mr. Phillips of Mr. Seely? A.—  
Yes.

MR. HACKETT: I object to any conversation with the  
deceased, Phillips.

10 THE COMMISSIONER: The answer will be taken sub-  
ject to your exception and objection.

MR. COOK: I join in that objection.

THE COMMISSIONER: Same ruling.

A.—I was advised that Mr. Phillips was a man of influence, —  
I had never met him, — and that perhaps he could help me.  
And I saw Mr. Phillips. He was quite taken with the idea.

Q.—Did you have then a conversation with Mr. Phillips?

A.—I beg your pardon?

20 Q.—Did you have then a conversation with Mr. Phillips?

A.—Yes.

MR. O'DONNELL: Same objection.

Q.—And you met him? A.—Yes.

Q.—Do you remember where you met him? A.—I do not.  
Somewhere around Borough Hall there.

30 Q.—Do you recollect what took place there between Phil-  
lips and yourself? A.—Well, all that took place was that I  
told Phillips that I was anxious to get these blocks in, this  
tunnel; that they were building a tunnel similar to that in  
Detroit, that I wanted to take the engineers out there to satisfy  
them of its merits, and I asked him to help me to bring that  
about if he could.

Q.—And what next, Mr. O'Rourke? A.—Well, he did  
bring them out.

40 Q.—Can you tell us what was Phillips' answer to your  
proposal? A.—I made no proposal to Mr. Phillips. I told Mr.  
Phillips of the circumstances and asked him to help me to get  
these engineers out there and use whatever influence he could  
to bring it to bear so that the concrete block tunnel would be  
given an opportunity.

Q.—And what did he say? A.—He said he would help  
me.

MR. O'DONNELL: Same objection.

*John F. O'Rourke for plaintiff (direct examination).*

MR. COOK: There was nothing improper in that, as far as I can see.

THE WITNESS: There was nothing improper in anything I had to do with him.

MR. GOUDRAULT: That is our opinion also. We are just getting the facts, Major.

THE WITNESS: Thank you.

Q.—At the time of your meeting Mr. Phillips, do I understand that was the first time you met Mr. Phillips? A.—The first time I ever saw him.

Q.—I see. At the time had you made arrangements to go to Detroit? A.—I made arrangements as soon as I arranged with Seely to go and it was arranged by Seely to take Decker because he wanted Decker's opinion also. Then I procured the transportation and telegraphed to Detroit people that I was going to be out there on Sunday.

Q.—I see. A.—(Continuing) Bringing New York engineers to see the work, and I wanted them to work Sunday.

Q.—Now, did you make that arrangement with Seely in just one or two interviews?

MR. O'DONNELL: He has already testified to that.

Q.—(continuing) To go to Detroit? A.—As soon as, — it might have been two or three interviews. You know, when you are running after people you don't have time to count usually how many times you see them. But I was of course anxious to get the demonstration if I could.

Q.—I see. A.—And Mr. Seely, I am sorry to say, — rather I am happy to say, was one of the finest chaps I ever met.

Q.—We don't object to that, but here is the point I want to make. You told us a minute ago that at your first meeting with Mr. Phillips the trip to Detroit was not arranged? A.—No, it was not arranged then. He told me he was too busy. Then when it was finally arranged, —

Q.—With whom? A.—With him, when it was arranged, he arranged to go on a Saturday night and be back in Long Island City on Monday morning so that he would not lose any time.

Q.—I see. Did you speak to Mr. Phillips about Mr. Seely?

MR. HACKETT: Don't lead the witness, please.

*John F. O'Rourke for plaintiff (direct examination).*

THE WITNESS: I beg your pardon, sir?

Q.—Did you speak to Phillips about Seely before going to Detroit? A.—That is what I saw Phillips about, to see if I could get him. I was told that he was influential, and I saw him and I asked him if he could help to get Seely to go out there.

Q.—And you afterward saw Mr. Seely? Afterward,  
10 you saw Mr. Seely? A.—Yes.

Q.—And arranged for that trip? A.—Yes.

Q.—What did Phillips tell you when you asked him to use, — using your own terms, — his influence to get Seely to go?

MR. HACKETT: He answered that twice, and he said he said nothing but got him to go.

MR. GOUDRAULT: What is the question?

(Question read by clerk.)

20 MR. O'DONNELL: We object to any conversations with Phillips.

THE WITNESS: (answering) He said that he would me and see if it could not be arranged.

Q.—Did you suggest any engineers to accompany you and Seely to Detroit? A.—No.

Q.—You did not? A.—No, except that I wanted to get, —

30 MR. HACKETT: As many as possible?

A.—(continuing) As many as possible of the Borough engineers to see the work.

Q.—How did you first come to see Mr. Seely in connection with your concrete blocks for the Linden Street sewer?

MR. HACKETT: Just a minute. He has told us all about it. He said that he read in the engineering journals that this work was going on, and he went to the Borough Hall to see Seely.

40 THE WITNESS: It was a job that everybody knew about, and I went to see if I could not get any blocks in on the job.

MR. COOK: Why shouldn't he. Wasn't that his business?

*John F. O'Rourke for plaintiff (direct examination).*

Q.—There was nothing improper in that, and you went to see Seely? A.—Seely was the designing engineer, and that is the man that I went to see.

Q.—Once the trip was arranged to Detroit for Seely and Mr. Decker and yourself, do you recollect anything that Mr. Seely might have said?

10 MR. O'DONNELL: Objected to as irrelevant and hearsay.

Q.—Just tell us what. Did you get my question, Mr. O'Rourke? A.—I didn't, no.

Q.—Arrangements were made that you should go to Detroit with Mr. Seely and Mr. Decker? A.—Yes.

20 Q.—When final arrangements were made for the departure, did you state to us what happened? Did you have any conversation with Mr. Seely? A.—No, just simply to arrange the train, meet him at the train, meeting the other man at the train, himself and Decker at the train, and we went on. There was nothing further to say, because what he wanted, — I wanted him to see that tunnel, and he wanted to see it, and there was nothing to talk about. There never was in all my relations with Seely anything other than the ordinary business that takes place between the engineer and the contractor.

MR. O'DONNELL: You both knew where you were going and why you were going, and that is all there was to it.

30 THE WITNESS: Yes.

Q.—What date did you leave, on a Saturday? A.—Saturday night.

MR. HACKETT: And were back on Monday morning?

THE WITNESS: No.

MR. O'DONNELL: Sunday night?

40 THE WITNESS: No. That is the interesting thing, because, — do I —

THE COMMISSIONER: Go right on.

MR. GOUDRAULT: Go ahead.

MR. COOK: Anything that is interesting in this case, Mr. O'Rourke, is welcome.



*John F. O'Rourke for plaintiff (direct examination).*

THE WITNESS: Why, I took them not only to see the Ford tunnel, but there were some other tunnels being built. I don't know whether I took them to see them. I guess I simply told them about it, and they were so interested that they decided to stay over the next day and have me introduce them to the city engineer, and they spent the day and went home Monday night instead of Sunday night. I stayed with them, and we had  
10 a very interesting time, and they were treated very cordially by Mr. Hubbell, the city engineer, Clarence W. Hubbell, the city engineer.

Q.—Before leaving New York for Detroit with Mr. Decker and Mr. Seely, did you know who Decker was? A.—No.

Q.—Had anybody told you? A.—I don't think, — I may have been told that he was making the Lock Joint Pipe for a contract, but I am not sure about that. But there was nothing to it except, — the thing I was told about is principally that  
20 he was a very clever man and that he would like to have his opinion about that tunnel as well as his own opinion.

Q.—In preparing that trip, did Seely tell you, —

MR. HACKETT: I object to the leading and suggestive questions.

MR. GOUDRAULT: Question withdrawn.

Q.—And they saw these other works in Detroit, didn't they? A.—Yes.

Q.—In looking over the Detroit job that you wished to show to these gentlemen, was anything said there that you recollect, by Seely or Decker? A.—When Seely saw a ring erected in about twenty minutes and a shove made without any difficulty the same as if it was a cast iron lined tunnel, he said there was no place any more for cast iron lined tunnels, which I have been trying to get into everybody's head ever since.

Q.—When you came back to New York did you have any talk with Phillips about the Linden Street job?

MR. O'DONNELL: Objected to.

THE WITNESS: I beg your pardon?

Q.—When you came back to New York from Detroit with Decker and Seely, did you have any further conversation with Phillips? A.—I saw Phillips some little time after that, and Phillips wanted me to pay him for his help.

Q.—What did he say?

*John F. O'Rourke for plaintiff (direct examination).*

MR. HACKETT: I object to this testimony of conversations with the deceased Phillips.

A.—I don't know what he said, but —

THE COMMISSIONER: I will allow the witness to answer, subject to counsel's objections.

10 MR. GOUDRAULT: You have the right to answer, according to the Commissioner's ruling.

THE WITNESS (answering): He wanted, if I remember rightly, \$50,000.

Q.—What was said about it? A.—Well, I told him I would see about it. Of course, \$50,000 is a very small matter in these things where millions of dollars are involved in work. That didn't feaze me any.

20 Q.—At that time you had a thorough knowledge of the specifications for the Linden Street sewer, didn't you? A.—I don't know what you mean.

Q.—Your company finally built a section of the sewer, didn't it? A.—It built the entire sewer. The tunnel rather.

Q.—And to save time, may I tell you that you remember assigning the open cut part of the sewer to — A.—John J. Creem.

30 MR. HACKETT: Who was an old and reliable contractor.

THE WITNESS: That was a considerable time after we had the contract.

Q.—I see. A.—The idea was when we took the contract, we would build the whole work ourselves.

40 Q.—Well now, you just said a minute ago that Phillips asked you \$50,000, or a figure of approximately that amount. At the time he asked you that, what exactly had been done toward this Linden Street sewer work or job? A.—At that time the engineers were fully convinced of the desirability of using that as an alternate design for the tunnels and offering it in public letting. And I have prepared, at their request, certain descriptions to embody in the specifications, because they didn't know anything about it.

Q.—At whose request? A.—Mr. Seeley. And it was about that time that Phillips wanted to get some understanding with me as to what he was going to get out of it if he helped me. I

*John F. O'Rourke for plaintiff (direct examination).*

might add, if you won't object to it, that no official nor any official action is involved whatever in anything proposed to me by Phillips. It was never said that he could do this or do that or do the other thing. And I certainly would have had nothing to do with it if I had any idea that they were going to do any bribing of officials, of anything that was not right.

10 Q.—On the other hand, you asked Phillips to use his influence, didn't you, though, for the very purpose of introducing your concrete tunnel blocks in Queens? A.—For the purpose of getting — I don't think I asked any further influence from him after I got the engineers to Detroit, because they were enthusiastic for the tunnel, and I didn't need anybody's influence.

Q.—Did you prepare your estimates when the advertising for this Linden Street sewer appeared in the City Record; did you prepare your estimates? A.—I prepared the estimates when we prepared the bid.

20 Q.—The bid, I mean? A.—Yes.

Q.—You did? A.—Yes.

Q.—Did you prepare them naturally enough with the concrete tunnel blocks for the tunnel part of the sewer? A.—Well, we only bid on the tunnel part. The sewer was advertised twice.

Q.—I see. But the first time, on the first bid? A.—The first bid, I didn't do anything about the open cut at all. I just simply prepared for the tunnel part.

Q.—How is it that you only prepared your bid for the tunnel part of the sewer?

30 MR. O'DONNELL: Objected to as irrelevant.

A.—Because we were asked, by, I think it was Piano or some name like that, to give him a bid.

Q.—Who was asked? A.—The O'Rourke Company was, to give them a bid for the tunnel part of the work, which they didn't know anything about. They wanted to bid for the whole job, which was the only way you could bid, and we gave them a bid as subcontractors to do the tunnel work.

40 Q.—To whom? A.—I think his name was Piano, or something like that.

MR. HACKETT: Paino.

THE WITNESS: Paino.

Q.—Angelo Paino? A.—Paino. I don't know what they called him now.

*John F. O'Rourke for plaintiff (direct examination).*

Q.—Paino, Angelo Paino? A.—I knew him as an acquaintance, but —

Q.—Where did you meet him? A.—I couldn't tell you that.

Q.—How did you come to meet him?

MR. HACKETT: What difference does that make?

10 THE WITNESS: That has all gone out of my mind.

Q.—I understand that; but try to recollect as much as you can, Mr. O'Rourke. You have told us now that your company was asked to let the bid of Angelo Paino go in for both sections, the open cut section and the tunnel; is that right? A. No.

MR. HACKETT: No. What Major O'Rourke said is that on the first bid a man by the name of Paino put in a bid for the whole job, but after they came to an arrangement with the Major's company to do the tunneling part as subcontractor, because his firm was expert in tunneling work, and he says that is why he did not bid the first time.

MR. GOUDRAULT: I understand what he said.

Q.—Now, your company did not put in a bid for the whole job the first time, the first bidding? A.—No. We gave a bid to this man who was going to bid for the whole work, something he was doing all the time. In fact, I am not sure whether I spoke to him about it. Things like that go through and when it comes to actually what the office really does, I supervise, and usually sign the estimates.

Q.—Now, before putting in your bids on the first bidding —

MR. HACKETT: He didn't put in any bid.

MR. GOUDRAULT: Yes, he did.

MR. HACKETT: No.

40 THE WITNESS: We gave a price to Paino; and Paino used our price to bid.

Q.—Yes. How did you come to Paino?

MR. HACKETT: He has told us, Mr. Goudrault.

*John F. O'Rourke for plaintiff (direct examination).*

Q.—How did you come to Paino? A.—They came after us for a figure on the tunnels, and there may have been others that also got bids from us. But I couldn't say, it is so long ago.

Q.—Had Phillips ever spoken to you about Paino? A. He may have. I don't recall whether he did or not. I wouldn't be at all surprised if he had.

10 Q.—Do you remember what he told you? A.—This Paino transaction faded away as soon as it started and I have forgotten all about it.

Q.—Why did it fade away? A.—Well, the next time when it came to bid, I decided we would bid ourselves and not have any subcontractor's bid.

20 Q.—And finally your tunnel blocks were furnished into that tunnel? A.—The tunnel blocks, Mr. Goudrault, is just the same as you talk about the bricks in a building. The tunnel is the point, don't you know, and there are a whole lot of things involved that are special for that particular type of tunnel, and all of that is used to build that tunnel.

Q.—Will you look at Plaintiff's Exhibit C-17, which is the contract between your company and the City of New York for the construction of the sewer on Linden Street —

MR. HACKETT: To be more accurate, Mr. Goudrault, — the file containing the contract.

30 Q.—Yes, the file containing the contract. And will you point out to us the specifications as regards your tunnel blocks, Major? A.—You don't mean this bid sheet, do you? You mean the specifications describing the work, or simply the bid?

Q.—Not the bid at this moment, but what we want to know is what the plans and specifications call for as regards tunnel blocks? A.—There is a paster there, in a certain part of the contract. I can remember what it is, if that is what you want.

40 Q.—It is in the record, it is in that file? A.—Yes. It specified that the composition of the concrete, the proportion of the concrete, should be one cement, two sand, and four stone. It said that it should be constructed with shields, that gravel packing should be used to fill the space left behind the shield, so that there would be no settlement.

Q.—That was for the tunnel? A.—Yes. And that it should be concreted — I mean grouted in a certain way; and that is all there was to it.

Q.—I see. Your concrete blocks then went into the specifications, your concrete blocks went into the specifications for

*John F. O'Rourke for plaintiff (direct examination).*

that Linden Street sewer? A.—Yes. They had plans which showed the tunnel constructed with blocks.

Q.—Now, how did these concrete tunnel blocks specifications come to be on the plan of the Linden Street sewer? A. Plans were drawn by Mr. Seeley, in Mr. Seeley's office, the specifications were prepared by the, — I mean that part of them were prepared by the people who had authority to do it, and it was a part of the work of the designing engineer to prepare plans for the Type B contract. And that is how they came to be in the plans and specifications. It came through their office.

Q.—I see. I understand that. But do you know from where they get their necessary details and data for the purpose of these plans and specifications being on that plan and profile? A.—You mean the specific plan?

Q.—Exactly. A.—They got that from me.

Q.—Did you prepare them? A.—Prepared by my office.

Q.—What did you do with them once they were prepared by your office, Mr. O'Rourke? A.—I took them around and gave them to Seeley, or I sent them to him, I don't know which. I thought perhaps this might clean up a little of your uncertainties about things, if you want to look at this (witness indicates paper). This is a tunnel, plans for a tunnel, four of which were built this last year by the Board of Transportation.

Q.—No; I will tell you, Mr O'Rourke, — A.—You asked a question, and I am just showing you something, what they did.

Q.—Anyway, your evidence, Mr. O'Rourke, is that they were planned and designed, as put on the plan and profile of the Linden Street sewer, were prepared by your office and brought to Seeley by you or somebody else, or sent by letter; is that right? A.—No. I gave him general plans of the blocks, and the designs generally, and they prepared the specific drawings that were used for the contracts for advertising. In other words, they prepared them from the information given by me.

MR. HACKETT: Major O'Rourke, you gave the information to Seeley and he prepared the details for the specifications, is that right?

THE WITNESS: Yes, that is right.

BY MR. GOUDRAULT:

Q.—Do you recollect, Major, if the concrete tunnel blocks of your company were to be used in the monolithic sewer, or in the precast sewer? A.—In the precast. The two types, Type A contained all the methods and designs that were unpatented,

*John F. O'Rourke for plaintiff (direct examination).*

not patented, open to everybody; and the Type B had the lock joint pipe and the concrete blocks.

Q.—Therefore, the concrete tunnel blocks were coupled in the plans and specifications, or grouped, with the precast pipe; is that right? A.—That is right.

Q.—Now, is there any reason why you could not have built the tunnel part of this job just as well monolithic instead of precast? A.—None at all.

Q.—Major, do you recall now, of your own knowledge, what happened when the bids were opened the first time?

MR. HACKETT: Just a minute. When the bids were opened the first time, they were rejected, and that is in the record.

MR. COOK: What difference does that make?

MR. GOUDRAULT: I know, that is through writing.  
20 But I want to know if he recalls who were the bidders.

MR. HACKETT: We have got that.

THE WITNESS: Do you want me to answer that?

Q.—Yes, please. A.—I am familiar with the first bids.

Q.—Well, who were the bidders? A.—Well, when I say I am familiar with it, I mean I was familiar with it.

Q.—You don't remember? A.—I would have to look at it to see.

Q.—Do you remember if there was a bid for Type A and Type B? A.—Yes.

Q.—But you don't recollect at this moment the lowest bidder on Type B? A.—My impression is — I may be wrong — that it was Booth & Flynn.

MR. HACKETT: You are right.

THE WITNESS: Was I right?

MR. HACKETT: Yes.  
40

MR. GOUDRAULT: You are right, yes.

Q.—Do you know if there was any bid on that first bidding, on Type B, besides Booth & Flynn's bid? A.—I do not.

MR. COOK: Where is this evidence leading to?

*John F. O'Rourke for plaintiff (direct examination).*

Q.—Do you recollect if Booth & Flynn were the only bidders? A.—No, no, no. Paino.

Q.—May I come now to the next question, Mr. O'Rourke? Paino was another bidder on Type B? A.—I believe that Booth & Flynn bid on it, too. I am not positive.

Q.—Yes, you did tell us. But I am speaking now of Paino. A.—What about Paino?

10 Q.—Did he bid also on that first bidding? A.—On Type B?

Q.—Yes, Type B. A.—Yes.

Q.—Did you speak to Phillips about these bids of Booth & Flynn and Paino?

MR. O'DONNELL: We object to any conversation with Phillips.

MR. HACKETT: I avail myself of that objection. A.  
20 I don't recall any conversation with him on the subject, but I remember the bids were rejected.

Q.—But before the bids were rejected, you had an interest, your company had an interest in this bidding, Mr. O'Rourke, did it not? A.—Oh, yes, we had.

Q.—Through whom and how? A.—Through Paino, giving Paino a bid for the tunnels, it being understood that if he got the contract, that we would have the contract for the tunnels, subcontract for the tunnels.

30 MR. O'DONNELL: That is the usual practice for contractors.

Q.—Do you know if Booth & Flynn also put in a bid on that first bidding, on Type A? A.—I don't remember. I hardly think so.

Q.—Assuming that there were some bids put in on Type A, Mr. O'Rourke, on that first bidding for the Linden Street sewer, would you tell us if your concrete blocks could have been used by the bidder had he been awarded the contract on Type A monolithic? A.—No.  
40

MR. O'DONNELL: Objected to as irrelevant.

Q.—Did you have any talk with Phillips after the bids were rejected that first time? A.—I think I did. If I remember, I think I saw him after they were rejected, and I asked him why, because I supposed that the thing was done with, as far



*John F. O'Rourke for plaintiff (direct examination).*

as I was concerned. We were not low, and my recollection is that he told me that Mr. Connolly rejected the bids because they were too high.

Q.—Then what did you decide? That is, were you further interested in that contract? A.—Then they readvertised the contract.

10 Q.—I see. Were you further interested? A.—Oh, yes. When the bids were rejected and the contact was readvertised, then I prepared a bid for the entire work, and bid, the O'Rourke Company did.

Q.—I see. Did you have any further conversation with Phillips as regards that second bid? A.—Yes, we had some talk about it.

Q.—Will you state those conversations, the words, if you remember, to the best of your recollection?

MR. O'DONNELL: Objected to, same objection.

20 A.—Well, as I remember it —

Q.—Or the substance of the conversation. A.—The substance of the conversation was that Phillips was interested in furnishing the Lock Joint pipe, and he gave me a price to put in the bid for Lock Joint pipe.

Q.—Did he tell you what his pipe would cost? A.—Cost him?

MR. O'DONNELL: Same objection.

30 Q.—No; what it would cost you? A.—Yes.

Q.—Do you remember it? A.—I think it was \$40, or it might have been \$35. a foot. It is in that contract.

MR. O'DONNELL: Same objection.

Q.—And did you estimate the job? A.—Yes.

Q.—And in estimating the job did you count on \$40. a foot as the cost to you of the precast pipe? A.—That is my recollection.

40 MR. HACKETT: You estimated the price that he gave you, whatever it was.

THE WITNESS: The same as we always do. That was a patented article and we had no other alternative. We had to take the people who made the pipe, we had to take their price that they furnished to us. Even if it was not patented, I could

*John F. O'Rourke for plaintiff (direct examination).*

not go out and make a specific thing like that, without a lot of experience.

Q.—To make the point clear, let us go back a moment and tell us — you told us that the plans for the concrete tunnel block were put in the plans and specifications for that sewer, didn't you, Major? A.—The plans and specifications with the tunnel blocks, — I don't know what you mean by the last question.

10 Q.—I mean to say the plans and specifications had to be prepared by the proper authorities for the construction of the tunnel part of the Linden Street sewer? A.—The designing engineer.

Q.—Yes, the designing engineer. And I understand at the time that you had decided Seeley to introduce in the said plans your concrete blocks for the tunnel part of the sewer, is that right? A.—Well, he decided from what he saw and what I told him, that he would adopt the tunnel blocks as an alternate plan.

20 Q.—I see. And how were they put in the plans and specifications? A.—Well, he prepared those himself, with my assistance. That is to say, I furnished him with the technical details.

MR. HACKETT: Do you know whether Seeley got the approval of the engineers who were his superiors? Did he take it up with them, do you know?

30 THE WITNESS: I couldn't tell you that. But generally speaking, a man in his position, his say-so is taken by those above him, because the others know very little about it.

MR. HACKETT: Well, did you know Mr. Rice?

THE WITNESS: I made his acquaintance.

MR. HACKETT: Mr. Perrine?

THE WITNESS: In a way, yes.

40 MR. GOUDRAULT: May I conclude with my examination, and then you can proceed to cross-examine.

MR. HACKETT: Yes.

BY MR. GOUDRAULT:

Q.—When you put in the bid for the whole job on the second advertising, did you know what Booth & Flynn had bid on the first bidding? A.—Yes, I had their bid.

*John F. O'Rourke for plaintiff (direct examination).*

MR. O'DONNELL: Everybody knew it; it was common knowledge.

Q.—I mean the bids that had been rejected? A.—Yes. We had the details of the bid, the same as you have there.

Q.—Did you make your bid more or less than Booth & Flynn, on the second bidding? A.—I made it less.

10 MR. O'DONNELL: Objected to. The best evidence of the bids is the bids.

THE WITNESS: Booth & Flynn made it more.

Q.—Who was awarded the contract on the second advertising; you were, as a matter of fact, your company? A.—Yes.

Q.—Once the contract was awarded to you, did you proceed with the work? A.—Yes, to get it started.

20 Q.—And to put it short, your company only bid the tunnel part of the Linden Street sewer, is that right, Major? A.—It finally took that form, that that was all we did. We assigned the open cut part to John J. Creem.

Q.—Did you give this part of the contract to John J. Creem, with or without consideration? A.—It was just given to him as it was. In fact, we paid for the bond for the whole contract, and Creem relieved us of doing that part of the work. And I was pretty glad to get Creem, because he was a capable man.

30 Q.—He was a very good contractor? A.—Very.

Q.—But was there any other consideration paid by John J. Creem for the assignment of the open cut part of the contract? A.—No.

Q.—Besides adjusting the bond? A.—No; we didn't even adjust that. He insisted on my paying for the bond.

Q.—Did you pay for the bond? A.—Yes.

Q.—A large amount, was it? A.—Not very large.

40 Q.—Do you recollect the figure? A.—Two or three thousand dollars, something like that, the whole bond, and his part would be in proportion.

Q.—Now, coming to the proportion, what was the proportion of the tunnel and the proportion of the open cut? A.—I think that the tunnel was somewhere around \$400,000, a little less than \$400,000, if I remember rightly.

Q.—I am not speaking of the amount. I am speaking as regards, I may say, the proportion of the size of the entire job? A.—Oh, the length?

*John F. O'Rourke for plaintiff (direct examination).*

Q.—Yes. A.—The tunnels were approximately 2,000 feet long, and the other was in excess of 4,000 feet, I should think; I don't know just exactly.

MR. HACKETT: How much was the cost of the open cut, approximately?

10 THE WITNESS: As I remember, it was eight hundred and odd thousand dollars, and the tunnel part was a little under four hundred thousand dollars.

Q.—Right at the beginning you have told us that Phillips asked you for a payment of \$50,000? —

MR. O'DONNELL: Same objection.

Q. (Continuing) — for his help in introducing the tunnel blocks of your company in Queens. Now, was there any other  
20 conversation as to the payment of that amount, with Phillips?

MR. COOK: Objected to.

Q.—One or many? A.—There wasn't very much conversation about it until the investigations broke loose and I saw the views that were taken of things like that. Then there was only one conversation. I refused to pay him any more than what I had already paid him.

Q.—How much had you already paid him? A.—I had  
30 paid him \$8,500.

Q.—To whom did you pay it? A.—To Mathews.

Q.—Did you pay him in check or cash? A.—Check; it went through the office, regular voucher, the same as any other payments.

Q.—Have you got your checks? A.—They came looking around the office to see the check book, and I knew what they wanted so I told them directly about it. I had nothing to conceal. I told them directly about it, and I gave them the checks, this man, I think his name is in the record there; and that is the last I saw of those checks.

40 Q.—I see. And do you remember when that was? A.—I think it was in August or September, 1920. It might have been December; I am not positive of that.

Q.—Do you remember the investigation that you are speaking of, the name that it carried? A.—I beg pardon?

Q.—You spoke of an investigation going on. A.—Yes.

Q.—And a man coming to your office to investigate your check books; do you recollect what investigation that way?

*John F. O'Rourke for plaintiff (direct examination).*

A.—Oh, there was a general outcry about corruption in the Queens sewer contracts, and all contracts in Queens. Craig shut down on making monthly payments, — the Comptroller.

Q.—You had met Dr. Mathews? A.—Yes.

Q.—And it was to him that those checks were given, I understand? A.—Yes. They were sent to him by the office.

10 Q.—At whose request? A.—Well, that was the arrangement I made with Phillips, that any payments I made I would sent them to Mathews.

Q.—Did you know Mathews before? A.—I don't know whether I did. I might have. I knew hardly anybody over in Queens; that was my first experience in Queens.

Q.—And do you remember what conversation you had with Phillips as to the time and manner of payments?

MR. COOK: I object.

20 MR. O'DONNELL: Same objection.

A.—Well, they were to be paid from moneys received after I had received moneys from the City, monthly payments.

Q.—And I presume you did receive one first payment from the City? A.—What?

Q.—Your company did receive one first payment from the City for that work? A.—Yes. There was only one first payment, and several others.

30 Q.—Do you remember of a modification in the original contract? A.—Yes.

Q.—Could you tell us in a word the substance of that modification? If same refers to payment by the City?

MR. O'DONNELL: Objected to as not being the best evidence.

40 A.—The terms of the contract itself were broad and didn't provide any method by which monthly payments could be made as the work progressed. It provided for making such payments, but it did not provide the means, and this modification was nothing more than a schedule of item payments.

MR. HACKETT: Progress estimates.

THE WITNESS: Well, it is a little more than that. It is the basis upon which it is done. Nearly every building contract that is made in the City here, the architects, they draw their contracts so that you can not do anything like it. They

*John F. O'Rourke for plaintiff (direct examination).*

have afterwards a schedule arranged for payments, and that is what is described here as the modification.

Q.—Yes, modification as regards payment? A.—Yes.

Q.—As a matter of fact, the City wanted to have a basis to pay you, isn't that right? A.—That is right, yes.

Q.—I see. A.—Upon which they could estimate and calculate what the monthly payment should be.

10

MR. HACKETT: That is a usual clause in every contract?

THE WITNESS: Unless the contract is an item contract later.

Q.—In this case it was not? A.—In this it was a lineal foot price.

Q.—I see. So what did the City decide to pay your company as regards lineal feet? A.—There was so much a lineal foot of completed sewer.

20

Q.—So the City decided to pay your company so much per lineal foot, is that right? A.—That was what the contract called for, the original contract.

Q.—And what did the modification call for? A.—The modification called for dividing that up so as to get a payment, — there were shafts as well as tunnels, —

MR. HACKETT: Work in progress.

30

THE WITNESS: I mean there were shafts as well as tunnels; and those shafts had re-enforced concrete, and the tunnels had concrete blocks and grouting and packing and all sorts of things were done, and there was a price put in, — I mean there was a list made up of prices.

MR. HACKETT: On which progress payment would be made?

THE WITNESS: On which progress payments would be made, so that the amount would agree with what the general sum was in the contract.

40

BY MR. GOUDRAULT:

Q.—And your company would be allowed a certain amount on monthly estimate, is that right? A.—That is right.

Q.—Now, do you recollect the figure, the amount that was to be paid by the City? A.—I do not.

*John F. O'Rourke for plaintiff (direct examination).*

Q.—Major, do you remember telling us that there was a modification as regards payment by the City to you? A.—Yes.

MR. HACKETT: He has told us 17 times.

MR. GOUDRAULT: Not as many as that. In order to save time, we will not count them.

10 Q.—Now, as a sequence to this modification, you were paid \$72.00 by the City, were you not?

MR. HACKETT: He said he did not remember.

THE WITNESS: Now, that recalls, — that was the price a lineal foot the City allowed in the monthly estimates for the concrete blocks.

20 Q.—Now, once that modification came into the original contract, did you have any conversation with Phillips as regards his payments, or did Phillips come to you for his payments? A.—Those figures were agreed upon so that the whole thing would balance, and that was made so as to cover a lot of other things than concrete blocks. That is to say, it had to cover the plans.

Q.—I see. You are speaking of the \$72 figure? A.—Yes, \$72. in itself for concrete blocks, would be a very large sum.

Q.—And you did receive payments from the City on that basis of \$72 a lineal foot? A.—Yes, on account of the blocks.

30 Q.—I see. A.—Deducted afterwards from the price for the lineal foot of tunnel.

Q.—As a matter of fact, Major, you were paid by the City for your contract, your company was paid by the City for the contract for the tunnel part of the contract? A.—Yes.

Q.—In full? A.—Yes.

Q.—Now, here I see that the City, on this Exhibit C-17, the City started making payments to your company on the 6th of January, 1920, it appears there an amount paid to date of \$10,200. A.—That was for work on the shaft.

40 Q.—The shafts formed part of the contract. A.—Yes. Four shafts. They were big masonry structures.

MR. HACKETT: From the surface to, —

THE WITNESS: To get down to the tunnel, and also they were used to receive the water from the surface that dropped down to the bottom and went off in the tunnel. They were sanitary sewers that connected to the shaft at a lower level.

*John F. O'Rourke for plaintiff (direct examination).*

Q.—When you got your first payment from the city, did you make any payment to Phillips?

MR. O'DONNELL: Objected to as not being the best evidence.

10 A.—No. We did not pay him until we got payments on the tunnel.

Q.—Well, after you got your first payment on the tunnel from the city, did you pay Phillips? A.—We made him a payment of \$3,500.

Q.—I see. A.—That is, it was paid to Mathews.

Q.—Now, how did you come to pay him \$3,500? A.—Well, we took that roughly on the basis of \$25 a foot.

Q.—Do I understand, then, for each \$72 that you were receiving from the City, you would give \$25 a foot to Phillips?

A.—No. We did it with that first payment.

20 Q.—What is that? A.—We did it with that first payment.

Q.—That is what I am asking you, Major.

MR. COOK. Make that right, Mr. Goudrault. It is not fair to make that statement.

MR. GOUDRAULT: That is not fair. We will correct it. What is my question?

(Question read by clerk.)

30 Q. (Continuing)—On the first payment. What is your answer, Major? A.—Yes, the first payment.

MR. HACKETT: But you were not to do that for the balance of the contract?

THE WITNESS: Well, there was not anything really specific about it, because the next time it was not.

40 Q.—Now, you told us a minute ago that you paid him a first payment of \$3,500 by check. A.—Yes.

Q.—Will you now look at this stub and tell us if that is the payment you referred to? A.—Yes.

Q.—October 15, 1920? A.—That is right.

Q.—To the order of William F. Mathews.

MR GOUDRAULT: I now offer as evidence check stub No. A-1405, October 15, 1920, William F. Mathews, \$3,500. I



*John F. O'Rourke for plaintiff (direct examination).*

now offer as evidence check book and stub of your engineering construction company.

MR. O'DONNELL: Objected to as not being the best evidence of any such payment.

10 MR. GOUDRAULT: Unless attorneys for defendant will agree that we file a photostatic copy of the said stub. Will that be agreeable to you gentlemen?

MR. COOK: Perfectly, as far as we are concerned.

MR. HACKETT: I don't care whether it is filed or not.

(The said check book stub was thereupon received in evidence and marked Plaintiff's Exhibit C-68, of this date.)

20 MR. GOUDRAULT: Will a photostatic copy be agreeable to you?

MR. HACKETT: Quite.

BY MR. GOUDRAULT:

Q.—Will you look at this check book and state there if the second payment that you referred to, Major, appears there on the stub?

MR. O'DONNELL: Same objection.

30 MR. COOK: What is the second payment that you refer to? He has not referred to any second payment.

MR. GOUDRAULT: All right.

MR. O'DONNELL: He said he made two payments, \$3,500 and \$5,000.

THE COMMISSIONER: The record will speak for itself.

40 MR. GOUDRAULT: I offer as evidence this stub, dated December 8, 1920, showing a payment of \$5,000 to William F. Mathews, as Plaintiff's Exhibit C-69.

MR. O'DONNELL: Same objection.

MR. GOUDRAULT: And with the very kind permission of attorneys for defendants, I will substitute for this original a photostatic copy, if they have no objection.

*John F. O'Rourke for plaintiff (direct examination).*

MR. COOK: How much is that stub that you are now speaking about, \$5,000?

MR. O'DONNELL: \$5,000.

(The said check book stub was thereupon received in evidence and marked Plaintiff's Exhibit C-69 of this date.)

10 BY MR. GOUDRAULT:

Q.—Did those two payments to Phillips, or Mathews, did they represent the \$25 that you were to pay from each \$72?  
A.—No.

Q.—Were they more or were they less? A.—They were less.

Q.—What was the purpose of paying Phillips less than the agreement? A.—We paid him all we thought he ought to have. I told him that too.

20 You were aware that it was less? A.—Oh, yes. The second payment I told him we would send him a check for \$5,000 and that would be enough. That is what I told him. I didn't say whether I would give him any more or not, that it would depend on circumstances. The circumstances did not point that way.

Q.—And did you have any conversation with Phillips after this? A.—Yes.

Q.—Will you tell us what was said then? A.—He came to get some more money from me, and I refused to give it to him.

30 Q.—What did you tell him, Mr. O'Rourke? A.—I told him he got all he was entitled to, and that was all he would get.

Q.—Did you give him any reasons? A.—Yes, I told him, just as I tell you now, that he got all he was entitled to.

Q.—Do you remember if you told him anything else, Major? A.—Well, I think I did. I think I told him that from the appearance of things that there was a strong disposition on the part of everybody to criticize payments of that sort. Not that there was anything wrong with my paying him, but I told him that there was a great deal of row made about that sort of thing, and that he better drop it as far as I was concerned. There  
40 wasn't so much a row made about mine, but there was on pipe.

Q.—Did you repeat all that to Phillips on that occasion?  
A.—The conversation was very brief.

Q.—But you gave your reasons? A.—Yes, very short reasons.

Q.—When those checks that are now missing, — have you explained how they came to be out of your possession?

*John F. O'Rourke for plaintiff (cross-examination).*

MR. HACKETT: Now, he has told us that seventeen times.

MR. GOUDRAULT: I think a little less.

MR. HACKETT: He gave them to a man who came there.

10 THE WITNESS: The man who came there, he did not have to search my books or search anything. He told me what he was looking for. I said I have two checks here that I will show you, and those are the only two that will interest you. And he asked me if he could have them, and I said certainly.

Q.—When the check came back to your company, did you notice the endorsements on them? A.—I didn't at that time. I noticed them when I gave them to this man.

20 Q.—And do you recollect now what they were? A.—Yes, one check was endorsed by Mathews —

MR. O'DONNELL: Objected to as not the best evidence.

A. (Continuing)—And the second check was endorsed by both Phillips and Mathews.

Q.—Do you remember whose endorsement was last on the check? A.—Yes, Phillips was the last endorsement. It was apparently an endorsement for cashing the checks. That is very common.

30 Q.—Was that for the \$3,500 or the \$5,000 check? A.—\$5,000.

Q.—Was that all you paid, that sum of \$8,500 to Phillips? A.—Yes.

MR. GOUDRAULT: I have finished.

MR. COOK: Have you finished, Mr. Goudrault?

MR. GOUDRAULT: Yes.

40 MR. COOK: Then we would like to finish with Mr. O'Rourke and let him go home.

CROSS EXAMINATION BY MR. HACKETT:

Q.—Major O'Rourke, you knew Mr. Perrine? A.—Yes.

Q.—Who was he? A.—He was an outside man. That is, he went around on the contract

*John F. O'Rourke for plaintiff (cross-examination).*

Q.—And you knew that he was over Seely? A.—No, I didn't think he was over Seely.

Q.—In fact he was. A.—Well, he may have been over him officially, but not, —

Q.—Then did you know Mr. Rice?

MR. GOUDRAULT: Let the witness answer, please.

10 A.—Yes.

Q.—He was in charge of engineering construction? A.—Yes.

Q.—You knew that he was over Seely? A.—They called him chief engineer.

Q.—Did you know any other engineers in the Borough Office who were Seely's superiors? A.—Clifford Moore.

Q.—Yes. A.—I think that is about all.

20 Q.—Did you know a man by the name of Blake? A.—Blake?

Q.—Yes. A.—No, I never came in contact with him.

Q.—From your experience with office routine, you knew that any change in specifications had to go before the superior? A.—Yes.

Q.—And had to have their approval? A.—Always.

30 MR GOUDRAULT: I object to this line of questioning, inasmuch as the witness is not the proper man to testify as regards the interior organization of any department of the Borough of Queens.

THE COMMISSIONER: You may proceed with your answer, subject to counsel's exceptions and objections.

BY MR. HACKETT:

Q.—And any modification in the specifications or the plans, of course had to have the approval, the signed approval? A.—Approval of the Borough President.

40 Q.—Approved by the Borough President? A.—And by the chief engineer.

Q.—The chief engineer, and other superiors of Seely? A.—Yes.

MR. HACKETT: Those are the only questions I have.

THE WITNESS: I would like to qualify that answer, in this respect, —

*John F. O'Rourke for plaintiff (redirect examination).*

MR. GOUDRAULT: You are entitled to do that.

THE WITNESS: I believe I was asked as a general question, was I not?

MR. HACKETT: Yes.

10 THE WITNESS: Because as to the actual procedure in Queens, all I know is that the modifications, for instance, were approved by the Borough President, and I think the Borough President's signature was on all the monthly estimates.

MR. GOUDRAULT: Yes. But that was not Mr. Hackett's question. Mr. Hackett's question, if I am right, referred to plans and specifications.

THE WITNESS: Well, they are all a part of the contract.

20 MR. GOUDRAULT: I know.

BY MR. HACKETT:

Q.—I understood that you did not undertake to pay Phillips \$50,000. You said you would see about that. A.—Well, that was, — there was never any agreement.

Q.—No. And in fact you did not pay him \$50,000? A.—No. And I told him he got all he was entitled to. So there could not have been any form of contract between us.

30 MR. HACKETT: That is all. Thank you.

REDIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—To make a point clear, Mr. O'Rourke, at the very beginning of your examination, when you did meet Mr. Phillips and did have conversations with him as regards payments to himself for the introduction of the concrete tunnel blocks in Queens, I understand no written agreement was made between you and him. But just to have the thing in the record according to truth and to the best of your recollection, and to facts, would you tell us what was the agreement as to payment to Phillips? A.—Well, he wanted \$50,000, and I said if the thing was worth it and if he performed the services what were worth \$50,000, I would pay it.

40 Q.—You agreed to the amount? A.—Well, that was the amount that was mentioned by him, and it did not seem unreasonable to me if he could do what we wanted it would be a

*John F. O'Rourke for plaintiff (redirect examination).*

great deal more than this contract, because that contract did not have it. .

Q.—In your estimation, did he do what you wanted? A. No. He got the thing introduced, but that was the end of his services in the matter. What I mean by that is that he took no further interest in my concrete block tunnels or in promoting them, or anything else.

10

BY MR. COOK:

Q.—And so he was only paid \$8,500 for the services he had rendered? A.—That's it.

Q.—That is correct? A.—That is correct.

BY MR. HACKETT:

Q.—You don't know that he rendered you any services. You saw these men, and have told us that your blocks on their merits were incorporated in the specifications after you had shown similar work to the Borough engineers? A.—His service consisted merely in aiding and procuring these people to go to Detroit and satisfy themselves as to the merits of the tunnel blocks.

20

BY MR. COOK:

Q.—It is very customary, is it not, to pay people for services of that character? A.—Of course.

30

MR. COOK: Of course.

BY MR. GOUDRAULT:

Q.—As much as \$50,000? A.—Oh, I think \$50,000 is very little. I haven't paid so much myself, but \$50,000 is a very small item in introducing a thing that goes into the millions.

Q.—And you told us also that you stopped payment of the balance when this investigator came in your office and got those checks?

40

MR. COOK: He never said anything of the sort, Mr. Goudrault.

A.—I didn't say anything about balance. I said I stopped paying him.

Q.—As a matter of fact, those two checks were taken away from your office? A.—Well, they were not taken at all. I offered them.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—You offered them? A.—That is, I produced them and the man asked if he could have them, and I said yes.

Q.—And that was after you refused to pay Phillips any more? A.—Yes.

Q.—And you gave him your reasons? A.—Yes, I told him he got all that he was entitled to.

Q.—And that was the principal reason? A.—Yes.

10 Q.—And if that was the principal reason, what was the other reason or reasons? A.—That they were making such a fuss over there. But the principal reason was that he got all he was entitled to.

MR. GOUDRAULT: That is all.

20 (An adjournment was taken from 1:10 p. m., to 2 o'clock, p. m.)

AFTER RECESS, 2 P. M.

DEPOSITION OF PAUL W. PAULSEN  
(recalled).

30 PAUL W. PAULSEN 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):

Q.—When you became a bidder, and in particular when you were the low bidder on section two of the 150th Avenue job, you submitted, I am told, a statement of your affairs to the Borough of Queens? A.—Yes, I think we did.

40 Q.—And that statement showed that your company, again according to my instructions, had assets of about one million dollars? A.—Not net. I don't believe they ever had anything like that net. They probably had assets close to that, but they were not deducting their obligations.

Q.—Well, did you deduct the obligations when you showed that statement to the Borough of Queens? A.—I did not show it to them. I mailed it.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—Yes, but the statement which you sent to the Borough of Queens, did it show the exact financial status of the Hammen Construction Company at that time? A.—I filled it out in the way it was reported to me.

Q.—That is not an answer. Did it show the exact — A. I couldn't tell, I was not the treasurer of the company, I filled it out on behalf of the company, by instructions of the corporation, and items that I filled in there were read to me.

Q.—Is it not to your knowledge that it was an inaccurate statement of your company's affairs? A.—No, not at that time.

Q.—Is it not to your knowledge that at that time only \$1,000 had been paid up as capital of the Hammen Construction Company? A.—I don't believe there was a statement made of the Hammen Construction Company alone. I think it was made on behalf of both companies, if I recall, a joint statement.

Q.—Is it not a fact that only \$1,000 had at that time been paid on the capital stock of the Hammen Construction Company? A.—No. There was \$15,000 paid when that was started, when the Hammen Construction Company was started.

Q.—You are sure of that? A.—To my best knowledge.

Q.—I am not asking you your best knowledge. A.—No, I am not sure, but that is the best of my knowledge.

Q.—When you were questioned by Mr. Cook on Friday, you did not seem to possess very definite and accurate information concerning the present status of the Hammen Construction Company. A.—Now? The present?

30 MR. HACKETT: Read my question.

(Question read by clerk.)

A.—No, I didn't.

Q.—Do you know an Emil Weitzner? A.—I don't believe so.

Q.—Do you know Henry Loveridge? A.—Yes. He used to be with Davis Equipment Company, if that is the man you are referring to.

Q.—You never heard of him in the character of a trustee? A.—No.

Q.—To the Hammen Company? A.—No.

Q.—Do you happen to be Mr. Paul W. Paulsen? A.—That's my name.

Q.—Yes. Did you give a promissory note in December 1927 to Henry Loveridge in his character of trustee? A.—Personally?



*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—Yes, personally. A.—I don't recall.

Q.—You have not a very good memory, have you, Mr. Paulsen? A.—I don't recall giving him a note.

Q.—You have not a very good memory, have you, Mr. Paulsen? A.—Yes.

Q.—Yes. Then you probably recall that this Company, the Hammen Construction Company, was indebted in the sum of \$533,207.95, to sundry creditors? A.—Hammen Construction Company?

Q.—Yes. A.—I never heard anything like that.

MR. GOUDRAULT: What date would that be, Mr. Hackett?

MR. HACKETT: That would be in December 1927.

Q.—And is it to your knowledge that the Hammen Construction Company received \$370,951.34 by way of loans and advances before December 1927, and repaid none of them? A.—No.

Q.—It is not to your knowledge? A.—No.

Q.—Is it to your knowledge that the Hammen Construction Company owed Hammen & Company, Inc., \$162,256 over and above the \$370,000 above referred to? A.—No. It never was called to my attention.

Q.—No. Well, I will ask you then to take communication of a document called a composition agreement between Hammen Construction Company and Hammen & Co., Inc., and Henry Loveridge, trustee for the creditors, and sundry creditors, the original of which is on deposit, I am instructed, with Henry Loveridge.

MR. GOUDRAULT: May I look at the exhibit?

MR. HACKETT: It is not an exhibit. I am asking him to take communication.

MR. GOUDRAULT: You are not filing it?

MR. HACKETT: We will see. I am asking him to look at it.

MR. GOUDRAULT: We object to the production now,

MR. HACKETT: I am not, — will you read the question?

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

(Question read by clerk.)

MR. GOUDRAULT: We object to any line of evidence as regards this agreement inasmuch as the document shown to the witness is not signed and is not an original; furthermore, that the witness is not the proper party to testify on the particulars contained in said document.

10 MR. HACKETT: All right.

(Witness examined document.)

BY MR. HACKETT:

Q.—Well, Mr. Paulsen, surely after this time you can say whether you have had communication of this document or not? How about it, Mr. Paulsen? Have you ever seen this document or the original of it? A.—No, not to my knowledge.

20 Q.—You have no recollection of any of the facts set forth in that document? A.—Some of the facts, that they owed money. I don't know whether they have been paid or not.

Q.—No. But how about this memory of yours, is it reliable? A.—Pardon me. You spoke about several hundred thousand dollars.

Q.—Yes. Five hundred and fifty thousand dollars owing by your company, concerning which you appear to have no information.

30 MR. GOUDRAULT: We are speaking now of the Hammen Construction Company, aren't we?

MR. HACKETT: I am. The company of which Mr. Paulsen was the vice president and the manager.

MR. GOUDRAULT: Until a certain time.

THE WITNESS: I was for what work they done here, not in other places. I am looking after the work they had here in New York and in New Jersey.

40 MR. GOUDRAULT: Did they have contracts elsewhere?  
THE WITNESS: Yes.

MR. COOK: Where?

THE WITNESS: They had contracts in Milwaukee, Louisville, Cincinnati, Cleveland, — Not Cleveland, Toledo, at the same time.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

BY MR. GOUDRAULT:

Q.—Do you know if those contracts were all completed?

A.—Yes. I did not make this up.

BY MR. HACKETT:

10 Q.—No; I know you didn't make it up. A.—And the details of it, some of the items there show that the Hammen Construction Company owe in or around New York City, I think is correct at the time when I bought the plant over, or I mean before, prior to that time.

Q.—I want to know, Mr. Paulsen, if it is a fact or not, to your knowledge, that the company of which you were vice president owed, when it went into bankruptcy, over half a million dollars? A.—Not to my knowledge.

20 Q.—Not to your knowledge. You never heard of it before? A.—No. All this stuff in there, that they owed Hammen & Company, Inc., a lot of money like stated there, that is the first time I have ever seen anything like that.

Q.—The first time you have ever heard of it? A.—Yes.

Q.—You quarreled, as a matter of fact, with Hammen and Bisballe, did you not? A.—No, I don't recall that. But at the time that I bought the machinery that they had in this part of the country, I argued at that time, and they promised to pay all the bills of the Hammen Construction Company in New York City.

30 Q.—Did you ever pay the promissory note that you gave them for the machinery? A.—I paid them \$27,500 in cash. That was not the Hammen Construction Company, that was to Hammen & Company, Inc.

Q.—And you gave them a promissory note; did you ever pay that? A.—No.

Q.—No. You still owe them \$18,000? A.—Hammen & Company, Inc., yes.

40 Q.—Yes. I draw that to your attention because you told Mr. Cook that you paid cash for the plant, whereas, in fact, you gave them a note for half of it, and you have not paid it since? A.—I don't recall that I told him I paid him in cash.

Q.—No; but I do recall it.

MR GOUDRAULT: \$27,500 is not half; it is more than half.

THE WITNESS: \$27,500 in cash and \$18,000 in note.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—Which is still outstanding? A.—Yes.

Q.—You have never met Henry Loveridge? A.—Yes.

Q.—Oh, yes. You met his lawyer, Mr Emil Weitzner?

A.—No, I don't believe so. At the time, pardon my expression, at the time we broke this work on Section 2, 150th Avenue, we hired two Universal cranes from Davis & Company, that Mr. Loveridge was with at the time.

10 Q.—I am not interested in that aspect of the question. But I do want to know whether or not in making a return to the Borough of Queens concerning the financial status of your company, over your signature, you investigated the accuracy of the information contained in the statement? A.—I did not.

Q.—No. You did not feel that it was incumbent upon you? A.—I did not have no chance to do it. It was required to file a statement and —

Q.—I know —

20 MR. GOUDRAULT: Now, let the witness answer. That is his right.

Q.—You know now that statement was inaccurate and misleading, do you not? A.—That is possible.

Q.—Yes. Do you not know as a matter of fact, that the statement was inaccurate and misleading? A.—No. At the time they had a lot of work.

Q.—I am not asking you about the work.

30 MR. GOUDRAULT: Let him answer.

Q.—I am asking you if it is not to your knowledge that the statement which was filed by you concerning the Hammen Construction Company was false? A.—No, it was not, to my knowledge.

Q.—You know now that it was false? A.—I wouldn't say that.

Q.—No? A.—As a matter of fact —

40 Q.—You had experience in investigations in cities other than Queens? A.—What do you mean by investigations?

Q.—I mean, for instance you had contract work in the City of Jersey City? A.—Yes, that is right.

Q.—And you appeared in investigation proceedings which were instituted in that city? A.—No.

MR. GOUDRAULT: Objected to as absolutely irrelevant, illegal, not referring to the matters at issue in this case, and not arising from the direct examination of the witness.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

THE COMMISSIONER: I will allow the answer subject to your objection.

MR. HACKETT: What was the question, please?

(Question read by Clerk).

10 Q.—You did not testify concerning a sewer that was constructed in Jersey City, or under construction in Jersey City?

A.—I testified in reference to or in regard to a sewer that was constructed for Jersey City between Dover and Boonton, along the river in Morris County. The Hammen Construction Company had a contract with Jersey City for that work; and I will further explain, or say that the Hammen Construction Company has a claim against the City of Jersey City for over \$400,000 on that contract, in the Federal Court, in New Jersey.

Q.—You have had that claim for something like 4 years?

20 A.—Well, I am talking about the corporation. The corporation had the claim against them at that time.

Q.—Yes; and it has not brought action yet? A.—Those actions were started in 1926.

Q.—And it was not prosecuted? A.—No.

Q.—And the controversy arose out of defective work which you refused to reform, to make good? A.—Well, that was a question of proof. The defective work there in that instance could not be proved, I am sure.

30 Q.—And when the City of Jersey City called upon you to make good your work, you declined? A.—We declined, because we considered we had completed in accordance with the specifications of the contract.

Q.—Then when they went on and did the work at your expense, you testified, — caused an investigation to be made and testified against Mayor Hague? A.—I did not cause an investigation to be made.

Q.—Do you know any firm by the name of Mahoney & Clarke? A.—Yes, sir.

Q.—Did you pay them the sum of \$10,000? A.—No.

40 Q.—Did you testify that you did? A.—No. I testified I paid them a sum of \$6,000.

Q.—\$6,000. For what purpose? A.—To give to a party in Jersey City.

Q.—And that party was a city official? A.—Yes.

Q.—To bribe them to overlook the imperfect work which you had done on Jersey City sewers? A.—It could not very well be. It was done before there was work started on the job.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

MR. GOUDRAULT: You mean that payment?

THE WITNESS: Yes.

Q.—And the name of the person for whom you say the \$6,000 was destined? A.—I don't think that is necessary.

Q.—I think that is necessary. A.—I don't believe so.

10 MR. HACKETT: I ask the Commissioner to order you to answer.

MR. GOUDRAULT: What is the question?

(Question read by Clerk).

MR. GOUDRAULT: Do you want the name?

MR. HACKETT: Of course I want it.

20 MR. GOUDRAULT: I object to all that line of evidence as being absolutely irrelevant and illegal.

THE COMMISSIONER: I direct you to answer.

THE WITNESS: I don't see what that has got to do with this case. I admit that I gave the money for a party, but I don't think I should answer that here.

BY MR. HACKETT:

30 Q.—As a matter of fact, you swore that you gave — A. Mahoney & Clarke.

Q.—Mahoney & Clarke. A.—Mr Mahoney.

Q.—Mr. Mahoney, \$6,000 to bribe a City official? A.—To give to a party. No bribe involved in it.

Q.—And I ask you for the name of the party for whom you say and said, the money was to be paid? A.—I did not give the money as a bribe to any official.

Q.—But you gave it to Mahoney, so you stated? A.—To give to an attorney in Jersey City.

40 Q.—For an official? A.—That was an official in Jersey City at the time.

Q.—Yes. Who was to get the \$6,000 by arrangement with you. A.—That is correct.

Q.—You might as well have that out now. A.—That is correct, but I don't think I should bring the name out

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—In view of the ruling of the Commissioner, do you refuse to answer? A.—I am not represented by an attorney here.

Q.—The question is, Mr. Paulsen, in view of the ruling of the Commissioner do you refuse to answer the question which has been propounded to you several times already? A.—To give the name of the party that this was to go to?

10 Q.—Yes. A.—I will answer. Mr. Brogan.

Q.—Who was Mr. Brogan? A.—He was an attorney in Jersey City.

Q.—But Mr. Brogan was not the person to whom the money was destined. Don't try to be smart with us, Paulsen. A.—All right.

Q.—If you don't wish to give us the name of the official, say so. A.—He was at the time, you may call him a City official, he was at the time Corporation Counsel, I believe, to the best of my knowledge, of Jersey City.

20 Q.—That is Brogan was? A.—Yes.

Q.—But I am talking of the man to whom the \$6,000 was destined. I am not speaking of the channel through which it went. A.—I never had no discussion whom that was to be destined, except to Brogan.

Q.—You know very well that is was not for Brogan? A. I haven't the least idea. As a matter of fact, Brogan claims or made a statement to the newspapers at the time that he did not receive the money.

30 Q.—In what other cities have you done contracting business? A.—Who are you referring to, personal or the corporation?

Q.—I notice that you are capable of great subtlety at times, Mr. Paulsen. A.—I don't understand that.

MR. GOUDRAULT: State the three corporations.

MR HACKETT: If you will try to be honest, there is no corporation before the Commissioner.

40 THE WITNESS: Put your question right. You said have I done work. You are trying to corner me, I presume, and you want me to answer in behalf of the Hammen Construction Company, or Hammen Company, Inc., or Paulsen Construction Company, whom I was affiliated with, or personally? Put your questions so that they are understandable.

Q.—We will leave you exactly where you put yourself. A.—That's all right.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—Did you ever do any work for the City of Detroit?

A.—Hammen & Company did.

Q.—Were you in their employ at the time? A.—Yes.

Q.—Did you have anything to do with any city officials there? A.—None whatever, except in the ordinary run of business.

10 Q.—In Chicago? A.—I never done any work in Chicago.

Q.—Any of your companies? A.—No.

Q.—Have you made a statement with regard to the officials in the Borough of Queens that you could buy them as you had bought officials in other cities in which you had done work? A.—No.

Q.—You swear to that? A.—Yes.

Q.—Where did you first meet John M. Phillips, and when?

A.—In the Fall of 1923, or early Winter; either before Christmas or after Christmas.

20 Q.—Where? A.—In Leahy's Drug Store, on Jackson Avenue. I believe it is No. 9 or No. 11, downstairs, right off the street.

Q.—In the front or the back part of the drug store? A. I don't recall. Probably in the front. We went in the back and was discussing.

Q.—Who was present at any time on the occasion of your first meeting with Phillips? A.—Andy Zorn.

Q.—And nobody else? A.—Not that I recall.

30 Q.—When did you meet Phillips the second time? A.—Shortly after.

Q.—What do you mean by shortly after? A.—Oh, within three months, I should say.

Q.—Within three months? A.—Yes.

Q.—Well, how soon after the first meeting which you have described, did you meet Phillips? A.—I met him about 30 days before the letting or the receiving of bids on Fisk Avenue.

Q.—That is not my question. A.—I don't recall the date.

Q.—You don't recall the date? A.—No.

40 Q.—I ask you how long, how many days, how many weeks, after you first met Phillips in Leahy's Drug Store, did you meet him again? A.—I don't recall exactly, but as near as I recollect, about three months.

Q.—Who was present when you met him the second time?

A.—Andy Zorn or Campbell.

Q.—Was anybody else present on the occasion of your second meeting with Phillips? A.—I don't recall.



*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—Where did that meeting take place? A.—49 Jackson Avenue.

Q.—On what floor? A.—Right off the street.

Q.—When was the next occasion that you met Phillips?  
A.—Right before bidding that job.

10 Q.—When? A.—Right prior to putting in a bid on that job.

MR. COOK: What job?

Q.—What job? A.—The Fisk Avenue job. That was the first job I bid on.

Q.—When you bid on the Fisk Avenue job, what price had you, if any, from Phillips for pipe? A.—I don't recall that, on that job.

Q.—You don't recall? A.—No.

20 Q.—In your examination in chief you swore that it was \$40 a foot. Has your memory ceased to be effective since you were examined in chief? A.—That was section number two of 150th Avenue. The price of that was \$40 a foot, given to me by Phillips at a meeting there, and it was reduced by telephone the day the bids went in at Borough Hall. Andy Zorn called me there and asked me to call Phillips, —

Q.—After this long and uncalled speech, I will read to you from your examination in chief at page 565:

30 "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?"

Then there was an objection.

"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?

"Q.—Yes. A.—Yes.

40 "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.

"Q.—Did you put in the bid? A.—Yes.

"Q.—Do you remember the price of the pipe he told you to figure on? A.—\$40 a foot."

A.—I don't remember on that job \$40 was quoted me.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—But if you don't remember, why did you swear to it, Mr. Paulsen? A.—I must have misunderstood your question in regard to the job involved.

Q.—Of course this was not my question. A.—Well, whoever's question that was.

10 Q.—You are apt to make mistakes? A.—The way you examine me it is very easy at times.

MR. HACKETT: Yes, I perceive that, from the result.

MR. GOUDRAULT: It was Mr. O'Donnell's question.

MR. O'DONNELL: What's the difference? He said it, anyway.

BY MR. HACKETT:

20 Q.—Can you give the date of your third meeting with Phillips? A.—Which meeting are you recalling? Which meeting are you calling my attention to? What meeting, in regard to what meeting?

Q.—The third one. A.—The date, no.

Q.—Do you remember who was present? A.—There was always present at those meetings Campbell, Andy Zorn or Bert Decker. One of them or all, or two of them. Always there to see Phillips, one or two or all.

30 Q.—You have told us of the first meeting in Leahy's Drug Store at which Zorn was present. You have told us of the second meeting. A.—The third meeting.

Q.—Just a minute. Now, who was present at the second meeting? A.—I don't recall which one was present at that meeting. At the meeting before I bid the Fisk Avenue job, I don't recall. One of those people was present.

Q.—Yes. But you see it is relevant and most vital that you should remember which one. A.—I don't remember.

Q.—You don't remember? A.—No, not at that occasion.

40 Q.—Do you remember having testified that you did remember? A.—At that occasion?

Q.—Yes. A.—There was one of the three there, or all of the three, or two of the three.

Q.—I see. Now, that is a very easy way to get out of it. A.—I will put it this way.

Q.—Let me ask you. A.—Andy Zorn was present at one.

Q.—That is at the third meeting? A.—I recall it, yes.

Q.—And who else? A.—I don't recall.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—You don't recall. On the 2nd of October, 1928, you appear to have said, "Will you tell us about when it was you first met John M. Phillips". "In the Fall of 1923." Is that accurate? A.—It was in the Fall of 1923 or in the early Winter of 1924. I can't remember the date.

10 Q.—But of course when you testified in the Fall of 1928, you did not say that you could not remember the date. It is only when you are a bit cornered, that you begin to hedge? A.—I am telling you that now. At the time I testified there I had just left out of my possession notes and documents that I had, and figures, giving the dates of the days that figures were made, and things like that.

Q.—When, you recall, you had coached Mr. Buckner or his agents, — you recall that?

MR. GOUDRAULT: I object to the reflection.

20 MR. HACKETT: It is not a reflection. It is a fact.

MR. GOUDRAULT: It is not a fact. The Court will appreciate that.

BY MR. HACKETT:

30 Q.—"And where was it that you saw Phillips for the first time? A.—No. 11 Jackson Avenue." Are you willing to stand by that? A.—11 or 9. I think 11 Jackson Avenue is correct. I have not been over there. There is two doors right close to each other, and whether it is No. 9 or No. 11, this drug store, I don't recall.

Q.—"Did you ever see Phillips again after that occasion? A.—About two or three weeks later." Are you willing to stand by that? A.—I may have. I am recalling now the time I seen him prior to bidding jobs.

40 Q.—But what I am trying to find out through you is that your memory has gone off since 1928. The facts are not as fresh in your mind? A.—I have not got any notes or anything to refer to that I had at that time.

MR. GOUDRAULT: What do you mean by notes?

THE WITNESS: I had papers of my figures when I figured jobs.

Q.—"Tell me the conversation that you had there? A.—He introduced me to Albert Decker at that time." And there is

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

no reference to anybody else being there. Are you willing to stand by that today? A.—On the first meeting?

Q.—On the second meeting. A.—That's right. At the same time as we spoke about the Fisk Avenue job coming off too.

10 Q.—“Tell us the circumstances of seeing Phillips on the second occasion? What conversation, if any, took place between you? A.—He asked me to come over. Q.—Just a moment, before we get to that, how did you happen to go over there? A.—By the invitation. By a telephone call from Phillips.” Now I am pointing out to you that on that occasion Zorn was not present, according to your testimony in 1928. Are you willing to stand by that? A.—As near as I can recall now Zorn was present on every occasion when I came to Phillips' office. He may have left after I came there.

20 Q.—But don't you see that in 1928 when you were asked questions on these facts you gave different testimony, and I am asking you which you prefer, do you prefer today's as the more accurate? A.—The one I gave before was more accurate, because I had data at my disposal at that time where I had dates more accurate than today, as to dates.

Q.—And as to persons? A.—And as to persons.

Q.—Places and people? A.—I wouldn't say that.

M. HACKETT: That is all.

30 MR. COOK: Mr. Commissioner, with the permission of my friend, Mr. Goudrault, I would like to add a few questions to my cross-examination, and with your permission.

THE COMMISSIONER: You may proceed.

MR. COOK: Mr. Goudrault, you will allow me?

M. GOUDRAULT: I never refuse.

MR. COOK: Thank you. I just want to make some things clear.

40 CROSS EXAMINATION BY MR. COOK:

Q.—Mr. Paulsen, I understand from your evidence in chief that you formed a partnership in Detroit with Mr. Hammen, Mr. Bisballe, and yourself? A.—A partnership?

Q.—A partnership. Do you understand me, sir, a partnership? A.—Yes.

Q.—Is that right? A.—That is right.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—In 1920? A.—That is right.

Q.—And then you and your two partners caused to be incorporated under the laws of the State of Michigan, a company known as Hammen & Company, Incorporated? A.—That is right.

10 Q.—And this company, Hammen & Company, Inc., was only authorized under its charter to do business in the State of Michigan; is that correct? A.—No, it was not admitted to do business outside of the State of Michigan in any other state, and it was not used in bidding work in any other state. But there was nothing, as I recall in the by-laws where it could not do business outside of the State of Michigan.

Q.—What was the date of the incorporation of Hammen & Company, Inc.? A.—I don't recall the date.

Q.—Do you recall the year? A.—1924.

Q.—1924? A.—I believe it was in January.

20 Q.—January, 1924. And then you incorporated, in New York, the Hammen Construction Company? A.—No. Hammen Construction Company was also a Michigan corporation.

Q.—A Michigan corporation? A.—That was incorporated before we ever came to New York to bid any work.

Q.—It was incorporated with the object to doing business outside the State of Michigan. Is that correct? A.—That is right.

30 Q.—So that your intention was that Hammen & Company, Inc. should do business in Michigan, and the Hammen Construction Company should do business outside of the State of Michigan; is that correct? A.—Yes.

Q.—That is correct. Will you tell me when Hammen Construction Company was incorporated? A.—Very shortly after Hammen & Company incorporated.

Q.—In the year 1924? A.—Same year.

Q.—And when, to the best of your knowledge, was a receiver appointed of Hammen & Company, Inc.? A.—I believe it was in the fall of 1927.

40 Q.—1927. A.—In the fall, I believe.

Q.—You are sure of that? A.—No, I am not sure.

Q.—It might have been 1926? A.—I don't believe so.

Q.—You are not sure? A.—No.

Q.—At all events, you know that it was before the fall of 1927? A.—Well, it was after I severed connections with it, and I was not familiar with the date of it.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—Now, when was a receiver appointed of the Hammen Construction Company? A.—I never knew of a receiver appointed for them.

Q.—There has never been a receiver appointed for them? A.—Not to my knowledge.

10 Q.—Not to your knowledge. And when did you incorporate the Paulsen Construction Company? A.—1926.  
Q.—1926? A.—I believe in the fall of 1926.

MR. GOUDRAULT: Excuse me a minute, Mr. Cook. I don't object to any of these questions inasmuch as they are objectionable, but I may state, as you have stated yourself, that all this has been put in evidence through you.

MR. COOK: I just want to put in the dates definitely.

MR. GOUDRAULT: All right.

20 BY MR. COOK:

Q.—When was a receiver appointed for the Paulsen Construction Company? A.—1928.

Q.—1928; and that is when you severed your connection with the Paulsen Construction Company, when the Receiver was appointed? A.—There was no connection severed. The work was completed.

30 Q.—And the Receiver was appointed? A.—About six months, or I should say four months, after their work was completed.

Q.—Their work was completed, their debts were not paid? A.—No.

Q.—And a Receiver was appointed. That is correct? A. Yes.

Q.—Now, what have you been doing since you severed your connection with the Paulsen Construction Company? A.—I have been working for Joseph Mele Construction Company.

40 Q.—What are you doing today? A.—Working for Joseph Mele Construction Company.

Q.—You are still working for them. You are getting a salary, or are you an officer of that company? A.—I am getting a salary.

Q.—Now, Mr. Paulsen, you spoke of a meeting between Phillips, Zorn, Decker, Seeley and yourself, that took place in Jackson Avenue. Do you remember that? A.—Yes.

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—Do you remember when that was? A.—That was right before the receiving of bids on 150th Avenue sewer.

Q.—You can not fix the date more definitely than that, Mr. Paulsen? A.—Well, it was within two months of it, the date.

10 Q.—Would it be in December, 1924? Might it have been in December, 1924? A.—I believe it was in January; I do not recall that.

Q.—You think it was in January, 1925? A.—No. This was in nineteen — it may have been in January, 1924; I mean in December, 1924, or January, 1925.

Q.—At all events, it was about that time? A.—It was within a couple of months of taking the bids on that job.

MR. GOUDRAULT: What job?

THE WITNESS: Section 2 of the 150th Avenue job.

20 Q.—The 150th Avenue job, Section No. 2? A.—Yes.

Q.—And you had that meeting there prior to putting in your bid for the work? A.—Prior to the advertising of the job.

Q.—And it was at that meeting that Phillips, according to your statement, according to your statement it was at that meeting that Phillips suggested to you the advisability of paying \$1,000 to Seeley? A.—That's right.

Q.—Is that right? A.—Yes.

30 Q.—And you are not prepared to swear that Decker and Zorn, or either of them, was present when Phillips made that statement? A.—They may all have been present. They went out and in.

Q.—But you are not prepared to say they were? A.—Seeley was present, but I am not prepared to say that the others were.

40 Q.—You are not prepared to say that the others were. And as Phillips is dead, and you eliminate Decker and Zorn, you are perfectly safe to make the statement that you do make in view of a possible prosecution, are you not? A.—I am not looking at that angle of it. I am merely making a statement of the facts.

Q.—At all events, you are perfectly safe, Mr. Paulsen. I will admit that. A.—I don't look at it that way.

Q.—Now, as to the Collins Avenue, contract, which has been filed as C-36, the bids were opened on the 13th of February, 1925. The contractors were ordered to start work on the 7th of

*Paul W. Paulsen for plaintiff recalled (cross-examination).*

April, 1925. The work was started, and completed on the 27th of February, 1926, and that contract and all the papers in regard to it have been filed as Exhibit C-36; you have seen it here, have you not? A.—What job is that you are referring to? Pardon me. I thought you said Collins Avenue job.

Q.—The Collins Avenue job, Section 2. A.—The 150th Avenue.

10 Q.—150th Avenue job, second section. A.—150th Avenue, you are right, that is correct. But you spoke of Collins Avenue.

Q.—I made a mistake. If I spoke of Collins Avenue, I meant 150th Avenue, second section. And you did not pay Seeley, and you had not paid Seeley the \$1,000 — you never paid Seeley \$1,000? A.—I never agreed to pay him.

Q.—You never agreed to pay him and you never did pay him? A.—No.

20 Q.—So that the bribing of Seeley had nothing whatever to do with your getting the contract? A.—There was no bribing.

Q.—You suggested bribing of Seeley? A.—There was no suggestion that Seeley could aid me in the work, in getting the contract.

Q.—Well, why were you going to pay Seeley the \$1,000? A.—I did not pay him \$1,000.

Q.—You did not pay him the \$1,000, and you got the contract. A.—There was nothing about paying him \$1,000. to get a contract or not get a contract.

Q.—But you did not pay him \$1,000? A.—No.

30 Q.—And you did get the contract? A.—I did.

Q.—Well, why do you drag Phillips into this matter here, then, in this way? A.—I am not dragging him.

Q.—What is your object, why do you drag Phillips and the unfortunate Mr. Seeley in? You say that Phillips told him to pay him \$1,000, and that Seeley suggested that you should pay him \$1,000, and you didn't pay him the \$1,000 and you got the contract. What are we to understand by that? Why did you say that? A.—I was asked that question. I was asked about the conversation. I recall it very clearly.

40 Q.—I see. Now, I want to question you regarding the contract between Hammen & Company, Inc., and Mr. Phillips for pipe, which was signed on the 17th of February, 1925. I understood from you that Hammen & Company, Inc., were doing business only in Michigan. A.—They were not admitted to do business, to my knowledge, outside of the State of Michigan.



*Paul W. Paulsen for plaintiff recalled (cross-examination).*

Q.—Is it not a fact that the contract for the purchase of pipe from Phillips was a contract with Hammen & Company, Inc.? A.—That's right.

10 Q.—And I understood you to say that notwithstanding the terms of this contract providing that payment should be made at certain specific times and in certain specific manner, and notwithstanding the very large amount that was involved in connection with the purchase of this pipe, that at the time, at the moment this written contract was executed, you had a verbal agreement with Phillips that the terms of this contract were not to be observed. Is that correct? A.—At the time that that contract was drawn up, before it was signed, we objected to the terms of the payment in that contract, and we told him, amongst other things, other reasons on that, that assuming an investigation was started and we were playing around with a lot of pipe on hand at an exorbitant price, we would be carrying 20 the load entirely. There had just been an investigation in 1922, the Meyer Investigation. I was not here then, but we heard about it.

Another thing, this pipe was subject to rejection.

MR. COOK: Go on quickly; we have to get through this.

MR. GOUDRAULT: Take your time, Mr. Witness.

30 Q.—Did you make a verbal agreement with Phillips on the 16th or 17th of February, 1925, modifying the terms of this written contract? Yes or no? A.—He agreed to accept payment from us. Not to regard this contract, he says. This was a standard form he used, and that he would accept payment from us as we received it from the City. Which he later on reneged on.

Q.—He reneged on his contract? A.—That was not a contract; that was merely an agreement.

Q.—And do you expect anybody to believe that statement, Mr. Paulsen? A.—I know. It wouldn't be the first time he done that.

40 Q.—Do you expect the Court to believe that?

MR. COOK: I see. Your witness, Mr. Goudrault. One moment.

BY MR. COOK:

Q.—And you took the pipe and Phillips said that if you

*Paul W. Paulsen for plaintiff recalled (redirect examination).*

did not pay for it according to the terms of this agreement, C-38, he would take it off the work? A.—Yes.

Q.—Is that right? He did? A.—He did at a later date, when we got a job on 150th Street.

Q.—And he said, furthermore, “If I do take it off the work, it will cost you \$100. a foot to get it back?” A.—That is what he told me.

10 Q.—That is what he told you? A.—Yes, that is right.

Q.—And he did take it off? A.—Yes, he rolled part of it off.

Q.—And he gave it back to you? A.—No, he merely took it, he rolled the pipe probably 50 feet away from the place the pipe was the first time.

Q.—And you got the pipe? A.—Yes.

Q.—And you got the pipe and put it in and did not pay \$100. a foot? A.—No.

20 Q.—You paid your contract price, whatever it was? A.—Yes.

Q.—What was the object of bringing that in? A.—That was the conversation there was at that time.

Q.—I see. And Mr. Phillips is dead? A.—Yes.

Q.—He can not contradict you, can he? Now, when you paid Phillips this \$67,340., how much more money did you pay him for pipe after that date? A.—We paid him a gross of about \$128,000.

30 Q.—\$128,000? A.—I don't recall the exact amount.

Q.—(Continuing) Under this agreement, C-38? A.—Yes.

MR. COOK: That is all.

REDIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—When you say \$128,000 gross payment to Phillips for pipe, for that particular job, you include in that this check or this amount of \$67,340, don't you? A.—That was the total money, about \$128,000. I don't recall the odd dollars that were paid for pipe for that contract.

40 Q.—I see. Now, will you look at two checks from the Hammen Construction Company, one dated Michigan, the 15th of December, 1925, for \$15,000, and one January 7th, 1926, for \$5,000, both of them payable to Phillips, and state if you know, what those checks were for? A.—That was on account of pipe for that job.

*Paul W. Paulsen for plaintiff recalled (redirect examination).*

Q.—For what job, Mr. Paulsen? A.—That 150th Avenue job.

MR. GOUDRAULT: I offer as evidence these two checks to be marked Plaintiff's Exhibit C-70 and Plaintiff's Exhibit C-71.

10 Q.—Do you recognize the signature of Mr. George Polchow? A.—Yes; he was the bookkeeper.

(The said checks were thereupon received in evidence and marked Plaintiff's Exhibit C-70 check for \$15,000; and Plaintiff's Exhibit C-71 check for \$5,000).

Q.—Much was said about those various companies, those three companies, Mr. Paulsen. I understand that you severed your connection with the first two companies, which were Hammen Construction Company and Hammen & Company, Inc., didn't you, at one time? A.—Yes.

20 Q.—And you also stated that the Hammen & Company, Inc., was not allowed to do business outside the State of Michigan? A.—To the best of my knowledge they were not admitted to do business in any state outside of Michigan.

Q.—I see. You mean what kind of business? A.—Well, contracting business.

30 Q.—Contracting business. Could it make payments for pipes or contract for pipes, outside the State of Michigan? A. That is done quite often. In the State of Michigan, there are no pipe manufacturers located there. You would almost have to do business with people outside the State. But to enter into a contract outside the State, you must file regular papers with the State Department, to do business there.

MR. COOK: I object to that.

MR. HACKETT: So do I.

40 Q.—Now, I understand that you stated that these companies had contracts still in existence, going on, uncompleted? A.—Who has?

Q.—I speak of the Hammen Construction Company, and Hammen & Company, Inc.? A.—I don't know. Hammen & Company, Inc., to the best of my knowledge, is in the hands of receivers. The Hammen Construction Company, if they are doing business, I don't know. I heard that they had a little work last year in Michigan, but that is hearsay.

*Paul W. Paulsen for plaintiff recalled (re-cross-examination).*

Q.—Now, as regards Paulsen Construction Company, I understand you told us that the indebtedness of that company was in the neighborhood of \$77,000, and you also stated that to the best of your recollection, the company had paid a certain portion of those debts. A.—The receivers.

10 Q.—The receiver has paid how much, do you know, out of the \$77,000? A.—I understand they paid approximately \$55,000.

Q.—And did I understand you to say that the same Paulsen Construction Company had a claim filed with the Comptroller of the City of New York for \$230,000? A.—Yes.

Q.—Now, you also stated that our friend Phillips rolled the pipe from the place where the work was to be done, about 50 feet. Did that have anything to do with the work, with delaying the work, to a certain extent? A.—Not to speak of.

20 Q.—I understand that the 150th Avenue job was done 12 days less than the time awarded for it, according to the papers that were filed? A.—Yes.

Q.—Now, it was a wet job, also; you have testified to that? A.—Yes, it was from 15 to 18 feet below tide level.

Q.—Did that mean quite a lot of pumping work? A.—Yes, there was a lot of pumping.

MR. HACKETT: He has testified to that.

MR. GOUDRAULT: Yes.

30 MR. HACKETT: Mr. Commissioner, I would like to re-cross-examine on the redirect.

THE COMMISSIONER: You may proceed, Mr. Hackett.

RE-CROSS EXAMINATION BY MR. HACKETT:

Q.—Mr. Paulsen, how do you explain that the Hammen Construction Company paid for the pipe which was purchased by Hammen & Company, Inc.? A.—Well, they did at that time.

40 Q.—What is the explanation? You produced a contract, C-38, between Lockjoint Pipe and Hammen & Company, Inc. A.—They were affiliated companies.

Q.—And you have now produced two checks, Exhibit C-70 and C-71, of the Hammen Construction Company, in payment of the obligation of Hammen & Company, Inc. What is the explanation? A.—They were affiliated companies.

*Paul W. Paulsen for plaintiff recalled (re-cross-examination).*

Q.—That is a sufficient explanation from your point of view? A.—That was my instruction. Those payments were made by instructions from the Detroit office.

Q.—You shield yourself behind the Detroit office quite frequently? A.—I was not president of the corporation. I had not a controlling interest in it.

10 Q.—But you can give no satisfactory answer? A.—No.

Q.—For the fact that sometimes pipe were paid for by a company who bought it, and sometimes by a company that had no interest in it? A.—Well, the company who was doing the work in this instance, the Hammen Construction Company, had the instruction.

Q.—Who was the Receiver for the Paulsen Construction Company? A.—The Irving Trust Company.

Q.—Where is its office? A.—Irving Trust Company, in New York City.

20 Q.—What is its address? A.—They are in the Woolworth Building. Their office is in the Woolworth Building.

Q.—Now, this claim that you have testified that you have against the City of New York, is for what amount of money? A.—Approximately \$230,000.

Q.—What is the origin of that claim? A.—The origin?

Q.—Yes. A.—From a contract constructed for the Board of Water Supply, New York City, by Paulsen Construction Company.

30 Q.—That had nothing to do with work done in the Borough of Queens? A.—No.

Q.—Now, you appear to have litigation with most of the people that you do contracts for; Jersey City and the City of New York? A.—Well, Jersey City and the City of New York we had litigation.

Q.—In only two? A.—On two instances. That's the only two places.

MR. HACKETT: That is all. Thank you.

40 MR. GOUDRAULT: That is all. Thank you, Mr. Paulsen.

*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 haing been previously duly sworn, deposeseth and saith as follows:

10

DIRECT EXAMINATION BY MR. GOUDRAULT  
(CONTINUED):

Q.—Mr. Tully, there has been produced in this case by you, a contract of the Linden Street sewer, also a final — not a final, but a 85 per cent. certificate. The same has been produced as Plaintiff's Exhibit C-67. This was produced by you?  
A.—Yes, sir, this was produced by me.

20 Q.—Now, will you look at the file of papers attached to the pink sheet which has been produced as C-67, and kindly produce the remaining letters which do refer to the same contract.

MR. HACKETT: They are all in.

MR. GOUDRAULT: Yes; but I just produce this as my description of the pink sheet.

MR. HACKETT: It has been produced.

30 MR. GOUDRAULT: The attorneys for the defendant have no objection that the whole file as it is now be filed as Exhibit C-67.

BY MR. HACKETT:

40 Q.—Mr. Tully, Mr. Paulsen has told us that he filed with the Borough of Queens, a financial statement before he was awarded the contract for Section 2 of 150th Avenue. Will you telephone to the Borough and have whoever is in charge of this document, make it available to you so you can bring it tomorrow morning? A.—Mr. Reilly is connected with the Borough President's office, Mr. Hackett; I am not. So if the financial statement was filed in the Borough President's office in Queens, Mr. Reilly is the man who can produce it.

Q.—And Mr. Reilly is in the ante-chamber? A.—He is outside.

Q.—Would you be good enough to pass on the request to him, Mr. Tully? A.—I will ask him yes.

*William F. Mathews for plaintiff (direct examination).*

BY MR. GOUDRAULT:

Q.—Will you now look at the City of New York, Department of Finance, Comptroller's office, check dated October 11, 1920, payable to the O'Rourke Engineering Construction Company, \$13,790.40, and which check I wish to offer as evidence, as Plaintiff's Exhibit C-72. A.—This is a warrant No. 118,285; 10 1920, that is the year, in payment of \$13,790.40.

Q.—To whom? A.—It is payable to the O'Rourke Engineering Construction Company, and it is payable on account of contract No. 52633.

MR. GOUDRAULT: I offer that check as evidence, as Plaintiff's Exhibit C-72.

(The said check was thereupon received in evidence and marked Plaintiff's Exhibit C-72, of this date.)

20 Q.—Therefore it would be on account of contract of the Linden Street sewer?

MR. O'DONNELL: We object to that as irrelevant; verbal evidence in connection with that is irrelevant.

A.—Linden Street sewer, etc.

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30 DEPOSITION OF WILLIAM F. MATHEWS.

WILLIAM F. MATHEWS, age 50; residence 284 — 14th Avenue, Long Island City, Queens County; occupation, physician, 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 BY MR. GOUDRAULT:

40 Q.—What is your business, Mr. Mathews? A.—I am a physician.

Q.—Are you a practicing physician now? A.—Yes, sir.

Q.—Do you know Maurice E. Connolly? A.—Yes.

Q.—How long have you known him? A.—20 years.

Q.—Do you know Mr. Seeley? A.—Yes.

Q.—Who was he? A.—An engineer in Queens Borough Hall.

*William F. Mathews for plaintiff (direct examination).*

Q.—Did you know John M. Phillips in his lifetime? A.—Yes.

Q.—How long did you know John M. Phillips? A.—Beginning in 1916.

Q.—Do you recollect your first acquaintance with John M. Phillips?

10 MR. O'DONNELL: Objected to as irrelevant.

A.—Yes.

Q.—Will you tell us? A.—I came in contact with him in a political campaign in which Connolly was a candidate.

Q.—After that campaign, did you see any more of Phillips? A.—Quite a lot of him.

Q.—Did you ever become associated with him? What was your relationship with Phillips after the campaign? A.—He was a political friend, and he was a sick man, and I had to do  
20 medical things for him, and I became associated with him in investigating his proposition that he had.

MR. HACKETT: You attended him as a physician?

THE WITNESS: Yes, that was my first contact.

Q.—Did you have any business relations, formal or informal, with him, after that political campaign? A.—Yes. For about two years later.

Q.—Did you see him more frequently after that political  
30 campaign? A.—Yes, I saw quite a lot of him.

Q.—In what connection, or for what purpose? A.—Political.

Q.—But after that, did you go on seeing him? A.—Well, for two or three years. I saw a good deal of him.

Q.—I see. What was exactly your occupation at the time that you seen Phillips? A.—I was interested in the building business at the time.

Q.—What sort of building business? A.—Houses.

Q.—Was Phillips in any way a builder of houses? A.—  
40 No.

Q.—What was his business? A.—He had no business, except this sewer business.

Q.—What part of the sewer business did Phillips have? A.—Selling pipe.

Q.—He was not a contractor of sewers, was he? A.—No.



*William F. Mathews for plaintiff (direct examination).*

Q.—Did you know any other contractors but Phillips?

A.—A few that I met through him in those two or three years.

Q.—Did you ever see Phillips in connection with contracts?

MR. HACKETT: I object to that as being pretty general. Can't we get down to brass tacks?

10 MR. GOUDRAULT: Yes, we are getting down to that.

THE WITNESS: I was with Phillips at times when he spoke to contractors, if that is what you mean.

Q.—I see. You said a minute ago that you saw a lot of him? A.—Yes.

Q.—What do you mean exactly by that, Doctor? A.—Well, I would see him two or three times a week. Sometimes spent a whole day or half a day with him.

20 Q.—Where would you meet him mostly? A.—Borough Hall, Borough of Queens.

Q.—What department? A.—The whole Borough Hall. He was all over the place. You would find him in one place or another place. I would meet him at his headquarters.

MR. HACKETT: That was where contractors resorted to frequently?

THE WITNESS: That is where they would come to if they had any business there.

30 MR. HACKETT: It was a good place to meet him.

Q.—Did you discontinue at any time your relations with Phillips? A.—At the end of three years.

Q.—What year would that be? A.—About 1920; 1919 or 1920; somewhere around that time.

Q.—And then you ceased seeing Phillips then? A.—Yes.

Q.—Did you see any more of Phillips later on? A.—Rarely. I might have seen him just for a fleeting moment, that is all. I never had any contact with him after that.

40 Q.—You mean after 1920? A.—It may have been 1921. It was for a few years and then I dropped away from Phillips.

Q.—How many years were you with Phillips? A.—I imagine about three years.

Q.—You told us a minute ago that you had met him first in what year? A.—1916.

Q.—So you would have left him in 1919? A.—Well, 1917, 1918, 1919. It might have been 1920, I don't know.

*William F. Mathews for plaintiff (direct examination).*

Q.—During that period of time what were you doing when you were with Phillips? A.—I was around with him in a political way. We had political contacts all the time; and he had his business with which I had no interest, in his business.

Q.—Were you being paid for that? A.—No.

Q.—Did there come a time when you were paid? A.—No.

10 A.—You never received any compensation from Phillips?  
A.—In one year, yes, sir, I did receive — I supervised some of this construction work, building the pipe.

Q.—How much were you receiving then? A.—I had \$500 a month.

Q.—How long did that continue? A.—Four or five months; six months maybe.

Q.—Do you recollect the year? A.—I don't know. It was in that period. That was the first time he tried to build pipe.

20 Q.—Do you know of this contract with the Lock Joint Pipe Company? A.—I know something of it.

Q.—Do you know how many contracts he had with that company? A.—No, I don't know how many he had.

Q.—But there was a time when it came that his agreement with that company was that he would manufacture and sell the pipe? A.—Yes.

30 Q.—Well, now, was it during that time that he was manufacturing pipe that you became the superintendent of his pipe manufacturing plant? A.—When he got the privilege of building them, the first time he built for himself. That is the first time I received some money from him.

Q.—I see. So if you cannot recollect the year, if we show you there a contract or agreement stating that it was in such a year that he was building himself the Lock Joint Pipe, then that would be the year that you received compensation from Phillips? A.—That is right.

Q.—Well, now, you said that in previous years to that you saw quite a lot of him? A.—Yes, I saw quite a lot of him.

Q.—Did you invest any money in his enterprise? A.—No.

40 Q.—When you say “a lot of him”, could you state more definitely?

MR. HACKETT: He said two or three times a week.

A.—We were political friends, and I was around with him more or less all the time. There is no record of it; here and there and everywhere.

*William F. Mathews for plaintiff (direct examination).*

Q.—Did you have any business of your own during those years? A.—Yes, the building business.

Q.—The building business?

MR. HACKETT: Yes, building houses. He has told us that. Building houses, and Phillips was not building houses.

10 Q.—Did you at any time during those years, Doctor, study the sewer construction in the Borough of Queens? A.—That is one of the reasons I was around for those three or four years. I was observing what he had, sewer building and the possibilities of it as a business proposition.

Q.—How long did you study that sewer work in the Borough of Queens? A.—That took those three years or so, or whatever it was. I saw all the details. I had a proposition from him, and I turned it down.

20 Q.—Now, let us limit ourselves to the period before you were receiving from him a compensation of \$500 per month. The period previous to that, will you just describe in a little more detail what you were doing with Phillips at the time you have told us? A.—I told you, I was around with the man more or less, and saw what dealings he was going through, and whom he was meeting, and so on.

Q.—Did you have occasion to meet some of the people he was meeting? A.—Yes. When he met them he was using my car to go around with. Naturally I met these people.

Q.—He was using your car? A.—Yes.

30 Q.—Did he have any office at the time? A.—He had no office.

Q.—Did he have any books at the time? A.—He never kept any books.

Q.—Any record of his contracts for pipes? A.—He had everything in his head that he carried on.

Q.—Phillips was a very busy man during those years, 1917, 1918, 1919 and 1920? A.—He had a few contracts in those years; one or two, I think, maybe three.

40 Q.—Did he have a lot of people to see? A.—Well, if anybody had any business in Borough Hall, they had to go to see him. He was a political power, and they had to see him.

Q.—Do you know where was his desk and his telephone? H.—He had none.

Q.—Where did he spend his time, to your knowledge, since you were with him during those years practically all the time?

*William F. Mathews for plaintiff (direct examination).*

MR. HACKETT: He has not said that. He said that he met the gentleman two or three times a week.

MR. GOUDRAULT: Question withdrawn.

Q.—Is it possible that you met Mr. Phillips more than three times a week?

10 MR. HACKETT: He said that. He said that there might have been weeks in which he would not see him.

THE WITNESS: Some days I would not meet him, and then I would meet him for a week or ten days in succession. Sometimes he would not be around at all.

Q.—Then you could not see him at all. But here is a man that drove your automobile —

20 MR. HACKETT: He did not say that.

Q.—Used your automobile. A.—He had to go around to see somebody, and asked me if I would take him, and I said I would.

Q.—How often would you be in Borough Hall those days?  
A.—I?

Q.—Yes. A.—Oh, I had occasion to go down there quite frequently. In the building business you have to go down there all the time practically. We built 1400 houses in Queens County, and that is the contracts I took care of.

30 MR. HACKETT: You were naturally interested in getting sewers?

THE WITNESS: Yes.

MR. HACKETT: And sewer connections?

THE WITNESS: I helped to get some of them. I showed him where they needed them. In one place we waited 10 years to get a sewer, and it took six to eight years to even get it through  
40 Borough Hall.

Q.—But your family and yourself did not construct any sewers in the Borough of Queens? A.—No.

Q.—Were you ever with Phillips in the Borough Hall section of Queens? A.—Yes, sure, lots of time. That was a meeting place.

*William F. Mathews for plaintiff (direct examination).*

Q.—Yes. But I am speaking more particularly with Phillips. A.—Yes, I was there quite frequently with him.

Q.—Did you ever see him in the Sewer Department in that Borough? A.—Yes, lots of times.

MR. HACKETT: And in other departments as well.

10 THE WITNESS: Yes.

Q.—You told us that you knew Mr. Seely. Did you ever see him in Mr. Seely's office? A.—I have seen him, not in Seely's office; Seely really did not have an office.

Q.—But did you see him speak to Seely? A.—Lots of times.

Q.—Lots of times? A.—Surely.

20 Q.—Here is the man that had no office, no telephone, and when somebody wanted to find him where could you locate John M. Phillips? A.—Around Borough Hall. Tried to find him there. That is the place he came to. He was at that time simply a pipe salesman. That is where he found his customers.

Q.—At a certain time you undertook some duties for which you received a compensation? A.—That was later. That was when he was experimenting in building the pipe himself.

Q.—You are positive it was that year? A.—I am not positive of any year. I know it is in a series of years right after 1916.

30 Q.—Yes, but you came in here and told us a minute ago that your very work was to superintend the building of sewer pipe, precast pipe, —

MR. HACKETT: Mr. Commissioner, I am going to ask for a ruling. This witness is not unwilling, and he has been asked the same question without exaggeration at least three or four times. And we are not making the progress that we hoped to make.

40 THE COMMISSIONER: Will you proceed, Mr. Goudrault?

MR. GOUDRAULT: With the greatest pleasure.

Q.—And when he undertook to build pipe, what did you do?

MR. HACKETT: He has told us.

*William F. Mathews for plaintiff (direct examination).*

A.—I helped him to build the pipe because I had some experience in construction work and he did not have any.

Q.—And did you then receive your compensation? A.—That was when I received my compensation.

Q.—All right. Do you know Andrew Zorn? A.—He is a man that was with Phillips.

10 Q.—How long have you known Andrew Zorn? A.—Thirty years.

Q.—Was he connected with Phillips in any way during these years that you were associated with Phillips? A.—No, not then. He was an ex-politician that was not in power or not connected with those in power.

Q.—Now, we pretty well know what you did with Phillips. But isn't there anything else that you would think of, Doctor? A.—There is nothing that was unusual.

20 Q.—No, no. There isn't, — A.—That's all right. I am perfectly willing to tell you anything I know.

Q.—That is nothing against you, Doctor. A.—I know that. I am not worried about that, either.

Q.—Did you ever handle money for Phillips? A.—Quite frequently. As much as \$20,000 he entrusted me with.

Q.—Where did you get the money? A.—He gave it to me.

Q.—What did you do with it? A.—Gave it back to him.

Q.—Yes, that is the bad part of it. But I mean, sometimes did you get money belonging to Phillips, from somebody else? A.—Yes. I will tell you about that.

30 Q.—But wasn't there any other money that you were getting? A.—No.

Q.—You did not go around to contractors and collect money? A.—No.

Q.—You don't remember, — you remember testifying as to the facts? A.—I think that is what I have testified to before. It may have been a little different, I don't know.

40 Q.—But your memory is good on that particular point? A.—At this point I don't think that I collected any money for him in his pipe business with the contractors. They would not give me the money.

Q.—Were you with him at various times when Phillips would give his prices to contractors?

MR. O'DONNELL: Objected to, for reasons already stated, with regard to the deceased.

MR. HACKETT: I object also.

*William F. Mathews for plaintiff (direct examination).*

THE COMMISSIONER: I will allow the answer, subject to counsel's objections.

A.—Yes, I heard him give prices to people.

Q.—You heard him make them quotations?

MR. HACKETT: "I heard him", that was the answer.

10 Q.—And do you know of your own knowledge whether he made uniform quotations to all contractors? A.—I don't know. I couldn't say whether they were uniform or not. I did not see every contractor that he met.

Q.—But my question is quite clear, isn't it, Doctor? A. No.

Q.—Well, I will make it clearer. Did you know of your own knowledge whether he made uniform quotations to all contractors for the same job? A.—I don't think he made all the same quotations.

2) Q.—And did you know that of your own knowledge? A. Well, I must have known it of my own knowledge, if I tell you these things.

Q.—There was introduced in evidence this morning, —

MR. HACKETT: Two checks, October 15th and December 8th.

30 Q. (continuing)—Of the contract for the Linden Street sewer, bearing No. 52633, awarded to the O'Rourke Engineering Construction Company. Do you know of that contract? A. Yes, sir.

Q.—Did you ever meet Mr. O'Rourke, the head of that company? A.—Yes.

Q.—Do you remember on what occasion you first met Mr. O'Rourke? A.—No, I wouldn't remember the first occasion. I met him three or four times; probably half a dozen times while that contract was pending or about to be pending.

Q.—Do you recollect that it was in reference to that contract?

40 MR. HACKETT: Are you interested in anything more than those two checks?

MR. GOUDRAULT: Yes.

MR. HACKETT: Get on to it, then.

MR. GOUDRAULT: I think I am getting on to it.

*William F. Mathews for plaintiff (direct examination).*

MR. HACKETT: I don't.

MR. GOUDRAULT: I am doing my utmost to get the evidence of the facts. These interruptions do prolong it.

THE COMMISSIONER: Proceed, please.

BY MR. GOUDRAULT:

10

Q.—How is it that you came to know Mr. O'Rourke? A. I met him through Phillips.

MR. O'DONNELL: Objected to as entirely irrelevant.

Q.—You saw him once or many times? A.—Oh, I would say a half a dozen times.

Q.—Do you remember when you saw him the first time? A.—I couldn't say when or where. I don't recollect. I know that I did meet him. I met him several times.

20

Q.—I see. Those meetings took place in respect to what, in reference to what? A.—In regard to that Linden Street sewer.

Q.—And did you know any particulars about the sewer? A.—Yes, I know some of the particulars about the sewer.

Q.—Did you know that there was one part open cut, and the other part tunnel work? A.—Yes, there were two kinds of sewer; one was tunnel and the other was open cut.

30 Q.—Do you recollect ever meeting Mr. Phillips and Mr. O'Rourke in the latter's office? A.—Yes, I was down there one day.

Q.—Where was that? A.—In the Whitehall Building.

Q.—Do you recollect any conversation there with Mr. Phillips? A.—No.

Q.—Are you sure of that? A.—Well, I can't recollect just now. That was 13 years ago.

Q.—Do you know of any arrangements between Phillips and Mr. O'Rourke? A.—Yes, I know of an arrangement.

40 MR. O'DONNELL: That is objected to as irrelevant and hearsay.

Q.—What was the arrangement? A.—To pay Phillips \$50,000 to get in those blocks of his, introduce them into the sewer.

MR. HACKETT: I object to any evidence as to conversation with Mr. Phillips.



*William F. Mathews for plaintiff (direct examination).*

Q.—Was that made in your presence, the arrangement?

A.—Yes.

MR. COOK: Same objection.

THE COMMISSIONER: The answer will be taken subject to counsel's objections. Will you proceed, please, Mr. Goudrault?  
10

MR. GOUDRAULT: Yes.

Q.—Could you tell us what happened next after that meeting: not telling any conversation, but just what took place after Phillips and O'Rourke and yourself did meet there? A.—That O'Rourke bid on this contract and won it.

Q.—Do you know of a first and second letting in regard to that? A.—Yes, there was one bidding without letting.

Q.—And then? A.—And then that was thrown out, not  
20 accepted by the City or by the authorities. And then it was relet, and on the second letting the blocks were allowed in the contract as an alternative to some other form of them. And the second letting O'Rourke won the contract, and it was awarded to him.

MR. COOK: And they put in his blocks.

THE WITNESS: Yes.

Q.—Now, you spoke a minute ago of being with Mr.  
30 O'Rourke and Phillips at Phillips' office? A.—No. Not Phillips' office.

Q.—I mean to say at Mr. O'Rourke's office? A.—Yes. I was down there one day in O'Rourke's office in the Whitehall Building.

Q.—I see. Did you meet these two gentlemen in connection with the Linden Street contract or any other matter after that? A.—Yes, I met him in the house of Mr. Phillips' wife.

Q.—Do you remember the address? A.—It was on 13th  
40 Street. I don't know what the number was. It was between 5th and 6th Avenue.

Q.—Will you tell us then, without telling the conversation, what arrangement was made then? A.—That was the arrangement, that he was to pay \$50,000.

Q.—Made in your presence? A.—Yes.

MR. O'DONNELL: Same objection.

*William F. Mathews for plaintiff (direct examination).*

Q.—Was the arrangement discussed there? A.—Yes.

Q.—What was the arrangement?

MR. HACKETT: I object to any verbal evidence —

THE COMMISSIONER: I will allow the witness to answer, subject to counsel's objection.

10 Q.—Do not state any conversation, just state the facts.  
A.—Give me the question again, please?

(Question read by clerk.)

THE WITNESS (answering): That \$50,000 was to be paid when his block had been used and paid for by the City, at the rate of \$25 a foot of completed sewer in which the block was used.

20 Q.—Do you know of an 85 percent. certificate being issued by the City of New York? A.—I know there are such things. I don't know that particular one.

Q.—You don't? A.—I know it was issued, — whether it is issued —

Q.—Will you then look at this certificate which has been filed as Plaintiff's Exhibit C-67?

(Witness examines exhibit referred to.)

A.—That is an 85 percent. certificate; an ordinary certificate.

30 Q.—Will you now look at check or voucher from the City of New York to O'Rourke Engineering Construction Company?

MR. HACKETT: Called a warrant.

Q.—A warrant. (continuing) which has been filed as Plaintiff's Exhibit C-72. A.—I have never seen that in my life.

Q.—No. For \$13,790.40, you have not seen this check before? A.—No.

Q.—Will you recollect the date there for a moment? A. October 1920.

40 Q.—October, 11, 1920. A.—Yes, October 1920.

Q.—Will you now look at Plaintiff's Exhibit C-68, which appears to be a stub dated October 15, 1920, for \$3,500 payable to the order of William F. Mathews. That has been filed as Plaintiff's C-68. Do you know anything about this check? A. I saw that check that was issued probably out of that book.

Q.—Issued to your order? A.—Yes.

*William F. Mathews for plaintiff (direct examination).*

Q.—What did you do with the check? A.—Cashed it.

Q.—What did you do with the money? A.—Gave it to Phillips. Paid some of his bills for him.

Q.—Will you now look at Exhibit C-69? A.—That is another one, for \$5,000.

MR. HACKETT: He endorsed it to Phillips and Phillips' name is on the back.

THE WITNESS: Yes. And that was put in Phillips' account. The other one, I cashed it, and I gave Phillips \$1,000 and paid some of his bills, and used it up that way.

Q.—Do you know whether you paid anything to Zorn? A.—No, Zorn did not get anything out of it. Buckner got all those things. I don't know what they are. There was a record of it, and there is a book that will show just where the money went.

Q.—At the time that the arrangements were made that Phillips should receive \$25 per lineal foot, did you take time to verify whether or not the payment of \$3500, which is the first payment, represented the exact payment on that basis of \$25 a foot? A.—No, I think not.

Q.—You did not make the calculation? A.—No, I did not make the calculation. I was not interested, because the money was not intended for me.

Q.—And you did not do the calculation for the \$5,000 either? A.—No.

Q.—Whether it covered the right amount or not? A.—No.

Q.—Did you keep a memorandum of moneys you were receiving for Phillips? A.—Whatever money I had for Phillips I put down in a note book so that I would know what I owed him and put in what I paid for him.

Q.—You don't know where those two checks are now, for \$3500 and \$5000? A.—No, I have no idea.

MR. HACKETT: You know where they are. They are in the hands of the agent of the Department of Justice, or the Attorney General, or somebody. We were told that 17 times by a man by the name of O'Rourke this morning.

THE WITNESS: I don't know.

Q.—You knew Andrew Zorn, you said? A.—Yes, I know him for many years.

*William F. Mathews for plaintiff (direct examination).*

Q.—All right. Try to recollect. You have already given evidence in this matter. A.—I know.

Q.—And there were two checks. The first one you said you paid Phillips' bills, with part? A.—Yes.

Q.—Now, recollect the second check.

MR. HACKETT: He gave it to Phillips, and it bears  
10 his endorsement.

MR. GOUDRAULT: Who is giving the evidence, Mr. Hackett or the witness?

THE WITNESS: Zorn took it down to the bank.

Q.—Zorn took it to the bank. There is nothing unusual in that, but I want to get the facts. It may become important later.

You mean that it was deposited in the bank through Zorn?  
20 A.—It was deposited in Phillips' account.

Q.—Who was Zorn in regard to Phillips? A.—He was a local politician.

Q.—As regards Phillips? A.—He was an old friend. He knew Phillips longer than I did. He was the man that introduced me to Phillips.

Q.—Do you know about this open cut section of the Linden Street sewer being transferred to Creem? A.—Creem took part of it.

Q.—Sure, I know that. Now, did you ever meet Creem?  
30 A.—Yes, I met Mr. Creem.

Q.—Where? A.—Probably in the drug store.

MR. HACKETT: You met him in the Borough Hall?

THE WITNESS: In the Borough Hall.

Q.—I think you met him out of New York once? A.—I met him in Jersey.

MR. COOK: You might have met him here.  
40

THE WITNESS: I saw him here. I spoke to him.

Q.—Did you meet him in Ampere, New Jersey? A.—Yes. I was over in the Ampere office.

Q.—What is the Ampere office? A.—Ampere is the home office of this Lock Joint Pipe Company.

*William F. Mathews for plaintiff (cross-examination).*

Q.—Who was there at the time? A.—Creem, his lawyer, Phillips, myself and Mr. Hirsch. He signed the contract and Phillips assigned the contract to the Lock Joint Pipe Company in that office.

Q.—Do you recollect what the original contract for the pipe called for?

10 MR. O'DONNELL: Objected to as irrelevant and not being the best evidence.

A.—I think \$40 was the price in that contract, per foot.

Q.—Do you know of your own knowledge anything about the payment of any money by Creem to Phillips? A.—He paid him \$25,000 on account in the office there, I think, or he gave him a check for that amount.

20 Q.—You were there? A.—I was in the office. I didn't handle the check, or anything like that, but I know he paid him \$25,000.

MR. GOUDRAULT: That is all as far as I am concerned.

MR. COOK: Now, Mr. Hackett, go ahead.

CROSS EXAMINATION BY MR. HACKETT:

Q.—Creem was a contractor using Lock Joint Pipe? A. Right.

30 Q.—Which he bought from Phillips? A.—Right.

Q.—And he paid for it? A.—Right.

Q.—Nothing unusual about that? A.—No.

Q.—You knew Phillips pretty well? A.—Yes.

Q.—You knew that he played the ponies? A.—Yes.

Q.—You knew that he gambled heavily? A.—Yes

Q.—Won huge sums of money? A.—Yes.

Q.—And you know that he was a lavish sort of a fellow, and gave money away to people he liked? A.—Yes, that is right.

40 Q.—At the time that you referred to, this Borough of Queens was growing very, very rapidly? A.—Enormously, yes.

Q.—And you said that you and your family built as many as 1400 houses? A.—Right.

Q.—And it was necessary to have sewer connections along streets before houses could be built? A.—That's the idea.

Q.—And Phillips was a manufacturer or a salesman and later a manufacturer of sewer pipes? A.—That is right.

*William F. Mathews for plaintiff (cross-examination).*

Q.—And that brought you together? A.—In that way, yes.

Q.—And moreover, you were his physician? A.—That was the beginning.

Q.—And he required frequently or from time to time the assistance of a physician? A.—Practically all the time.

10 Q.—Practically all the time, and you ministered to him? A.—Yes, and I took him to hospitals and got other physicians to take care of him.

Q.—And during the time of this growth in Queens, — and somebody has told us that the population went from 100,000 to over a million in a few year, — the Borough Hall was a regular Mecca for contractors? A.—It was the only meeting place in that neighborhood.

20 Q.—Yes. And it was the most natural place in the world for a vendor of sewer pipes to go? A.—Correct.

Q.—All his customers came there and came there frequently. A.—That is right.

Q.—Doctor, we have been told that there were investigations and you have told us that Mr. Phillips was interested in politics. It is to your knowledge that there were political feuds? A.—All the time. They never ceased.

Q.—They never ceased. And when the Phillips' group was in, there were many other groups trying to get them out. A.—That is right.

30 Q.—And investigations and other methods of attack were both usual and continuous? A.—That is right.

Q.—It has been intimated here that Phillips was a bit of a bluffer? A.—A good deal.

Q.—A good deal. And O'Rourke, who was here this morning, said he did not know whether Phillips had ever done anything to help him or not. A.—It is possible.

Q.—But he was clever enough to get something from O'Rourke, on the — A.—On the strenght of his possible power.

40 MR. HACKETT: On the strenght of his saying so.

MR. COOK: He was a regular politician, wasn't he?

THE WITNESS: Absolutely.

*William F. Mathews for plaintiff (redirect examination).*

REDIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—Was he a very influential man in Queens Borough?

A.—For a long time he was not.

Q.—I am speaking during the years that you knew him?

A.—That is just when he began to become influential.

10 Q.—Very much so? A.—Well, he began to make money and he was able to spend it, and that brought power.

MR. COOK: He was apparently a man of considerable means at this time?

THE WITNESS: Yes, sir.

MR. HACKETT: And a great deal of agility?

THE WITNESS: He was a very clever man.

20 MR. HACKETT: And he succeeded in making people believe him?

THE WITNESS: He made people believe that he could get things done.

MR. HACKETT: Whether they were accomplished or not.

THE WITNESS: Whether they were accomplished or not.

BY MR. GOUDRAULT:

30 Q.—Mr. Hackett has spoken to you about investigations in Queens. Do you recollect, Doctor, the Meyer Investigating Committee? A.—Yes, sir.

Q.—Is there any particular fact that you recollect regarding that investigation? A.—That investigation was the time I ceased going with Phillips, or coming in contact with him.

Q.—What did you do mean? A.—I went back to the building business.

40 Q.—No other trip? A.—I don't recall what you have in mind.

MR. HACKETT: You cannot take the witness in chief again.

MR. GOUDRAULT: Not in chief, but derived from your examination.

*William F. Mathews for plaintiff (redirect examination).*

THE WITNESS: I know the Meyers investigation was at the time I ceased going around with him.

Q.—I see. Where did you go then? A.—I stayed right in Queens County. I had other affairs to attend to.

Q.—But during the Meyer investigating committee, —  
A.—I took a trip for two weeks to Kentucky.

10 Q.—Did you speak to Phillips about that trip? A.—No.

Q.—Just one more question. Do you know of a dinner set?  
A.—I only heard of it.

Q.—You never saw it? A.—No.

Q.—You never contributed money to it? A.—No. That was long after that time.

MR. GOUDRAULT: All right.

20 (Mr. Carey, Hr. Harrington, and Mr. MacInnes appeared as witnesses, but were not sworn. Mr. Reilly also appeared.)

THE COMMISSIONER: You wish these witnesses here at 11 o'clock tomorrow morning?

MR GOUDRAULT: Yes, to dispose of the first three of them.

THE COMMISSIONER: Gentlemen, you are directed to be here at 11 o'clock tomorrow morning, when the hearings will be resumed.

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(Whereupon at 4:10 p. m., the hearing was adjourned to Tuesday, February 3, 1931, at 11 a. m.)

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Depositions of witnesses, sworn and examined on the third day of February, 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:

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DEPOSITION OF ANGUS A. MacINNES.

ANGUS A. MacINNES, age 52; residence, 4552 Brownvale Drive, Little Neck Long Island, Queens County; occupation, civil engineer, 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:

30

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—By whom are you employed, Mr. MacInnes A.—Patrick McGovern, Inc.

Q.—In what capacity? A.—Purchasing agent.

Q.—What is their business? A.—General contractors.

Q.—Did you ever hear of Hammels Boulevard sewer at Rockaway? A.—Yes, sir.

Q.—Were you with Patrick McGovern's firm at the time Patrick McGovern did that monolithic sewer on Hammels Boulevard? A.—Yes.

40

Q.—How long have you been with that corporation? A.—Ever since it was organized, when we came to New York.

Q.—How long would that be, approximately? A.—We came in 1912. It was under a different name; that is, it was not incorporated at that time, but it is the same organization.

Q.—The date of award to Patrick McGovern, Inc., for that Hammels Boulevard sewer is August 28th, 1924. You were then

*Angus A. MacInnes for plaintiff (direct examination).*

purchasing agent for the Patrick McGovern concern? A.—I was, but I was not on that job.

Q.—Did you buy materials for them? A.—Not for that particular job.

Q.—No, but usually? A.—I do.

Q.—You do, and you did then? A.—Not for that job, because I was moved to Philadelphia before the job started.

10 Q.—Did you have anything to do with making the bid in the case of this Hammels Boulevard? A.—Only in that I got some prices for them.

Q.—Prices on? A.—On various materials that went into the job.

Q.—In the regular course of business you were asked, I suppose, to get prices on materials that would be needed for the construction of that sewer? A.—Yes, I always do that. When they are making a bid I get their prices.

20 MR. COOK: I object, Mr. Commissioner, to evidence in regard to Hammels Boulevard, as irrelevant and illegal, and I ask that my objection be applied to all evidence, to avoid the necessity of renewing it.

MR. HACKETT: I wish to place myself in the same position as that taken by Mr. Cook.

THE COMMISSIONER: Your objections will be noted on the record.

30 Q.—Did you get those figures for different kinds of materials? A.—Yes, various materials that were required.

Q.—We have in evidence here that the plan and specifications for that Hammels Boulevard sewer called for monolithic sewer and precast type sewer where precast pipe had to be used. Do you know whether you included in your search for cost of material anything with reference to precast sewer pipe? A.—Yes, I did.

Q.—Did you get any quotations? A.—I think I did, yes.

40 MR. O'DONNELL: We object to any verbal evidence, as not being the best evidence of the prices.

Q.—From what individuals? A.—From the Lock Joint Pipe Company.

Q.—To whom did you speak at the Lock Joint Pipe Company? A.—To whom did I speak?

*Angus A. MacInnes for plaintiff (direct examination).*

Q.—To whom did you speak? A.—I called up their office in Jersey, — I have forgotten where it was, — in a Jersey town.

MR. HACKETT: Ampere.

10 THE WITNESS: Ampere, New Jersey, that's it. They referred me to a man named Phillips, at Long Island City, who would be pleased to get me prices.

Q.—Did you get any quotations from Phillips then? A.—Yes. He gave me a quotation over the telephone, and I remember it, and I asked him to confirm it in writing.

MR. O'DONNELL: We object to any verbal evidence as to that, as not being the best evidence.

20 Q.—Will you then look at this letter and state if that is the confirmation your are speaking of, Mr. MacInnes? A.—That's it.

MR. GOUDRAULT: I will now offer as evidence this letter dated August 12, 1924 as plaintiff's Exhibit C-73.

(The said letter was thereupon received in evidence and marked Plaintiff's Exhibit C-73, of this date.)

Q.—That was a letter that you received purporting to be signed by Phillips? A.—Yes, as a result of my asking him to send a written quotation.

30 Q.—Did you personally receive that? A.—Yes.

Q.—And that referred to prices of pipe on Hammels Boulevard? A.—Yes.

MR. COOK: It speaks for itself.

MR. GOUDRAULT: Yes, it speaks for itself.

Q.—Now did you get any other communication from any other precast sewer pipe people on that job? A.—I did not.

40 Q.—Why not? A.—I was unable to get anyone to give me a price.

MR. O'DONNELL: Objected to as irrelevant.

Q.—Did you make any inquiries at the time? A.—I believe we tried to get prices wherever we could for precast pipe at that time.

Q.—Do you remember, Mr. MacInnes, how many times that would be that you tried? A.—No. As I remember it, we did

*Angus A. MacInnes for plaintiff (cross-examination).*

not know, — there were scarcely anyone who made that precast pipe.

Q.—Well, did you inquire? A.—We tried to find somebody who would figure on it.

Q.—Companies? A.—Yes, companies.

10 Q.—Do you remember how many? A.—There was an independent company, I remember, that I tried to get. There could not have been more than two others that we had heard about, that we tried to get quotations from.

Q.—I see. Did they refuse to give you a price, quotations?

MR. O'DONNELL: Objected to as irrelevant.

A.—As I remember it, yes, they did not want to figure.

Q.—Were there any reasons given? A.—They did not give me any reasons.

20 Q.—The job was finally awarded, was it, on the monolithic sewer? A.—It was awarded to us on the monolithic sewer.

Q.—Yes, and did the work? A.—Yes, we did.

MR. COOK: You also tendered on the monolithic?

THE WITNESS: Yes.

MR. COOK: And you got the monolithic?

30 THE WITNESS: Yes, sir, because we bid low on the monolithic.

Q.—Who was the member of your firm who did most as regards preparing the bids for the Hammels Boulevard sewer, Mr. MacInnes? I understand your part of it was that you were going to get the prices of material? A.—That was all I did. I think Mr. McDonald.

MR. GOUDRAULT: McDonald, all right, then. That will be all.

40 CROSS EXAMINATION BY MR. COOK:

(On behalf of defendants, under reserve of all objections.)

Q.—Your firm entered both on the monolithic and on the precast pipe system? A.—My recollection was that they did, because there were two bids, alternate, asked for.

Q.—Yes. And you were awarded the contract for the monolithic type of sewer? A.—We were, yes, sir.

*Charles Henry Harrington for plaintiff (direct examination).*

Q.—But the precast type of sewer, in so far as this particular contract was concerned, did not interest you at all? A.—It did not.

MR. COOK: That is all.

MR. HACKETT: I have no cross-examination.

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MR. GOUDRAULT: All right, Mr. Harrington.

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DEPOSITION OF CHARLES HENRY HARRINGTON.

20 CHARLES HENRY HARRINGTON, age 41; residence 3315, 161st Street, Flushing, in the County of Queens, a construction engineer and superintendent, 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 business, Mr. Harrington? A.—Civil engineer.

30 Q.—With what company are you connected? A.—Patrick McGovern, Inc.

Q.—Since when? A.—Since 1916.

Q.—Did you have any personal connection with the Hammels Boulevard sewer down in Rockaway in 1924?

MR. COOK: I object to all evidence in regard to the Hammels Boulevard sewer as irrelevant, illegal and improper.

MR. HACKETT: I avail myself of the same objection.

40 THE COMMISSIONER: Your objections will be noted on the record.

MR. HACKETT: And I ask that it avail throughout the testimony of this witness.

THE COMMISSIONER: The testimony will be taken subject to your objections.

MR. GOUDRAULT: What is the question?

*Charles Henry Harrington for plaintiff (direct examination).*

(Question read by clerk.)

A.—I did.

Q.—The contract has been produced as Plaintiff's Exhibit C-33, and that is the contract, I understand, that was executed by Patrick McGovern, Inc., for the Hammels Boulevard.

10

MR. O'DONNELL: The contract speaks for itself.

A.—Yes.

Q.—Now, what was your connection with the job there?

A.—I was superintendent of the work there.

Q.—Superintendent? A.—Superintendent and engineer.

Q.—Were you on the job very much or little? A.—I was on the job at least twelve hours of every working day.

Q.—As a matter of fact you built the sewer? A.—Yes, sir.

20

Q.—Do you remember the average depth of the trench down at Hammels Boulevard? A.—Approximately 21 feet.

Q.—Do you remember the water conditions there? A.—Yes. Water was encountered at depths varying from 2 to 4 feet below the surface.

Q.—Do you remember what was the head of the water in the trench? A.—The maximum head I would say was 18 feet.

Q.—I suppose you had to pump the water out? A.—Yes, sir.

30

Q.—Without going into many details, I would like to know in a general way how that sewer was constructed, Mr. Harrington. We had the trench, and we had the pump. I understand now that the water is out, or you have poured out the water, and you lay your foundations and construct a sewer. May I have exactly the operations that were necessary then?

MR. COOK: Well, I object. It is absolutely irrelevant and has nothing whatever to do with this case, and we are just wasting time.

40

MR. GOUDRAULT: I will tell you the purpose of it, if you wish, if that will help you.

MR. COOK: Well, —

MR. GOUDRAULT: If not, I will go on with my case. I will be as brief as possible, but I will get those facts. I think they are essential in the case. Does that satisfy you?

*Charles Henry Harrington for plaintiff (direct examination).*

MR. COOK: It is your case.

BY MR. GOUDRAULT:

Q.—Do you understand my question? A.—After the foundation is in?

10 Q.—What I mean is this: You have a trench there, and there was some water, and I understand you did some pumping there to make it dry, to make a good job. A.—Yes.

20 Q.—You have to put your monolithic sewer in. A.—First a timber foundation is placed in the bottom, under the sewer to be constructed, and we had a unit that we constructed of 50 feet. We used what is known as blown arch steel forms for shaping the sewer to fit the design of the contract, the reinforced steel forms with the design, and the steel forms being for the reinforcing, and blocked up. Back forms were placed, and the concrete was poured on the lower half of the sewer. The lower half of the sewer was always in advance 50 feet of the upper half. When this lower half of the end of the joint was in the construction, we had what is known as a steel water stop, if I remember correctly. It was about six inches wide, and somewhere in the neighborhood of 7, 7½ feet long.

Now, the next operation was to place the upper half of the sewer over the lower half that had been previously completed and set up and so fit to put the upper half on.

30 Q.—Yes, go on. A.—That was the forms of the upper half. We set the prescribed lines and grades, and concrete poured, and the upper half of the sewer was set.

MR. COOK: Mr. Commissioner, I have not the faintest doubt that Mr. Harrington conducted this work entirely in the best way, and I have no doubt, but all these details are of no possible interest to us. They can have no possible bearing on the case. And I would ask that my learned friend be instructed not to go into irrelevant matter like this. It is very interesting from an engineer's standpoint, but it is not at all interesting from the defendants' standpoint.

40 MR. GOUDRAULT: It may be interesting from another viewpoint. In a few minutes we will see whether or not.

MR. COOK: Yes, a very few minutes, Mr. Goudrault.

MR. GOUDRAULT: Well, if you don't interrupt the witness, we will simplify it.

*Charles Henry Harrington for plaintiff (direct examination).*

THE COMMISSIONER: Will you proceed, Mr. Goudrault.

MR. GOUDRAULT: I have been ready to proceed. The interruption came from the attorneys for defendants.

10 THE COMMISSIONER: That I understand, but on the other hand I think they have cause to complain, possibly.

MR. GOUDRAULT: They have cause to complain in this particular instance?

THE COMMISSIONER: Well, I don't know whether I have or not, but for the moment I don't see what you are getting at.

MR. GOUDRAULT: Of course, you don't, but I do. Otherwise, why would I put the question?

20 THE COMMISSIONER: I don't know. You may proceed.

MR. GOUDRAULT: Otherwise I would not put the question, if it did not have any usefulness.

I am sorry, Mr. Harrington, you were interrupted by Mr. Cook. But please give us that very interesting data and particulars that we want.

30 THE WITNESS: That completes the process of concretizing a unit of the sewer.

BY MR. GOUDRAULT:

Q.—I see. That sewer is a cylindrical sewer? A.—Yes.

Q.—Now, there is what you call an invert too? A.—Well, the invert is what I classified as the lower section

Q.—As the lower section? A.—Yes.

Q.—And then there is another section? A.—The arch is the upper section.

40 Q.—When can you put, — within what time can you put lower section on the lower section or the invert? A.—From 24 to 48 hours.

Q.—And when you say that, what do you mean? —After the lower section has been poured.

Q.—Well, will you explain that a little more, what is meant by those hours? A.—By those hours?



*Charles Henry Harrington for plaintiff (direct examination).*

Q.—You mean that the concrete has dried up sufficiently?  
A.—The concrete has dried up.

MR. HACKETT: I object to the suggestive and leading question.

MR. GOUDRAULT: No leading question, but he is going  
10 to speak. If you want a long story, you are going to get it.

THE WITNESS: Depending upon weather conditions,  
of course. The weather conditions will affect the setting of the  
concrete.

Q.—Now, after you close the upper half, after 36, or how  
many hours did you say? A.—I said 24 to 48 hours.

Q.—How long do you leave the forms on the upper half  
before you can go on and use them on the next section? A.—Ap-  
proximately the same time.

20 Q.—Don't the weather have anything to do with the  
length of time that you must leave your forms on? A.—Well,  
the concrete must be sufficiently set before the forms can be  
pulled.

Q.—How many sets of forms did you use?

MR. O'DONNELL: Objected to as entirely irrelevant.

A.—We used two sets, as I remember.

30 Q.—You said that you built that in 50-foot sections? A.  
50-foot sections.

Q.—And you began at opposite ends of your operation?  
A.—No. But we did operate from two different points. They  
weren't on the opposite ends.

Q.—How many feet of sewer did you build in a month, do  
you know? A.—I can't recall that accurately. I would have  
to look that up from either the last testimony or from the esti-  
mate. It is my rough recollection, about 600 feet.

40 Q.—All right. About how many days would it take to  
complete a given section say of 50 feet of a sewer the way you  
have described it?

MR. O'DONNELL: Objected to as entirely irrelevant.

A.—Why, possibly three days.

Q.—Three days. Do you know of your own knowledge,  
Mr. Harrington, if you completed that Hammels Boulevard  
sewer within the time allowed by the contract with the City?

*Charles Henry Harrington for plaintiff (direct examination).*

MR. O'DONNELL: Same objection.

A.—No, we did not.

Q.—Were you penalized? A.—No, we had —

MR. HACKETT: Extension and delays, as appears by the record.

10 A.—Yes.

MR. GOUDRAULT: All right, produce it.

MR. HACKETT: It's in. Exhibit C-33.

MR. GOUDRAULT: That's the contract.

MR. HACKETT: The extension is there, too.

BY MR. GOUDRAULT:

20 Q.—There is one question about your lower half or invert. Is that poured in one operation or two? A.—The lower half is poured in one operation.

Q.—By lower half it is the invert? A.—The invert and the side walls to the springing line. That is the center of the bore of the sewer.

Q.—In the plans that you secured from the City for building that sewer in Hammels Boulevard, was there any provision made with reference to waterproofing membrane in the barrel of the sewer?  
30

MR. O'DONNELL: Objected to. The plans speak for themselves.

A.—No, sir.

Q.—I now show you, Mr. Harrington, Exhibit C-7, which is the plan and profile of the Hammels Boulevard, seven sheets. I suppose you had a blueprint of that to work on it? A.—Yes, sir.

Q.—And there is no waterproofing membrane required  
40 in the barrel of the sewer? A.—There was none required.

Q.—You are very positive as to that? A.—Yes.

Q.—Do you remember what was the mixture of the concrete for that particular job? A.—It is in the specifications. I believe it was a 1-1½-2 mix.

Q.—It would appear in the contract, though? A.—Yes.

Q.—Well, now will you look at Plaintiff's Exhibit C-3, which is the sheet No. 1 of the plan and profile and details for

*Charles Henry Harrington for plaintiff (direct examination).*

the construction of a sanitary sewer on 150th Avenue, Borough of Queens.

MR. HACKETT: Dated December, 1924.

10 Q.—(continuing) Dated December, 1924, containing also on the said sheet the notes and specifications. And I wish to state that the full plans and specifications —

MR. HACKETT: Were also filed as Exhibit.

Q.—(continuing) Were filed as exhibit, but we are only interested in this sheet No. 1.

MR. COOK: Plan and profile of what?

MR. GOUDRAULT: 150th Avenue.

MR. HACKETT: Section 1.

20 Q.—Now, Mr. Harrington, have you ever examined the plan and profile of this 150th Avenue sewer as regards waterproofing membrane in the barrel of the sewer, today or previous to this date? A.—It seems to me I saw something like that over in the Grand Jury.

Q.—I see. Will you look at the plan there and state whether you see any design as regards a waterproofing membrane to be inserted in the barrel of the monolithic sewer, Type B sewer? A.—Yes, in the lower half.

30 Q.—Have you examined the notes on the plans which discuss what waterproofing is to be done, Mr. Harrington? Have you read those?

MR. O'DONNELL: Objected to as irrelevant.

A.—Yes.

Q.—Yes. You have already read those previous to this date? A.—I have read them now.

40 MR. COOK: You have read them now. And you had nothing to do with that contract, had you, Mr. Harrington?

THE WITNESS: No, sir.

MR. COOK: You had nothing to do with it at all. Your company was not interested in it at all.

MR. GOUDRAULT: The purpose of examining you on this question, Mr. Harrington, is I want you to connect this

*Charles Henry Harrington for plaintiff (direct examination).*

plan, the waterproofing membrane, on this 150th Avenue, with the previous contract for the Hammels Boulevard where no such waterproofing membrane exists. That is the purpose of my examination.

10 MR. COOK: I submit this evidence is entirely and absolutely improper and illegal and irrelevant, and subject to every conceivable objection that Greenleaf on Evidence or anybody else could suggest, and I ask, Mr. Commissioner, that we have a ruling on this point because we cannot go on indefinitely with evidence of this sort. Here this witness, an engineer, highly competent, I don't doubt, who had another contract in another section, says he never saw this plan, and he is asked to come forward as an expert and give his opinion regarding something that nobody is in the least interested in.

20 MR. GOUDRAULT: Well, now Mr. Cook is finished, so I will go on with my case.

THE COMMISSIONER: Your objection will be noted on the record. And you may proceed, Mr. Goudrault.

BY MR. GOUDRAULT:

Q.—Was the Hammels Boulevard a dry job? A.—Yes.

Q.—I mean to say, once completed? A.—Yes.

30 Q.—And it was passed by the engineers for the Borough of Queens? A.—Yes.

Q.—Sewer Department? A.—Yes, sir.

Q.—Did you ever hear of any complaint? A.—No, I haven't.

Q.—And you have been a construction engineer for 16 years, you told us, 17 or 18 years? A.—I have been a construction engineer for 19 years.

Q.—You had a technical education before you began? A. Yes, sir.

Q.—Where? A.—In Boston. I graduated from the Massachusetts Institute of Technology.

40 Q.—In 1911. Will you explain to us, in words of one syllable, what those waterproofing membrane requirements are on that plan for the 150th Avenue?

MR. COOK: I object, Mr. Commissioner, again.

MR. O'DONNELL: Anybody can read what is written on the plan.

*Charles Henry Harrington for plaintiff (direct examination).*

MR. HACKETT: I object also, Mr. Commissioner.

THE COMMISSIONER: Your objections will be noted.

THE WITNESS: I can't do it in words of one syllable.

MR. COOK: We won't hold you to Mr. Goudrault's one syllable, as Mr. Goudrault suggests.

10

MR. HACKETT: Or his specifications.

BY MR. GOUDRAULT:

Q.—Explain us in as few words as possible what that waterproofing membrane requirement meant on the monolithic sewer? A.—The specifications say the waterproofing cannot be placed on the concrete until after the concrete has been set seven days on the lower half of the structure.

20

Q.—According to those plans, where does it show, this waterproofing membrane? A.—Why, it really makes two joints out of the lower half of the structure.

Q.—Where does it go? A.—It goes between the outside of your concrete and the waterway of your sewer.

Q.—What about the invert? A.—On your invert. From the arch it is applied on the outside of the concrete, and laps down 12 inches below the joint of the arch and the invert.

30

Q.—When you are putting your lower half of your monolithic sewer, where is it that you put this sheet of waterproofing, according to that design?

MR. HACKETT: I object to the question as useless, inasmuch as the plan speaks for itself.

MR. GOUDRAULT: I want to know from Mr. Harrington in his capacity as engineer and constructor of sewers.

MR. HACKETT: We can all read.

40

THE COMMISSIONER: The answer will be taken subject to counsel's objection.

MR. HACKETT: We can all read, with due respect to the witness' interpretation.

MR. GOUDRAULT: No interpretation. Just explain it.

THE WITNESS: According to this design the outside wall is 9 inches in thickness, with an invert of 15 inches in thickness, would have to be poured first. And after that con-

*Charles Henry Harrington for plaintiff (direct examination).*

crete is poured and thoroughly set up and the forms removed. And when a period of seven days has elapsed that waterproofing is applied, according to the specifications and the notes on the plan.

Q.—I will put it clearer. If you are building a sewer with this plan and profile and which has waterproofing membrane requirement, would that be a different job than the Hammels Boulevard job? A.—Oh, yes.

Q.—How would it be different?

MR. O'DONNELL: Same objection.

A.—How was it different?

Q.—Yes, how would it be different? A.—It's different in the method of construction. The concrete couldn't possibly be poured, the lower half couldn't possibly be poured in one unit with the waterproofing requirement which you have in this plan. The period of set is different, which would more or less retard the progress, with conditions being equal.

Q.—Would you have to get a separate form?

MR. HACKETT: Objected to, as leading and suggestive.

A.—Yes.

Q.—All right, then, Mr. Harrington. Explain us in detail.

MR. COOK: After you have asked your leading question, — Mr. Goudrault, that is not right.

A.—It would mean the erection of a separate inside form for the walls where the waterproofing is to be applied. It would not necessarily need any bottom form. It wouldn't need any bottom form, just the two sides forms for your straight walls.

Q.—I put a question there: Would you have to use a separate form? What was your answer? A.—I said you would have to use two side wall forms inside side wall form.

MR. HACKETT: But not necessarily a bottom form.

THE WITNESS: Not necessarily a bottom form, for your operation to prepare your concrete for waterproofing.

Q.—A minute ago you told us that you poured your invert or the lower half of the sewer in one operation, didn't you, at Hammels Boulevard? A.—Yes, sir.

*Charles Henry Harrington for plaintiff (direct examination).*

Q.—How many operations would it take if you followed the program outlined on these plans? A.—It would take an additional operation; two operations to pour the invert form with the use of the waterproofing of the lower half.

Q.—Why would you have two operations? A.—It specifies that the concrete has to be set up before the waterproofing can be applied, and with a fabric and coal tar pitch waterproofing it is impossible to put the waterproofing in there without making two operations, in my estimation.

Q.—Under the plans that you are now examining, how much of your invert can you make at one time? A.—Why, that depends on the amount of forms you have on hand; the amount of trench you have ready for the concrete.

Q.—But you said it did take a new form?

MR. HACKETT: And the number of men you have, and the equipments you have. Many things.

20 A.—Yes.

Q.—Yes, we will come to that in a few minutes. You did say it would take a new form? A.—It would take an additional set of forms, side wall forms.

Q.—And then how long would you have to wait, under those plans, after you put up the first portions of your lower half?

A.—Seven days.

Q.—That is according to the specifications? A.—Yes.

Q.—Now, after waiting seven days, what would you do?  
30 A.—We would have to waterproof.

Q.—Waterproof what? A.—Waterproof the first pour of your concrete.

Q.—That is according to, — A.—According to that design.

Q.—According to that design of the waterproofing membrane? A.—Yes.

Q.—Now, after you put your waterproofing requirement, such as fabric and pitch, or whatever it is, what would you have to do under those plans? A.—Well, after that is applied and thoroughly dry, you could move your steel forms right in and put your inner half of your sewer, pour your inner half of your sewer.

Q.—Would that take another form? A.—Yes. It would take a separate form.

Q.—Under this new specification, how long would you have to leave your forms on for the upper half? A.—Well, I have not read the specifications for this job.

*Charles Henry Harrington for plaintiff (direct examination).*

Q.—Would you mind reading them. You got my question right, didn't you? A.—I think I did. According to these specifications your arch forms have got to be kept in place 21 days.

Q.—In the specifications that you worked under at Hammels Boulevard, was there any provision at all as to the length of time to leave those forms on? A.—I can't answer that correctly.

10 Q.—Well, I will show you the plan.

(Witness examines plan.)

A.—I don't notice anything right on here now that specifies any definite time.

MR. GOUDRAULT: I have showed you the plan right through there. Now, will you read the question?

(Question and answer read by clerk.)

20 Q.—You just said that this work, according to these plans and specifications and notes for the 150th Avenue would require more forms? A.—Yes, sir.

Q.—Than the Hammels Boulevard. is that right? A.—Yes, sir.

Q.—Would it involve then more labor? A.—It would involve, possibly not more labor, but it would be a little more expensive, due to the fact that it caused another operation to accomplish the same amount of work.

30 Q.—More time? A.—Yes.

Q.—More delay? A.—Yes.

MR HACKETT: I object to the question as leading, suggestive.

Q.—Now, you stated that the Hammels Boulevard that you constructed, that you engineered, that the job, the concrete part of the monolithic job could be done within, you said, from 24 to 48 hours A.—That was the moving of the forms.

40 Q.—And a section of 50 foot could be made within about? A.—Three days.

Q.—The same section of monolithic sewer built according to the plans and profile as designed for the 150th Avenue, how much would that be?

MR. O'DONNELL: Objected to as entirely irrelevant and illegal.



*Charles Henry Harrington for plaintiff (direct examination).*

A.—Well, that is pretty hard to estimate, for the simple reason that you have got a clause in here covering the arch forms to be kept in place 21 days.

Q.—Well, do I understand that you have to follow those notes wherever they are on the plan and profile? A.—Well, they can be changed. They can be changed by the engineers in charge for the City.

10 Q.—Supposing they are not changed, and they remain as they are, then that same job, how long would it take to be done according to those notes and specifications? Is my question clear? A.—Yes, sir. I would say at least twice as long.

Q.—Three days and 21 days, is that twice as long? A. Well, I can't figure it just that way. You could get enough of arch forms in there so that we could allow the arch to set up 21 days and we would use the back forms. It would entail more labor then, and more expense, but you could get around it in that way.

20 Q.—In what way? A.—By having additional arch forms on hand so that instead of having one set of arch forms you could have, say, thret sets of arch forms. In that case it would give you the effect of a seven day set.

Q.—I see. Would that be more costly then? A.—Yes.

Q.—Much more? A.—Yes

Q.—Considerably more? A.—It would be.

30 MR. HACKETT: I object to the leading, suggestive and illegal way that these questions are put. And I ask, Mr. Commissioner, that the attorney for the plaintiff be admonished not to proceed in this way.

THE COMMISSIONER: Mr. Goudrault, you heard Mr. Hackett's request.

M. GOUDRAULT: In a few minutes I am going to declare my examination closed.

40 Q.—Have you got to leave the bottom on 7 days before you can build the top? Is that the way I understand those specifications?

MR. O'DONNELL: Same objection.

A.—You necessarily have to, according to this specification, because you cannot waterproof until 7 days after your concrete has been poured.

*Charles Henry Harrington for plaintiff (cross-examination).*

Q.—Is that anything hard, to build with those plans and specifications? A.—No, it is not hard to build.

Q.—Mr. Harrington, I will put you just two more questions, and complete your examination. And I wish to be corrected if I am not right in my statement. It is just to expedite that I will put it this way: You said that the new plan and profile for the 150th Avenue sewer, and the specifications therein appearing regarding that waterproofing membrane, would cause more delay in the construction of a sewer of that kind than the plan and profile of the Hammels Boulevard? A.—Yes, sir.

Q.—On the other hand, you said that the delay would be twice what it was on the Hammels Boulevards job; it would be about twice? A.—Yes.

Q.—But if that were so, you would require some additional forms? A.—Yes, to expedite it.

Q.—I see. Well, now my question to you is this: By saving time you increase the cost considerably, by having extra forms. Is that right? A.—Yes.

Q.—And if you have no extra forms, then it becomes a question of delay as compared to the job, the Hammels Boulevard job? A.—Yes, sir.

Q.—And what delay would there be? A.—That is hard to estimate.

Q.—At least it has got to be 21 days. Am I right? A.—According to the notes, yes.

Q.—And the Hammels Boulevard was constructed by your firm. You could proceed after three days to a new section, isn't that right? A.—Yes, sir.

MR. GOUDRAULT: Thank you. Your witness.

CROSS EXAMINATION BY MR. HACKETT:

MR. HACKETT: Mr. Harrington, I will cross-examine you subect to the objections made.

Q.—Did you ever work on a farm? A.—No, sir.

Q.—In hay making a great deal depends on the weather. You realize that, I suppose? A.—Yes, I have heard of that.

Q.—When the weather is good, the hay that is cut down in the morning may be taken in the same day, pretty well dry. And if the weather is bad, and you continue to cut, you may have great quantities, —

*Charles Henry Harrington for plaintiff (cross-examination).*

MR. GOUDRAULT: Does that have anything to do with the case, Mr. Commissioner? I am just wondering.

Q.—And I ask if the same may not happen in sewer construction. If the weather is bad, or conditions are bad, your concrete will not set as rapidly, will it? A.—No, it won't.

10 Q.—So some people insist that concrete set a certain time, to make certain that the pipe or pile, or whatever it is you are making, be perfectly set before the form is removed. That is not an unusual requirement in the specifications, is it? A.—It varies in different specifications.

20 Q.—Yes. I note that in the specifications, both for monolithic and for precast, it is stated "No pipe not marked with the date of manufacture shall be laid or accepted. No pipe shall be laid in the trench which has not been seasoned for 21 days." That is not an unreasonable requirement, is it? I am speaking of pipe that were made either beside the trench or made in a factory. A.—I wouldn't say it was with pipe.

MR. HACKETT: No.

MR. GOUDRAULT: I beg your pardon. But I think your question is altogether wrong there. If you refer to 21 days for pipe, there is no such question as that. That was the requirement as regards the waterproofing membrane.

30 MR. HACKETT: Mr. Goudrault, if you will desist for a moment and devote a little time to the specifications, you will find out that my question is justified.

BY MR. HACKETT:

Q.—Where the owner is particularly desirous of getting a good job, a job which the concrete is perfectly set, he frequently asks or stipulates that the forms remain in place longer than if he is not so particular. That is true, is it not? A.—Yes. Those matters, of course, as a rule are left up to the judgment of the engineer in charge of the work.

40 Q.—Yes. A.—And it is his judgment. It is not so much a matter of common practice. It is what he thinks. He is the boss.

Q.—And it was very necessary in this wet area in which these sewers were built, that the sewers be waterproofed and watertight, was it not? A.—Very essential that they should be watertight.

*Charles Henry Harrington for plaintiff (cross-examination).*

Q.—Mr. Harrington, it has been proved here that these sewers were below sea level, and that their contents had to be pumped from the sewer level to a higher level in order that they might escape, and that in consequence it was most essential that seepage and all additional water be kept out of the sewer, as a matter of economical operation; that is correct, is it not? A. Yes.

10 Q.—So it is not astonishing in these circumstances that unusual precautions were taken to make the sewer absolutely tight, is it. A.—No. It was very essential that the sewers in the wet ground should be tight.

Q.—Yes. The forms to which some reference has been made, are part of the equipment of every sewer contractor? A. That is a matter of his judgment.

Q.—A matter of his judgment. A.—Whatever he wants to use to shape his sewer. That is his own matter.

20 Q.—And a man who has sufficient financial strength and is sufficiently experienced, and can do a good job satisfactorily, always has enough equipment? A.—He gets whatever he thinks his job requires to do it, from an economic standpoint.

Q.—And I suppose some people who have not as much financial backing, try to scrimp and try to get along with less equipment than would be useful? A.—Well, that is natural.

30 Q.—So in building a monolithic sewer as specified for the Hammels job, — as specified for the 150th Avenue, a contractor who had not a sufficient number of forms, naturally would not make as much progress as one who had an adequate number, would he? A.—Well, of course, the progress on any job depends on the man who has it and the way he attacks it, and conditions that he has to encounter. And of course whatever the design be, he plans himself for that design, and he tries to lay out his work to fit that design. If he has the contract, he has to do it or else forfeit it. There is no hard and fast set of rules to undertake a piece of construction and follow it through.

40 Q.—Is the work of McGovern largely that of — does the work of the McGovern Company consist largely of the construction of sewers? A.—No. We do very little sewers.

Q.—During the 20 years that you have seen many modifications in the technique and maner of the use of concrete? A. Well, not so much. The only thing that varies, as a rule, is the mixture.

Q.—Yes. But engineers and builders are constantly attempting to improve the method by which concrete is used, are

*Charles Henry Harrington for plaintiff (cross-examination).*

they not? A.—The method of placing and the shaping of your forms is where we do most of the improving.

Q.—And of course, concrete is much more widely used today in construction than it was 20 or 25 years ago? A.—Oh, yes.

Q.—And the method of handling it and using it generally, have undergone some change and modifications during the years?

10 A.—Yes, they have.

Q.—And some methods that were introduced have, I suppose, been found good, and have been used, and are still used, and others that were introduced were found less advantageous and have been discarded? A.—That is true. That is true in every endeavor.

MR. GOUDRAULT: Yes. On the other hand, I object —

MR. COOK: One minute, please.

20 MR. GOUDRAULT: He has answered. I can make my objection to this line of examination. You speak of methods. Specify what methods you mean.

MR. HACKETT: Thank you.

BY MR. HACKETT:

Q.—It has been found, for instance, that the higher the percentage of cement that goes into a concrete mixture, the more impervious it is, the more watertight it is. Is not that true?  
30 A.—Yes.

Q.—And it has been found that the application of coal tar products and fabrics, also makes concrete more impervious? A. Yes. If placed right.

Q.—If placed right. Sometimes it is placed outside a wall, for instance, and sometimes it is placed inside. And experience has gradually taught the constructor, the builder, where it can be placed to the best advantage, has it not? A.—In most cases, yes.

40 Q.—Did you consider this type of sewer with a waterproofing membrane a waterproof sewer? Was it impervious to water? A.—That pipe there?

Q.—Yes. A.—Well, I could not tell until after it was constructed. The mere fact that you waterproof a surface does not mean that it is going to be watertight.

Q.—No; but do you think, looking at the cross section which you have before you, that water could readily permeate

*Charles Henry Harrington for plaintiff (cross-examination).*

that sewer with a fabric placed in the center of it and applied by means of pitch and coal tar? A.—Well, that depends a good deal on the quality of concrete that you got in your sewer.

10 Q.—Yes. A.—With the type of waterproofing and the design of waterproofing there, it would seem to me that if the concrete was not impervious, that there would be a possible chance of water getting in, even though the sewer was water-  
proofed. My idea of a perfect waterproofing proposition is to have the structure entirely enveloped with the waterproofing, and in that manner, with no punctures in the waterproofing, it is pretty hard to get any water in.

Q.—Now, the inner pipe was entirely surrounded by this waterproofing; at least, the invert? A.—Up to the springing line.

20 M. GOUDRAULT: On what job, on what plan and profile, Mr. Hackett?

MR. HACKETT: We are talking of the 150th Avenue, Section 1.

Q.—And to that extent it meets the requirements that you have outlined in your previous answer, it being entirely surrounded by the waterproofing? A.—That lower half.

30 Q.—Yes, the invert. I understand that some years ago sewers were almost exclusively built of something other than pipe; they were either the monolithic pipe which we had here, or brick, or some other commodity; and that in recent years pipe sewers have come into style, and are largely, if not universally, used in modern construction. Can you comment on the accuracy of my information? A.—I think you are right.

Q.—Times change. And methods of construction do as well. You have not any hesitancy in agreeing with that statement, have you, sir? A.—No. That is one known fact.

M. HACKETT: Yes.

M. GOUDRAULT: I also agree.

40 MR. HACKETT: That is all.

MR. COOK: No cross-examination.

BY MR. HACKETT:

Q.—What year did you graduate from Tech? A.—I was

*Charles Henry Harrington for plaintiff (redirect examination).*

through 1912, but I was in the Class of 1911. I worked during the year of 1911.

Q.—And you have been in active practice ever since? A. Yes. And I was doing a little engineering work while I was going to college. Practically since 1909.

REDIRECT EXAMINATION BY MR. GOUDRAULT:

10 Q.—Of course, that Hammels Boulevard, that sewer on Hammels Boulevard that you built, Mr. Harrington, was watertight? A.—Yes, sir.

Q.—And you did put some waterproofing in, of some kind? A.—No. We put a steel water stop in there, but there was no waterproofing; no waterproofing in there.

Q.—That was just at the joints? A.—At the joints. The cement contained in the concrete was supposed to be sufficient to keep the water out, with the additional water stop at the construction joint.

20 Q.—A minute ago you said that a contractor had to make progress on his job. When he had a contract, he had to do it, and I understand that; but if he did receive plans and specifications, I suppose he had to follow those plans and specifications also? A.—Yes, sir; unless the engineer in charge saw fit to modify them.

M. GOUDRAULT: I see. Just one more question.

BY MR. HACKETT:

30 Q.—You say there was a steel water stop at the joints? A.—Yes, at the invert; a horizontal water stop at the bottom, below the flow line of the invert, an arch water stop that extended down.

Q.—That is on the Hammels Boulevard? A.—Hammels Boulevard, yes.

Q.—And on this 150th Avenue, this other one, the membrane replaced it? A.—I didn't notice any water stop there.

40 BY MR. GOUDRAULT:

Q.—Do I understand that the designs and plans and specifications of that 150th Avenue job, Plaintiff's Exhibit C-3, required this waterproofing membrane on both types of sewer, or just on one? A.—I don't quite get your question.

*Charles Henry Harrington for plaintiff (redirect examination).*

MR. GOUDRAULT: Read it.

(Question read by Clerk).

A.—It only shows the Type A sewer here with the waterproofing in.

10 Q.—You mean just the monolithic type? A.—Yes. That is all that shows on this sheet. I don't know what the requirements are on the others.

Q.—I will show you the plans in just a minute.

MR. HACKETT: Is this re-examination?

MR. GOUDRAULT: No; just to clear this witness's evidence, and make it nice and easily understood.

MR. HACKETT: Are you continuing the examination in chief, or —

20 MR. GOUDRAULT: I am examining Mr. Harrington. Now, we have here —

MR. HACKETT: Just a minute, Mr. Goudrault; I want to know whether you are making application to the Commissioner to reopen the examination in chief, or whether this examination arises out of the cross-examination.

MR. GOUDRAULT: Mr. Commissioner, I think it is both. I do ask permission to make this evidence with this witness.

30 MR. HACKETT: All right, I have no objection to your taking him in chief.

BY MR. GOUDRAULT:

Q.—Now, we have here filed also, as Exhibits C-4, C-5 and C-18, the balance of the said plans and profiles for the 150th Avenue sewer. This last exhibit, C-18, comprises sheets 2, 3, 4, 6, 7, 8, 9 and 11. And we have in evidence that complete set of plans. Will you look, —

40 MR. O'DONNELL: I renew the objection heretofore made.

Q.—(Continuing) and state if a waterproofing membrane is required on just the monolithic type of sewer, or on the precast type of construction, Type B? I am always speaking of the



*James L. Carey for plaintiff (direct examination).*

waterproofing membrane in the barrel of the sewer. A.—I don't see any Type B in this at all.

Q.—What is that? A.—I don't see any Type B here at all.

MR. GOUDRAULT: All right. That is all, thank you.

10 MR. GOUDRAULT: I would like to have Mr. Decker called in and requested to be here this afternoon at two o'clock.

(Albert Decker, a witness, was called, but not sworn).

THE COMMISSIONER: Mr. Decker, you are excused until two o'clock, at which time you are directed to return here at this office.

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DEPOSITION OF JAMES L. CAREY.

JAMES L. CAREY, age 50; residence, 35 Prospect Park, West Brooklyn, New York, Kings 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:

30 Q.—Do you know the Necaro Co., Inc.? A.—Yes, sir.

Q.—That was a contracting concern? A.—Yes, sir.

Q.—You were connected with that firm? A.—Yes, sir. I was vice-president and general manager.

Q.—I understand you built sewers for the City of New York, in the Borough of Queens? A.—Yes, sir.

Q.—Do you remember the jobs? A.—Yes, sir.

40 Q.—Will you name the jobs that your company made for the Borough of Queens? A.—One was entitled Amstel Avenue sewer; and the other one was entitled Sewer in 150th Avenue, Section 2.

Q.—Will you look at this contract for Amstel Avenue sewer, and state if that is the job?

MR. COOK: What is the number?

MR. GOUDRAULT: 77021.

*James L. Carey for plaintiff (direct examination).*

Q.—(Continuing) And state if that is the job you are referring to, Mr. Carey? A.—That is the one.

MR. GOUDRAULT: I now offer as evidence, as Plaintiff's Exhibit C-74, this contract, which I will have identified by Mr. Tully, of the Comptroller's department, later on.

10 (The said contract was thereupon received in evidence and marked Plaintiff's Exhibit No. C-74, of this date.)

Q.—That Amstel Avenue job was an extension of the Patrick McGovern job? A.—It was for the same sewer system.

Q.—Do you remember what sized pipe you used in Amstel Avenue, Mr. Carey? A.—54-inch, 48-inch and 42-inch, circular.

Q.—From whom did you get your pipe?

MR. O'DONNELL: Objected to as entirely irrelevant.

20 A.—John M. Phillips.

Q.—Do you remember the amount that you paid? A.—Yes. \$168,000.

Q.—And the number of feet of pipe to be used according to the plans and specifications do appear in the contract, do they not? A.—No.

Q.—Will you look at page 2, Mr. Carey, and state whether or not they do? A.—I see on this page that you show me, the engineer's preliminary estimate of quantities, which varies somewhat from the final quantity.

30 Q.—I understand. If you take the total that appears there for that Amstel Avenue, you will see that it was 7966 feet of re-enforced concrete pipe to be used. This is the original contract signed by your company, so once it is constructed I presume that this pipe has been used perhaps a little less? A.—We know the contemplated quantities. The actual quantities differ somewhat.

Q.—I know. To a large extent, Mr. Carey? A.—No.

Q.—Worth while going into any details? A.—No

Q.—Or is it just a few feet? A.—Few feet.

40 Q.—I see that this contract has been signed Necaro Company, Inc., by Henry Newman. Was he the president? A.—Yes, he was the president.

Q.—Do you recognize his signature there on page 35? A.—Yes, I do; that is his signature.

Q.—Will you now look at this contract for the construction of a sanitary sewer on 150th Street, date of award November 16, 1925, which seems to have been awarded to your company,

*James L. Carcy for plaintiff (direct examination).*

the Necaro Company, Inc. and state if that is the job your referred to a moment ago?

MR. HACKETT: What is the contract number?

MR. GOUDRAULT: 77393.

10 A.—It does not state Section 2 on that. I believe that is.

MR. GOUDRAULT: I now offer as evidence, as Plaintiff's Exhibit C-75, this contract, which Mr. Tully, of the Comptroller's Department, will identify in a few minutes.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-75, of this date).

Q.—In that instance, did you buy your pipe from Phillips?

A.—Yes.

20 MR. O'DONNELL: Objected to as not being the best evidence.

Q.—Do you remember the size of the pipe? A.—36-inch and 39-inch.

Q.—How much did you pay for that pipe? A.—\$18 per lineal foot.

MR. O'DONNELL: Objected to as not being the best evidence of such payment.

30 A.—(Continuing) Amounting to, for a total of 4909.2 lineal feet, \$88,365.60.

Q.—Will you now look at Plaintiff's Exhibit C-74, the Amstel Boulevard contract, and state if your company has been paid by the City of New York for that job?

MR. O'DONNELL: Objected to as entirely irrelevant.

A.—Do you want me to state the total amount we were paid?

Q.—Yes. A.—\$1,186,531.23.

40 Q.—Was that in full? A.—That was in full.

Q.—And your company was paid? A.—Yes, sir.

Q.—Do you know of your personal knowledge, the rules of the Comptroller's Department, in the Sewers Department, as regards payments? I mean this particular feature of these rules; would you be allowed to be paid the last payment due you by the City on a special contract if there was any money owing by you for material?

*James L. Carey for plaintiff (direct examination).*

MR. O'DONNELL: Objected to as not the best evidence.

A.—Not if that fact was within the knowledge of the City.

Q.—Will you look at Plaintiff's Exhibit C-75, which is the contract for 150th Street, and state whether or not your company has been paid in full for that contract?

10 MR. O'DONNELL: Same objection; entirely irrelevant.

A.—From the Comptroller's record it would appear that we have been paid in full the sum of \$479,820.46.

Q.—That is the amount of the contract? A.—I believe so.

Q.—You have no claim against the City for the Amstel Avenue or the 150th Avenue contract, have you? A.—None whatever.

20 Q.—Did you receive your pipe before the work started in this last contract, the 150th Avenue sewer? A.—Do I understand that question, actual work or the order to start work?

Q.—Actual work? A.—Yes, we received the pipe before we actually started work.

BY MR. HACKETT:

Q.—But not until after you had received the order to start? A.—No.

30 Q.—So that there will be no confusion, you got the order to start work and then later you took delivery of the pipe? A. That is right.

BY MR. GOUDRAULT:

Q.—You paid Phillips how, with money, or checks, or what? A.—By checks.

Q.—And have you got those checks? A.—Those checks Mr. Buckner has, and we have his receipt for them.

Q.—I see. Did you ever endeavor to get those checks from Buckner's office? A.—No.

40 MR. GOUDRAULT: Well, we have. We have not succeeded yet.

Q.—Have you got your stubs showing payments to Phillips, Mr. Carey?

MR. O'DONNELL: Objected to as not the best evidence.

*James L. Carey for plaintiff (direct examination).*

A.—I would like to show you Mr. Buckner's receipt for those checks.

Q.—Have you got the stubs? A.—Yes, I have the stubs with me.

Q.—Well, that's fine. That is what we want. You have looked at your stubs? A.—Yes, sir.

10 Q.—Will you read them into the record, payments for pipe to Phillips, on the Amstel Avenue job, and on the 150th Avenue job?

MR. HACKETT: I want this to go in subject to my objection as not being the best evidence.

MR. COOK: Same objection for us.

THE WITNESS: Do you wish me to read this, to give the banks upon which they were drawn, and the number, and so forth.

20

MR. GOUDRAULT: Yes.

THE WITNESS: On December 31, 1925, our check No. 17, drawn upon the Title Guarantee & Trust Company, to the order of John M. Phillips, for \$10,000, and a notation on the stub saying "On account of concrete pipe for Amstel Avenue".

30 Our check drawn upon the National City Bank of New York, No. 4245, dated November 30, 1925, to John M. Phillips, for \$50,000, with a notation of the stub "On account of concrete pipe, Amstel Avenue".

Our check drawn upon the National City Bank, New York, No. 4414, dated April 1, 1926, to the order of John M. Phillips, \$25,000. Stub notation "On account of concrete pipe for 150th Street contract".

Our check drawn upon the National City Bank, New York, No. 4562, dated May 18, 1926, to John M. Phillips, for \$25,000, on account of concrete pipe contract, Amstel Avenue.

40 Our check drawn upon the National City Bank, New York, No. 4719, dated July 20, 1926, to John M. Phillips, for \$25,000. Notation: "On account of concrete pipe, Amstel Avenue."

Our check upon the National City Bank, New York, No. 4876, dated Sept. 21, 1926, to John M. Phillips, \$15,000, "on account of Amstel Avenue concrete pipe."

Check upon the National City Bank, New York, No. 5112, dated December 7, 1926, to John M. Phillips, \$34,600. Noted "Amstel Avenue contract".

*James L. Carey for plaintiff. (cross-examination).*

Check upon the National City Bank, New York, No. 5198, dated December 24, 1926, to John M. Phillips, \$60,000. Noted "On Account 150th Street contract."

Check, National City Bank, No. 5377, dated March 8, 1927, John M. Phillips, \$7,500. Noted, "Amstel Avenue pipe".

Q.—On account? A.—On account, yes.

10 Check, National City Bank, New York, No. 5541, dated April 26, 1927, to John M. Phillips, \$3,365.60. Noted "Balance due on 150th Street".

Check, National City Bank, No. 5648, dated June 7, 1927, to John M. Phillips, \$900. Stub notation "Balance due on Amstel Avenue contract". That is the complete list of checks.

Q.—They were, these checks, I understand, were filed in the case at the request of the Attorney General? A.—Yes, sir.

Q.—The case of the City of New York, People of the City of New York, wasn't it? A.—Yes, sir.

20 Q.—And they are still, according to you, in the possession of the State, or its representatives? A.—I hold a receipt.

Q.—Of the special district attorney? A.—Special district attorney in the matter, for those papers.

MR. GOUDRAULT: That is all.

CROSS EXAMINATION BY MR. HACKETT:

30 Q.—Mr. Carey, your company did some work in Queens that it did not have under direct contract from the City, did it not? A.—We had one contract assigned to us by consent of the City, and acted directly with the City as assignee of the contract.

Q.—The assignment of contracts generally and in the Borough of Queens particularly, was not unusual? A.—It is a common trade custom.

Q.—Sometimes something is paid for the assignment and sometimes not? A.—Well, it is quite usual to sell it for a consideration.

40 Q.—Yes. The purchaser may be in a position to perform the work for any one of a number of reasons? A.—True.

Q.—He may want to hold his organization together and be willing to do it without profit? A.—There are many reasons, but it is quite usual for money to pass in such a transaction.

Q.—In the transfer that you got of a contract, you paid for it? A.—Paid \$30,000 for it.

*James L. Carey for plaintiff (cross-examination).*

Q.—Paid \$30,000. And to your knowledge that is an every-day transaction among contractors? A.—It is a continuous and frequent happening.

Q.—How many jobs did you do for the Borough of Queens? A.—I couldn't say. I judge above ten million dollars worth of work.

10 Q.—And that was done through the course of several years? A.—Yes, sir.

Q.—And during that time, like other contractors, you went frequently to Borough Hall, I suppose? A.—It was a necessary thing to do in the conduct of my business.

Q.—Yes. And I suppose not more necessary for you than other men who were engaged in the contracting business in the Borough of Queens, or who hoped to become engaged in construction work there? A.—The source of all information was contained in the Borough Hall. All our directions came from there. All our requests were taken up with the Borough Hall.

20 Q.—With the various departments? A.—Various departments. And it was a very frequent trip for contractors.

Q.—And I suppose that in the carrying out of your contracts, there arose questions which had to be discussed, and concerning which possibly your local man and the local inspectors did not agree, and they had to be discussed and decided with the officials at Borough Hall. A.—The many questions arising as to interpretation, and to meaning, explanations, additions and alterations to plans, as in all constructive bodies, are continuing affairs. And frequent contact is necessary between the performing body and the designing body.

30 Q.—Yes. You knew the engineers, or some of them, at Borough Hall? A.—I knew, I think, most all of them.

Q.—Did you know Mr. Rice? A.—Yes.

Q.—What was his job? A.—He was the highest ranking engineer, I understand.

Q.—Yes; he was senior to Seeley? A.—Yes.

Q.—And you knew Mr. Perrine? A.—Yes.

40 Q.—He also was senior to Seeley? A.—That I couldn't say. As far as I know it was divided into construction and designing, and Mr. Rice, I understood, was over both.

MR. GOUDRAULT: Who was in charge of the designing?

THE WITNESS: I understood Mr. Seeley was the designing engineer.

*James L. Carey for plaintiff (cross-examination).*

BY MR. HACKETT:

Q.—Then did you know other engineers there? Do you recall any other names? A.—Yes. Do you wish me to state them?

Q.—Yes. A.—Mr. Bertram, Mr. Wm. Bishop, Mr Mackey.

10 Q.—Mr. Blake, do you remember him? A.—Oh, yes. Mr. Johnson, Mr. Werner — I knew many more.

Q.—Do you remember the names of any of the engineers from the City of New York, as distinct from the Borough, who had control and supervision over the work as it proceeded? A. Yes. In the Comptroller's office I knew Mr. Graham, who was the head of the Engineering Division of the Comptroller's office; Mr. Bostine, an assistant engineer in that department, who was directly in charge of the work in Queens, and responsible to the Comptroller's office.

20 MR. GOUDRAULT: I do hope that is all material and relevant, and it is not taking much time.

MR. O'DONNELL: We hope likewise.

Q.—The experience which you had in Queens carrying out the work which ran into the millions, gave you some information, I suppose, concerning the origin of instructions and the control that was exercised over specifications and plans and designs, and all of that? A.—No. I have no knowledge of that.

30 Q.—Well, for instance, do you know to what extent plans and specifications had to have the approval of the different men who were above the draftsmen? A.—My only knowledge was the plans, when they became a fact, and the names on them. That is the only knowledge I have.

Q.—And these names of men that you have mentioned, appeared from time to time on different plans and specifications? A.—Yes, sir.

Q.—Your work was pretty closely followed by the head men in the Borough, as well as the head men in the City?

40 MR. GOUDRAULT: I object to that line of evidence, the witness not being the most competent witness to testify as to this.

THE COMMISSIONER: I will allow the answer, subject to counsel's objections.



*James L. Carey for plaintiff (cross-examination).*

MR. HACKETT: I don't know who would be more competent. He carried out that work and knew what supervision was exercised.

MR. GOUDRAULT: We will put in the best evidence when the time comes.

10 THE WITNESS: I should say the work was most closely supervised, and followed, by both the Borough authorities and the Comptroller's department.

Q.—And I suppose there was that healthy rivalry between the two which meant they checked each other very carefully?

MR. GOUDRAULT: I object to that question.

THE COMMISSIONER: I will allow the answer, subject to counsel's objection. Proceed, Mr. Hackett.

20 MR. HACKETT: Your answer, please, Mr. Witness?

THE WITNESS: I should say they cross-checked each other in the most scrutinizing manner.

MR. HACKETT: That is all.

CROSS EXAMINATION BY MR. COOK:

30 Q.—Mr. Carey, I understand your firm was paid \$1,108,531 for the Amstel job? A.—Yes, sir.

Q.—And the pipe for that job you purchased from Phillips? A.—Yes, sir.

Q.—And you paid him for the pipe necessary for that entire job, the sum of \$168,000? A.—Yes, sir.

Q.—A lump sum? A.—Yes, sir.

Q.—In regard to the 150th Street contract, Section 2, you bought your pipe, — the total price that you received for the contract was \$479,820? A.—Yes, sir.

40 Q.—And you paid Phillips for pipe for that contract, the sum of \$88,365.60? A.—Yes, sir.

Q.—In both cases, Mr. Carey, I understand you purchased the pipe from Phillips after the contracts had been awarded to your company? A.—That I believe is correct. But I —

Q.—That is what I understand.

MR. GOUDRAULT: Let him answer.

MR. COOK: He is answering.

*James L. Carey for plaintiff (redirect examination).*

MR. GOUDRAULT: No, you are interrupting him. What is your answer?

THE WITNESS: That I believe is correct.

MR. O'DONNELL: You did not have anything to do with Phillips before you made your bids?

10 THE WITNESS: Nobody representing us, including myself, saw Phillips, or anyone representing him; and I, and I believe that is true of all of my partners, had never met Phillips until some time following the delivery of bids.

MR. COOK: Thank you, Mr. Carey.

REDIRECT EXAMINATION BY MR. GOUDRAULT:

20 Q.—You spoke a minute ago about assignment of contracts as being the usual course of business? A.—Yes, sir.

Q.—Did you state what consideration; that these assignment of contracts would be for consideration? A.—I said that would be the normal condition.

Q.—Yes, sir. But you would not be surprised to know that some of those contracts would be assigned without consideration, I mean without apparent consideration? A.—I have no knowledge.

MR. GOUDRAULT: That is in the evidence.

30 MR. COOK: Mr. Goudrault, you should not do that. I don't admit that that is in the evidence. And you should not say so, to this witness, anyway, that that is in the evidence. He said he knew nothing about it.

MR. GOUDRAULT: That is a matter of argument.

BY MR. GOUDRAULT:

40 Q.—Exhibit C-3 is the plan and profile of 150th Avenue. You have been questioned at length on the different members of the Sewers Bureau of the Borough of Queens. Will you look at this plan now and see if those are three of the men that you mentioned a minute ago? A.—Frederick Seeley is one of those, Perrine — do you want me to give you the engineer?

Q.—As his name appears. A.—Perrine. And Borough President Connolly is on there.

Q.—No other name on that particular plan? A.—No.

*Eugene J. Tully for plaintiff recalled (direct examination).*

MR. GOUDRAULT: All right, sir.

MR. O'DONNELL: In each particular instance the conditions upon which an assignment might be made would depend upon the conditions peculiar to that instance?

10 THE WITNESS: Yes, upon the individual and circumstances.

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(At 1:15 p. m. a recess was taken to 2:10 p. m.)

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AFTER RECESS. 2:10 p. m.

(Mr. Hackett did not arrive until as later noted).

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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:

30 DIRECT EXAMINATION BY MR. GOUDRAULT:  
(Continued):

Q.—Mr. Tully, will you look at this file of papers and produce them as Plaintiff's Exhibit C-76? A.—This is the final certificate on contract No. 71761, paid to Patrick McGovern, Inc. It is for a sewer, etc., in Hammels Boulevard. This payment was made August 26th, 1926, in the amount of \$29,809.37.

MR. GOUDRAULT: Will you also produce with that final certificate, the papers annexed.

40

(The said final certificate and papers referred to were thereupon received in evidence and marked Plaintiff's Exhibit C-76, of this date).

MR. O'DONNELL: Just put on the record for Mr. Hackett that you are filing those under his reserve and any objections he may care to make.

*Eugene J. Tully for plaintiff recalled (direct examination).*

MR. GOUDRAULT: Yes.

Q.—On that final certificate appears, I understand, Mr. Tully, the allowances for the work to be done? A.—Yes, sir.

Q.—They speak for themselves? A.—Yes, sir.

BY MR. COOK:

10 Q.—Mr. Tully, I see from these papers that the total amount paid on account of that construction, total amount paid on account of the construction on Hammels Boulevard amounted to \$819,581. A.—That is prior to this payment?

Q.—Prior to the payment of \$29,809.37, at the bottom. A.—Yes, sir. \$789,772.50

Q.—And with the \$29,809, the total payment was? A. \$819,581.87.

20 MR. COOK: That is right. Defendants object to the production of Exhibit C-76 as irrelevant, and also object to any evidence in connection therewith.

BY MR. GOUDRAULT:

Q.—Mr. Tully, I understand that in looking up your records at the Comptroller's department, you have discovered that a series of contracts had been awarded and executed by the firm of Muccini & Decker, such contracts being direct contracts or subcontracts? A.—Yes, sir.

30 Q.—Have you got a list of those contracts? A.—Why, I have a list — that is, I have the contract numbers that were contained in the subpoena, which we produced.

(At this point Mr. Hackett entered.)

Q.—Will you produce all contracts of Muccini & Decker with the City of New York? A.—Yes, sir.

Q.—You have already produced a series of these contracts previous to this moment, haven't you? A.—Yes, sir. Some of these contracts have been put in evidence before.

40 Q.—Now, go on with the rest. A.—This is contract No. 71829 between Muccini & Decker and the City of New York. It is for the construction of a sewer and appurtenances in Grand Avenue, etc. The date of the award of this contract is August 28, 1924. The date of the contract is September 17th, 1924. This is an original contract.

*Eugene J. Tully for plaintiff recalled (direct examination).*

MR. GOUDRAULT: I offer it in evidence as Plaintiff's Exhibit C-77.

MR. O'DONNELL: Defendants object to the production of this document and all evidence in connection therewith as being irrelevant and illegal.

10 (The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-77, of this date).

THE WITNESS: This is contract No. 76067, between Muccini & Decker and the City of New York. It is for the construction of sanitary sewers and apputrenances in Farmers Boulevard, etc. The date of award is August 6, 1925. The date of contract is August 12, 1925. This is an original contract.

MR. GOUDRAULT: I offer in evidence as Plaintiff's Exhibit C-78, this contract.

20 MR. O'DONNELL: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-78, of this date).

THE WITNESS: This is contract No. 76642, between Muccini & Decker and the City of New York, for the construction of a sewer and appurtenances in Queens Blvd., etc. Date of award is September 11, 1925. Date of contract, September 23, 1925. This is an original contract.

30 MR. GOUDRAULT: Plaintiff offers in evidence this original contract, as Plaintiff's Exhibit C-79.

MR. O'DONNELL: Same objection.

(The said contract was thereupon received in evidence and marked "Plaintiff's Exhibit C-79, of this date").

40 THE WITNESS: The next is contract No. 81,335, between Muccini & Decker and the City of New York, for the construction of a sewer and appurtenances in 108th St., etc. The date of award is October 26, 1926; date of contract is November 8, 1926. This is an original contract.

MR. GOUDRAULT: Plaintiff offers in evidence this original contract, as Plaintiff's Exhibit C-80.

MR. O'DONNELL: Same objection.

*Eugene J. Tully for plaintiff recalled (direct examination).*

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-80 of this date).

THE WITNESS: This is contract No. 81,333, between Muccini & Decker and the City of New York, for the construction of a sanitary sewer on Brinkerhoff Avenue, etc. Date of award, October 25, 1926. Date of contract, November 8, 1926.  
10 This is an original contract.

MR. GOUDRAULT: Plaintiff offers in evidence this original contract, as Plaintiff's Exhibit C-81.

MR. O'DONNELL: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-81 of this date.)

THE WITNESS: This is contract No. 81,334, between Muccini & Decker, and the City of New York, for the construction of a sanitary sewer, Brinkerhoff Avenue, etc. Date of award, October 25, 1926. Date of contract, November 8, 1926.  
20 This is an original contract.

MR. GOUDRAULT: Plaintiffs offer in evidence this original contract, as Plaintiff's Exhibit C-82.

MR. O'DONNELL: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-82, of this date).  
30

MR. HACKETT: Any more?

THE WITNESS: No, sir.

MR. GOUDRAULT: Now, Mr. Tully, there are no more. We will check those contracts with Muccini & Decker, because many of them have been produced in connection with other witnesses who were here, and if it is not complete, we will see that the list is completed through you.  
40

THE WITNESS: All right, sir. I am at your service.

MR. GOUDRAULT: And we reserve our right to produce them.

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MR. GOUDRAULT: Mr. Decker.

*Albert Decker for plaintiff (direct examination).*

DEPOSITION OF ALBERT DECKER.

ALBERT DECKER, age 49; residence, Highland Road, Douglaston, Queens County, New York; 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  
10 and saith as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—Did you ever work for the City of New York, Mr. Decker? A.—Yes, sir.

Q.—When did you work for the City? A.—I think it was around 1902 to 1914.

Q.—In what capacity? A.—Draftsman and engineer.

20 Q.—In what department? A.—I worked for the Topographical Department and the Sewer Department.

Q.—Do you remember the year that you were in the Sewer Department? A.—1907 to 1914.

Q.—When you left the Sewer Department of the Borough of Queens, what did you do? A.—I went with Joseph L. Sigretto & Company.

Q.—Do you remember what Joseph L. Sigretto & Company were doing in 1914 when you left the City employ? A.—They had a sewer contract. I don't just remember where; they had a several of them.

30 Q.—How long were you with Joseph L. Sigretto & Company, Mr. Decker? A.—I think it was 5 or 6 years: 5 or 6 years.

Q.—Without interruption? A.—Yes, sir.

Q.—Where were Joseph L. Sigretto & Company doing their work when you were connected with them? A.—Well, we did one contract, I remember, down at Glen Cove, Great Neck; both, and Jersey City.

Q.—Any contract in Queens? A.—Yes, sir; I had nothing to do with that; that was under another division.

40 Q.—Did you know John M. Phillips, the late John M. Phililps? A.—Yes, sir.

When did you first get acquainted with John M. Phillips? A.—Well, I met him at a political meeting one time. That was the first time I met him.

Q.—Do you know that Joseph L. Sigretto & Company did work in the Borough of Queens in 1915? A.—I think they did.

*Albert Decker for plaintiff (direct examination).*

MR. O'DONNELL: Objected to as not being the best evidence.

Q.—In 1916? A.—In 1916, I don't remember.

Q.—Did you meet John M. Phillips before you went to work for Sigretto, or after? A.—Well, I met him at this political meeting. That is, informally. I didn't know him.

10 Q.—And when you were better acquainted with him, that was later on, wasn't it? A.—Later on.

Q.—Much later on? A.—I met him over in East Orange.

Q.—Do you know a man named Purcell? A.—Yes, sir.

Q.—Did you know Phillips well before you went with Sigretto? A.—I practically didn't know him at all, then.

Q.—Did you see Purcell and Phillips together at any time? A.—Yes, sir.

Q.—Where? A.—In East Orange.

20 Q.—Have you any idea when that was, as regards the year? A.—I don't know what year it was, no. I know it is a long time ago. No, I don't know what year it was.

Q.—Did you see them talking together? A.—Yes.

Q.—At that time, when Phillips and Purcell were together in New Jersey, was Sigretto doing then any sewer contract work in Queens? A.—No, sir.

Q.—Would you then know if he had been out of Queens at that time, for how long, approximately? A.—Oh, a year or so.

30 Q.—Do you remember Sigretto having a contract in the Borough of Queens known as the Hull Avenue sewer contract? A.—Yes, sir.

Q.—Do you know of the same contractor having a contract known as the Atlantic Avenue sewer contract, in the Borough of Queens? A.—Yes, sir.

MR. O'DONNELL: Objected to, as irrelevant.

MR. HACKETT: I avail myself of that objection.

40 Q.—Do you know, Mr. Decker, of Sigretto having a contract known as the McComb Place sewer contract?

MR. O'DONNELL: Same objection.

A.—I don't remember that.

Q.—Will you look at what appears to be a contract between J. Sigretto, in his capacity as president of Joseph L. Sigretto & Co., Inc., and John M. Phillips, and state if you have seen this paper before?



*Albert Decker for plaintiff (direct examination).*

MR. COOK: May we see it, please?

MR. GOUDRAULT: Yes.

(Defendants' attorneys examine paper referred to.)

A.—Yes, I have seen that.

10 Q.—You have seen that? A.—Yes.

MR. GOUDRAULT: Plaintiffs now offer as evidence, this contract between Joseph L. Sigretto & Company, Inc. and John M. Phillips, as Plaintiff's Exhibit C-83.

MR. O'DONNELL: Defendants object to the production of this document as being entirely irrelevant and illegal, and defendants object to any evidence in connection therewith.

20 (The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-83, of this date).

Q.—You have also seen this contract, what purports to be a contract between Joseph L. Sigretto & Company, Inc., and John M. Phillips, which appears to be dated April 27, 1917? You have seen that before? A.—Yes, sir.

MR. GOUDRAULT: Plaintiffs offer in evidence, as Exhibit C-84, the said contract.

MR. O'DONNELL: Same objection.

30 (The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-84 of this date).

Q.—Will you look at a paper purporting to be a contract between Joseph L. Sigretto & Company, Inc., and John M. Phillips, and state if you have seen this before, Mr. Decker? A.—Yes, sir.

MR. GOUDRAULT: Plaintiffs offer in evidence this contract, as Exhibit C-85.

40 MR. O'DONNELL: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-85 of this date).

MR. GOUDRAULT: Do I understand that the attorneys for the defendants wish to see these?

MR. COOK: Yes.

*Albert Decker for plaintiff (direct examination).*

(Defendants' attorneys examine papers referred to.)

Q.—If you now look at Exhibit C-83, which is the contract between Joseph L. Sigretto & Company, Inc., and John M. Phillips, you will see there are some interlineations? A.—Yes, that is the reason I recognize it.

10 Q.—Do you remember who made them? A.—I made them; that is my writing.

Q.—Your own writing. And there are some interlineations also in pen and ink on the other two contracts.

MR. HACKETT: Are there?

MR. GOUDRAULT: Yes.

MR. COOK: If you are testifying, Mr. Goudrault, you better be sworn first.

20 Q.—Would they be made by you? A.—Yes.

Q.—So on three contracts those interlineations are in your own handwriting? A.—Yes, sir.

Q.—Now, do you know the handwriting of Joseph L. Sigretto, Mr. Decker? A.—I think so. But I wouldn't swear to it.

MR. O'DONNELL: Objected to as not being the best evidence.

30 Q.—Do you know the handwriting of John M. Phillips? A.—That looks like it.

MR. O'DONNELL: Same objection.

Q.—On all of these three contracts? A.—Yes, sir. That looks like it.

MR. O'DONNELL: Defendants object to any verbal evidence by this witness as to the handwriting, as not being the best evidence.

40 MR. HACKETT: I avail myself of the same objection. Isn't it, as a matter of fact, their signature? A.—I don't know.

Q.—Wasn't that signed in your presence? A.—I don't remember that one (indicating).

Q.—Are those the signatures of Sigretto and Phillips on these three contracts, C-83, C-84 and C-85; to the best of your knowledge, their signatures?

*Albert Decker for plaintiff (direct examination).*

MR. O'DONNELL: The witness has already answered the question. In any event, it is not the best evidence.

THE COMMISSIONER: You may proceed with your answer subject to counsel's objection.

A.—To the best of my knowledge it is.

10 Q.—You knew their handwriting, Phillips' and Sigretto's handwriting; you had been with those men for years?

MR. O'DONNELL: Same objection.

A.—Yes, but I can not recognize it 14 years after.

Q.—At the time that these papers were executed, April 27, 1917, had Sigretto gotten any contract from the Borough of Queens, for the construction of sewers, Mr. Decker?

MR. HACKETT: The records show that.

20 A.—That shows it. He must have.

Q.—Do you remember the Collins Avenue sewer? A.—Yes, sir.

Q.—You worked on that? A.—I worked on that one.

Q.—That was awarded to Joseph I. Sigretto & Company?

A.—Yes.

Q.—Do you remember the Hull Avenue sewer?

30 MR. HACKETT: He said that he remembers the Hull and the Atlantic Avenue jobs, and the McComb Place he does not.

A.—Yes, Hull Avenue I remember.

MR. HACKETT: Sure. And so do you remember the Atlantic.

THE WITNESS: Atlantic, yes.

40 Q.—In those contracts, Exhibits C-83, C-84 and C-85, those corrections or interlineations were put in by you at whose suggestion, do you recollect, Mr. Decker? A.—It must have been Mr. Sigretto's because he can't read.

MR. COOK: Mr. Sigretto can't read or write?

THE WITNESS: No, sir.

Q.—At this time, that is in April, 1917, did you know John M. Phillips well? A.—No, sir.

*Albert Decker for plaintiff (direct examination).*

MR. COOK: May I ask a question here?

MR. GOUDRAULT: Yes, sure.

MR. COOK: Were the interlineations put in after the contract was signed?

THE WITNESS: That I don't know.

10

MR. COOK: You don't remember.

THE WITNESS: No.

Q.—Years afterwards you became a very close friend of John M. Phillips, I understand? A.—I was a good friend of him, yes.

Q.—Did he loan you any money? A.—Yes.

MR. O'DONNELL: Objected to as irrelevant.

20

Q.—Once or twice? A.—Once he loaned me \$25,000.

MR. HACKETT: When you were in the contracting business on your own?

THE WITNESS: Yes, sir.

Q.—What was your part of the work when you were working for Joseph L. Sigretto, when these contracts on Atlantic Avenue, McComb Place, Hull Avenue and Collins Avenue were being built?

30

MR. O'DONNELL: Same objection, as irrelevant.

A.—I was engineer and superintendent.

Q.—For Joseph L. Sigretto? A.—Yes, sir.

Q.—Did you have many men under you? A.—Yes, considerable.

MR. O'DONNELL: Same objection.

Q.—Did Mr. Sigretto have any other superintendents and engineers? A.—He did not have any engineers. Later on he had a couple of superintendents, in Queens; Mr. Frank Paino and Mr. James Gallo.

40

Q.—Did you help Mr. Sigretto with his books, Mr. Decker? A.—Yes, sir.

MR. COOK: I object to that question. Mr. Decker has just clearly stated that Mr. Sigretto could neither read nor

*Albert Decker for plaintiff (direct examination).*

write; and therefore it is impossible to say that he helped him with his books. He probably kept Mr. Sigretto's books entirely, but he did not help Mr. Sigretto because Sigretto did not know how to keep his books.

10 THE WITNESS: At the time I kept some of his books and his wife helped also. His wife and myself kept them. He could not write.

Q.—When did you finally leave Joseph L. Sigretto & Company? The year?

MR. HACKETT: 1919 or 1920, he said.

A.—I don't know what year it was. I can tell you how you can tell. Have you got a record of the contract on Myrtle Avenue? That is the year I left.

20 Q.—Which contract? A.—Contract for Myrtle Avenue. That would fix the date.

Q.—Do you know anything, Mr. Decker, of Mr. Sigretto's job on 51st Street? A.—51st Street?

Q.—Yes. A.—He assigned that to Mr. Creem.

Q.—Forgetting about dates and everything, do you know if after Mr. Sigretto had assigned to Mr. Creem the 51st Street contract, if he did do any more jobs in the Borough of Queens except finishing any job that he had? A.—After 51st Street?

Q.—Yes. A.—I don't think so. What year was that one?

30 Q.—When you worked for Sigretto, you were an employee then? A.—That is all.

Q.—The date of the award of the contract to Sigretto & Company for the 51st Street, is 1918. A.—I don't think he did any work after that in Queens.

Q.—It was assigned to Creem, and completed —

MR. COOK: Mr. Goudrault, that all appears quite clearly from Mr. Sigretto's own evidence, and Exhibit C-1. What's the use of going into this?

40 Q.—According to Exhibit C-1, which is a tabulation of sewer contracts awarded and executed in the Borough of Queens, it does state here that the 51st Street sewer work was completed in August, 1920. A.—I don't think he did any work after 51st Street, because I think he had a contract in Jersey. It was a water contract for Jersey City.

*Albert Decker for plaintiff (direct examination).*

Q.—I understand at one time, Mr. Decker, you organized a company, incorporated a company? A.—What do you mean? Which company?

Q.—Muccini & Decker. A.—Muccini & Decker was never incorporated. It was a partnership.

Q.—A partnership? A.—Yes, sir.

10 Q.—I see. Do you remember the year you went into partnership with Muccini? A.—Yes, 1924.

Q.—Do you remember the first City contract that Muccini & Decker had in Queens Borough? A.—It was a contract in Flushing. I think it was Union Avenue; Union Avenue sewer.

Q.—Now, I understood that Muccini & Decker had a series of contracts, hadn't they? A.—Yes, sir.

Q.—For the Borough of Queens? A.—Yes, sir.

Q.—Would you remember the number of contracts, sewer contracts, that Muccini & Decker had? A.—No. I might remember them by name.

20 Q.—If I give you the names, could you state whether or not I am right? A.—That is right.

Q.—You just stated the Union Avenue sewer. A.—Yes, sir.

Q.—Do you remember the Grand Avenue sewer? A.—Yes, sir. I will tell you, if you will let me read my own stuff, I can give it to you.

30 Q.—Surely. A.—Union Avenue, Grand Avenue, Queens Boulevard, Farmers Boulevard, Laurel Hill Boulevard, Polk Avenue, Springfield Boulevard, Hempstead Avenue, Jamaica Avenue; Brinkerhoff Avenue, two contracts; 88th Street, 51st Street, Monroe Street, Winchester Boulevard, Beach 32nd Street, Rockaway Boulevard, Ditmars Avenue, 121st Street, 38th Street, Decker Street, 92nd Street, 45th Avenue, 24th Street. Now, outside of sewer contracts, I did the Rockaway boardwalk. I did a paving job, a road job, on, I think it is Hammels Boulevard.

Q.—Oh, no. A.—You don't want those?

Q.—No, just the sewers. A.—Those are the sewers I read you.

40 Q.—Did you mention Sutter Avenue? A.—88th Street, that's Sutter Avenue.

Q.—I understand that all these various sewer contracts were of the Type B or precast pipe, weren't they? A.—Yes.

Q.—From whom did you buy the precast pipe that entered into these sewers? A.—Mr. Phillips.

Q.—John M. Phillips? A.—Yes, John M. Phillips.

*Albert Decker for plaintiff (direct examination).*

Q.—Do you recollect the amount that your firm, the firm of Muccini & Decker, paid Phillips for the pipe, for those various contracts? A.—The total?

Q.—Yes. A.—I don't remember the exact figure. It is over a million and a half. I know that.

10 MR. O'DONNELL: Objected to as not being the best evidence of payment.

Q.—Is Mr. Muccini dead? A.—No, sir.

Q.—He is not in partnership with you any more? A.—Oh, yes.

Q.—He is still? A.—Well, we are not in partnership. We are doing business under a corporation.

20 Q.—Mr. Decker, you have been subpoenaed to produce whatever papers, cancelled checks and books and documents you may have referring to various contracts with the Borough of Queens? A.—Yes, sir.

Q.—I now hand you sheets and ask you if you have any more account books except this? I mean books pertaining to your transactions with Phillips for precast pipe.

MR. HACKETT: It might be of interest to know how Mr. Goudrault, attorney for the plaintiff, became possessed of your books, Mr. Decker.

30 THE WITNESS: Those books were turned over to Mr. Buckner, and I never got them back. The fact is that I made a copy of this before I brought it in.

MR. GOUDRAULT: In order to clear up the question, this evidence was turned over to me by the People of the State of New York, by my own clients.

MR. COOK: Did you write these (indicating)?

THE WITNESS: Yes, sir.

40 MR. COOK: Mr. Goudrault, will put your question to him, and I will see what you are going to ask, if you don't mind. before this gentleman answers, we want to know what your question is.

MR. GOUDRAULT: Will you read my question?

(Question read by Clerk).

THE WITNESS: No, sir.

*Albert Decker for plaintiff (direct examination):*

Q.—That is all you have? A.—Yes, sir. Of course, this is a copy of that (indicating).

MR. GOUDRAULT: I now offer in evidence these sheets as Plaintiff's Exhibit C-86.

10 MR. O'DONNELL: Defendants object to the production of this document as not being the best evidence of the purchases and payments which purport to be shown thereon.

MR. HACKETT: I avail myself of that objection.

(The said papers were thereupon received in evidence and marked Plaintiff's Exhibit C-86 of this date; three sheets).

BY MR. GOUDRAULT:

Q.—I understand that this Exhibit C-86 is in your own handwriting? A.—Yes, sir.

20 Q.—What is this Exhibit C-86? A.—Sheets out of my ledger.

MR. COOK: Those are sheets torn out of or taken out of your ledger?

THE WITNESS: Taken out of my ledger, my original ledger.

30 MR. COOK: These are sheets taken, as Mr. Decker says, from his own ledger.

I submit, Mr. Commissioner, that they are making no proof whatever against the defendants in this case. But subject to my objection as to their relevancy, I have no objection to their being produced. I don't care whether you produce them or not. And as to the balance of the sheets what have they to do with the case?

MR. HACKETT: What have any of them to do with the case?

40 BY MR. GOUDRAULT:

Q.—You were keeping your ledgers in a loose leaf system? A.—There's the originals right there, and these sheets were taken out. And when I got them back from Mr. Buckner they were not in there. And this is the first time I have seen them since.



*Albert Decker for plaintiff (direct examination).*

BY MR. COOK:

Q.—The other sheets, Mr. Decker, that you have just handed counsel for the plaintiff, nothing whatever to do with the matters we are now discussing, have they? A.—These here?

Q.—Yes. A.—Yes, they have. They belonged in here originally.

10 Q.—But I mean these papers that Mr. Goudrault has in his hand, have nothing to do with it? A.—Yes, these belong in here. They were in here originally (indicating).

THE COMMISSIONER: But your ledger papers outside of those have nothing to do with the subject under discussion.

THE WITNESS: No, sir.

10 MR. COOK: What's the use of producing them, Mr. Goudrault?

MR. GOUDRAULT: I want to be careful that it is not a mutilated document.

Q.—In showing us this exhibit, which are the ledger sheets, this exhibit C-86, and that ledger of yours, — A.—You should have 1924, 1925, 1926 and 1927.

30 Q.—That is right. (continuing) That together with the ledger sheets, the balance of your ledger that you have shown us, are those all the books you have of Muccini & Decker? A. Yes, sir.

Q.—You have nothing else? A.—The rest are all outside accounts.

Q.—Will you look at Exhibit C-86, Mr. Decker, and state if therein appears, —

MR. HACKETT: No. That is a suggestive question.

MR. GOUDRAULT: All right.

40 Q.—I see here that you have in column one, in the right hand column, the names of the jobs, —

MR. COOK: Ask him what it is.

MR. GOUDRAULT: Do you want this to be long?

MR. HACKETT: It is long.

MR. GOUDRAULT: You will get it.

*Albert Decker for plaintiff (direct examination).*

BY MR. GOUDRAULT:

Q.—You have already stated a number of contracts that were executed in the Borough of Queens by the firm of Muccini & Decker. A.—That is for sewers, yes.

Q.—For sewers, Mr. Decker. A.—Yes, sir

10 Q.—And now these contracts, I understand, appear on these ledger sheets? A.—Yes, sir.

Q.—And you have there figures. I wish you to kindly tell us what they mean. I mean the figures in the right hand column of such pages.

MR. O'DONNELL: Objected to, as not being the best evidence.

A.—Well, for instance, this is the Grand Avenue contract, and it constituted this number of feet of different size sewers, and the total of contract is \$97,000. And these were figured by me  
20 to bid with. And I carried them under that item. (Indicating)

Q.—I see. Now, would the total amount there of, would that be for pipe? A.—Yes, sir.

Q.—That was your contract with John M. Phillips? A. Yes, sir.

Q.—With each one of these contracts? A.—Yes, sir.

MR. COOK: You had written agreements in each case, with Mr. Phillips, for the pipe?

30 THE WITNESS: No, sir, I did not.

Q.—Just an ordinary verbal agreement. A.—Verbal agreement. This particular one here, there was an assignment from Daniel Creem.

Q.—I see. But the others? A.—The others were verbal.

Q.—You just bought your pipe from Phillips? A.—Yes, sir.

Q.—And paid for it? A.—Paid for it.

40 Q.—Now, does the amount that you would have paid to Phillips appear here on the said ledger sheets, C-86? A.—On the left hand side.

Q.—I see. All those amounts there were entries payable to John M. Phillips, and you charged this against one particular contract, did you? A.—No, they are bunched together, because we bid, for instance, — is that 1925?

Q.—That is right. A.—I bunched five contracts in 1925.

*Albert Decker for plaintiff (direct examination).*

Q.—There you have the amount of the pipe? A.—Yes, sir.

Q.—Which you paid to Phillips? A.—Yes, sir.

Q.—That were charged to you by Phillips? A.—This is what I owed him, and this is what I paid to him.

10 Q.—I see. In the left hand column then appears payments to Phillips? A.—Yes, sir.

Q.—Did you write that down yourself? A.—Yes, sir.

Q.—Your own handwriting? A.—Yes, sir.

Q.—On the three sheets?, A.—Yes, sir.

Q.—Now, I notice here that there are a few entries to cash for various amounts. Could you state what they were? A.—Yes, sir. I gave him cash for that.

MR. O'DONNELL: Same objection, as not being the best evidence. And defendants renew the objection that statements by this witness cannot be used against the defendants.

20 MR. HACKETT: I associate myself with that objection.

Q.—I see here that on January 26, 1924, you paid to Daniel J. Creem \$27,000? A.—Yes, sir.

Q.—That was for the Grand Avenue? A.—Yes, sir, that was toward that assignment. There was one check of \$1,000, and then the rest of the checks made to Daniel J. Creem will amount to \$96,000, for his assignment.

30 MR. HACKETT: He was financing Phillips at that time, according to one witness.

THE WITNESS: I imagine that is what it was. Anyway, I paid these checks to Daniel J. Creem for that particular contract.

Q.—Daniel J. Creem, he was not a contractor, was he? A.—No, sir.

Q.—He was an assignee of Phillips? A.—Yes, sir.

40 Q.—Now, will you explain the entry here appearing to be February 12, to Rose Spinella, for \$15,000. Who is she? A.—Yes, sir. We borrowed money from Mrs. Spinella to pay Mr. Phillips, and then we paid Mrs. Spinella back, and charged it against the pipe. She advanced the money.

Q.—Is that each time that you have the name Rose Spinella the same? A.—No. I think that was two transactions, if I remember right.

*Albert Decker for plaintiff (direct examination).*

Q.—She advanced the money and you paid it to Phillips. Is that the idea? A.—That is right.

Q.—And then you reimbursed her? A.—Yes, sir.

Q.—And that was for pipe? A.—Yes, sir.

Q.—On Sheet No. 2 of Exhibit C-86, Mr. Decker, I see various entries to cash. Would you explain, in a word, what they are? Various amounts in the left hand column; that is 1926, from 10 January 28 to May 8, inclusive. There is an amount of checks, all payable to cash. A.—Yes, that was cash.

Q.—For what purpose? A.—To pay Mr. Phillips for his pipe.

MR. O'DONNELL: Same objection, as not the best evidence of payment.

Q.—There is here, on May 12, a check for \$35,125. to Welch Brothers. A.—Yes, Mr. Phillips told me to give Welch Brothers a check. 20

Q.—And you applied it on account? A.—Applied it against the pipe.

Q.—Against the pipe that you owed Phillips. And after that I see three further payments of \$5,000, May 15th, May 22 and May 29. That is cash. A.—Cash.

Q.—To whom? A.—Mr. Phillips, for pipe.

Q.—For pipe. Now, on June 1, 1926, I see an entry Michael D'Angelo, for it seems to be \$25,000. A.—Yes, sir. That check was made out to him and he gave that money to 30 Mr. Phillips.

Q.—Also that was for pipe? A.—That was for pipe. The same thing for Joseph De Salvo.

Q.—On June 22, \$25,000, De Salvo, that was for pipe, to Phillips? A.—Yes, sir.

MR. O'DONNELL: Same objection to all this evidence.

Q.—And you have here, Mr. Decker, July 3, Edwin Harrison, \$28,250. A.—That was for races for Phillips' bookmaker, I understand. I made a check and gave it to Mr. Phillips. 40

MR. COOK: What had that to do with sewers?

Q.—Was that for pipe? A.—That was for pipe.

Q.—And you gave the check to Edwin Harrison? A.—No, I gave it to Mr. Phillips.

Q.—But it was made to? A.—He told me to make it out to Mr. Harrison.

*Albert Decker for plaintiff (direct examination).*

Q.—And did you apply that payment to? A.—Pipe, yes, sir.

Q.—On July 21, John O'Toole, \$1,000. A.—That was applied against pipe.

Q.—On July 29, Daniel Enright, \$5,025. A.—That was applied to pipe.

10 Q.—Sold and delivered to you by Phillips? A.—Yes, sir.

Q.—On August 9, William McGuire, \$15,000. A.—That was applied to pipe.

MR. COOK: Who was William McGuire?

THE WITNESS: McGuire, I don't know who he was. Mr. Phillips told me to make out this check to Mr. McGuire, and I made out the check and gave it to Phillips.

20 Q.—And that check went through your bank and was paid? A.—Yes, sir.

Q.—And I see here on August 9, to John McDonald, \$20,000. Will you explain that one? A.—It is the same thing; same as the preceding one.

MR. COOK: Who is John McDonald is.

THE WITNESS: I know who John McDonald is.

30 Q.—Who is he? A.—He is a contractor. That is, he is connected with a contractor. His brother is a big paving man. As I understand, that was something about races.

MR. COOK: Something about races?

THE WITNESS: Yes, sir, he lost.

MR. COOK: As you go along, this is very interesting, would you just mention when anything about races comes in, because it saves a lot of trouble.

MR. GOUDRAULT: You don't need to mind that.

40 MR. COOK: Oh, yes, you do need to mind that. That is a very serious suggestion.

MR. GOUDRAULT: All right, we will accept your suggestion, and then we will have to question him whether it was for races or for pipe.

MR. HACKETT: Undoubtedly we will.

*Albert Decker for plaintiff (direct examination).*

MR. COOK: No, no. He is your witness.

MR. GOUDRAULT: I see. Then if he is my witness, let me go on.

Q.—I understand that this payment to John McDonald was given this man on the instructions of Phillips, Mr. Decker?

10 A.—Absolutely.

Q.—And why did you give Phillips that check to the order of McDonald? A.—Because he asked me to make it out that way, in payment of pipe, and to pay a betting obligation of Phillips, as he told us.

Q.—And now, I see one here dated September 6th, Thomas Cassidy, \$5,000? A.—That is for racing too.

Q.—But also, — A.—Applied against pipe.

Q.—I see here on September 13th, Thomas Cassidy, another payment for \$5,000? A.—That is the same.

20 MR. COOK: Racing?

THE WITNESS: Yes, sir.

Q.—Pipe?

MR. O'DONNELL: Racing.

THE WITNESS: Racing, and charged against the pipe.

Q.—On September 13th, one to Edwin Harrison, \$5,000.  
30 A.—That is another bookie, or races, whatever you want to call them.

Q.—In your book it is applied to pipe furnished you by Phillips? A.—Absolutely.

Q.—And the same for John McDonald, September 14th, for \$4,182; Edward Carroll, on the 16th of September? A.—That is the same.

Q.—And the 27th of September, John McDonald? A.—That is the same.

Q.—\$43,000, that is the same proceedings? A.—Yes, sir.

40 Q.—You gave these checks at the instance of Phillips and applied them against the pipe furnished by Phillips? A.—Yes, sir.

Q.—And on that Sheet No. 2 all other payments appearing as being cash, I understand was paid to Phillips for pipe? A.—Yes, sir.

Q.—Well, now, what you have said of Sheets 1 and 2 of this Exhibit C-86, does that apply to Sheet No. 3 also? A.—You

*Albert Decker for plaintiff (direct examination).*

better read them, because they are mixed up. Some are and some are not.

MR. HACKETT: I don't think that you said exactly what you wished to say, Mr. Goudrault.

I understood the witness to say that all the payment, regardless as to whom they went, were in compensation for pipe.  
10 I don't think that what you said was quite so.

MR. GOUDRAULT: Well, that is really what I did mean, though.

MR. COOK: I know what you meant, but we want to get it down right.

MR. GOUDRAULT: You are right, that is what I meant.

BY MR. GOUDRAULT:

20

Q.—In compensation for pipe or in payment for pipe?

A.—Yes.

MR. HACKETT: Yes.

MR. COOK: You might take them all in order.

MR. GOUDRAULT: Well, I would like to put them in the same way we did Sheet 1 and 2, but the witness now tells me that these entries were different.

30

THE WITNESS: Yes, sir.

MR. GOUDRAULT: All right, then we will take them one by one. Then I will put my question like this:

Q.—All payments that appear on Sheet No. 3 of Exhibit C-86, on the left hand column, of a payment to Phillips directly or indirectly for pipe? A.—Directly for pipe. Not indirectly.

Q.—I mean to say, indirectly as they were not always to Phillips' order, those checks. Do you get me? A.—Yes, that  
40 is right. Some are and some are not.

Q.—But do you get my question right? Perhaps I am not clear. A.—I am not so clear on that either. What is it?

Q.—Do the entries appearing here as payments in this left hand column of Sheet 3, are they all for pipe? A.—They are all for pipe, yes.

Q.—And all charged to Phillips' account for pipe? A.—Yes, sir.

*Albert Decker for plaintiff (direct examination).*

MR. HACKETT: And with the money payable by you to Phillips, Phillips' obligations, many of them arising from racing, were paid?

THE WITNESS: Yes, sir.

10 Q.—Racing or other obligations. A.—There are some other things here. They are not all racing. Down here I paid for some of his material, and checks were paid out to his material people for the manufacture of his pipe.

Q.—I see. So it is not solely for races? A.—Not solely for races, no.

Q.—Now, I understand that you have handed us here a series of checks, cancelled checks? A.—Yes, sir.

20 Q.—We have had no chance of making a list of the checks. I suppose we can give you a receipt, and you can rely on us to return them. A.—There are some missing yet from those that were given to Buckner. You can look to Mr. Buckner for them, not to me. But they are there, just the way I got them. I tied them up the way we got them, and there they are.

MR. GOUDRAULT: We want our right to further examine Mr. Decker and produce said checks after we have had a chance to examine them and see if they relate to the matters at issue in this case.

30 THE COMMISSIONER: I have no objection to that, but I wish you would proceed.

MR. GOUDRAULT: Well, I think we are doing fine.

BY MR. GOUDRAULT:

Q.—We now have in evidence, Mr. Decker, this contract of your firm, which is the Grand Avenue contract, wherein it appears that 3902 feet of precast reinforced concrete sewer pipe was ordered to be used, or used, for the construction of that contract. Do you know how much —

40 MR. COOK: What exhibit is that, please?

MR. GOUDRAULT: That is Exhibit C-77.

Q.—(continuing) Do you know how much was paid for that pipe? A.—It's right on this list here (indicating). That is the number of feet and that is the total price, lump sum.

Q.—Therefore, you have paid \$97,000? A.—Yes, sir.



*Albert Decker for plaintiff (direct examination).*

MR. O'DONNELL: Defendants object to any verbal evidence as to payments, as not being the best evidence.

MR. GOUDRAULT: If you refer to paragraph 26 of the declaration, we have there, Mr. Cook, 16 contracts or so, maybe more, and we are going to prove that in each of these contracts there were so many lineal feet of sewer pipe, precast  
10 pipe, bought from Phillips by the witness and paid for.

MR. HACKETT: Why don't you get at that?

MR. GOUDRAULT: We are getting at that, if you will just leave us alone.

MR. COOK: Take them in order, and let us get ahead.

MR. GOUDRAULT: Will you read me the last question, and the last answer pertaining to that Grand Avenue contract?

20 (Question and answer read by clerk.)

BY MR. GOUDRAULT:

Q.—Mr. Decker, are you willing to look into the 16 contracts we have here produced, and tell us, making your own additions, the number of linear feet that the contracts called for and were used by your company for the construction of each of these sewers, and also give us the price paid to Phillips for each particular contract; that is the data that is necessary for this  
30 case, and we wish you to make that. A.—Well, I have got this all worked out here already. Each contract I have divided the number of feet and the price per foot. Of course, in some cases you see it was a lump sum, and I divided it as I saw fit because it was a lump sum, as a matter of keeping track of it. In some cases they cost so much per foot, and in some cases a lump sum. But the linear feet are all there.

Q.—And all the lump sum were put in by you? A.—In the cases where he sold to me lump sum, they are; and when they were per foot, they are per foot.

40 Q.—I see. Therefore the linear feet appearing there on Sheet No. 1 represent the total number of feet used by you and bought from Phillips and paid to Phillips. Is that right? A. Yes, sir.

Q.—For the Grand Avenue sewer? A.—Yes, sir.

Q.—Now, will you look at your Exhibit C-86, which refers to the Queens Boulevard sewer, and tell us if there appears

*Albert Decker for plaintiff (direct examination).*

there the number of feet of precast reinforced concrete sewer pipe? A.—Do you want me to read the number of feet?

Q.—Yes. A.—2807 feet of 6 foot at \$22 a foot, and 564 feet of 2 foot-nine, at \$7.50; lump sum \$66,000.

10 MR. O'DONNELL: That is all under the objections which we made to C-86.

THE COMMISSIONER: Your objection will be noted on the record. And will you proceed, Mr. Witness, with your responses.

20 Q.—Will you again refer to that exhibit and see the amount of pipe and the various sizes of pipe that were used by you for the Farmers Boulevard sewer and tell us how much you paid Phillips? A.—3621 feet of 4 foot-6 at \$45 a foot, making a total of \$163,000.

Q.—Will you now look at the Polk Avenue entries, and state what number of feet? A.—287 feet of 3 foot-6, at \$19 a foot, and 583 feet of 3 foot at \$12.50, making \$12,724.

Q.—Will you now look at your ledger sheet and tell us the particulars as regards the number of feet and prices and total amount paid to Phillips for the Hempstead Avenue sewer? A.—Hempstead Avenue, 3650 feet of 3 foot-6, at \$45 a foot, \$164,250.

30 Q.—Will you now look at your ledger sheet as regards the number of feet and prices and amounts paid with regard to Springfield Boulevard? A.—6580 feet of 3 foot-6, at \$45 a foot, \$296,100.

Q.—Jamaica Avenue? A.—7788 feet of 3 foot-6, a \$45, \$350,460. And there is another item, 677 feet of 2 foot-9, at \$30 a foot, \$20,310.

40 Q.—Brinkerhoff Avenue? A.—Well, there were two contracts on that, 2807 feet of 3 foot-6, at \$19.43, and 154 feet of 4 foot pipe at \$19.43. That was a lump sum, \$57,620 for the two contracts.

Q.—You say there were two contracts there on Brinkerhoff Avenue? A.—There were two Brinkerhoff Avenue. One was 3 foot-6 and the other was 4 foot. And the price is the lump sum on both.

*Albert Decker for plaintiff (direct examination).*

MR. HACKETT: \$57,620.

THE WITNESS: Yes.

Q.—Now we go to the 51st Street sewer? A.—488 feet of 5 foot-6, at \$21.84, — \$10,680.

10 Q.—Monroe Street? A.—1524 feet of 7 foot sewer at \$27.56, — \$42,000.

Q.—As regards this Monroe Street, did you give the total there, Mr. Decker?

MR. HACKETT: Yes, \$42,000.

Q.—Now, we go to Ditmars Avenue sewer. A.—807 feet of 3 foot sewer, \$13 a foot; 270 feet of 2 foot-6, at \$6.70; total \$12,300.

20 Q.—Now we go to the Rockaway Boulevard sewer? A. 1350 feet of 7 foot sewer at \$26.40; 2776 feet of 4 foot-6, at \$16.40. Total \$81,000.

Q.—Now, will you give me the particulars as regard the 38th Street sewer. A.—542 feet of 4 foot, at \$17; 435 feet of 2 foot-9, at \$9; 671 feet of 24 inch, at \$3; total \$15,016.

Q.—For the 121st Street sewer? A.—646 feet of 4 foot sewer, at \$15; 680 feet of 3 foot-6, at \$12.50; 260 feet of 2 foot, at \$3; total \$19,000.

30 Q.—Now, will you give me the particulars of Beach 32nd Street? A.—2266 feet of 3 foot sewer, at \$22.50, \$51,000.

Q.—The Decker Street? A.—3859 feet of 8 foot sewer at \$36; 300 feet of 3 foot sewer, at \$11; \$142,307 total.

Q.—The Sutter Avenue job? A.—1063 feet of 4 foot, at \$11; 515 feet of 3 foot, at \$8; 264 feet of 2 foot-9 at \$7; 181 feet of 2 foot, at \$3; total \$18,200.

40 Q.—The last one is the 45th Avenue. A.—527 feet of 3 foot-9 at \$12; 260 feet of 3 foot-3 at \$10; 520 feet of 3 foot, \$9; 250 feet of 2 foot-6, at \$7; 250 of 2 foot, at \$3; total \$18,000, lump sum.

Q.—Would you itemize that Grand Avenue job? A.—2012 feet of 8 foot at \$31.50; 573 feet of 7 foot, at \$30; 536 feet of 5 foot-6, at \$13.10; 781 feet of 4 foot-6, at \$12; total \$97,000, lump sum.

*Albert Decker for plaintiff (direct examination).*

MR. O'DONNELL: Defendants renew the objection made in regard to verbal evidence by this witness when reading from the document C-86 from which the foregoing measurements and prices were read.

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MR. GOUDRAULT: Mr. Commissioner, before we adjourn, may I ask you to instruct Mr. Clifton Turner to be here tomorrow at 11 o'clock.

(The witness, Clifton Turner, appeared, but was not sworn.)

20

THE COMMISSIONER: Mr. Turner, you are instructed to be here at 11 o'clock sharp tomorrow morning.

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(Whereupon at 4:05 P. M., an adjournment was taken to Wednesday, February 4th, 1931, at 11 o'clock.)

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Depositions of witnesses, sworn and examined on the 4th day of February 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, 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 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:

(By consent of all concerned, Mr. John F. Collins, attorney for Patrick McGovern, Inc., was invited to be present during the testimony of the witness John S. Macdonald.)

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DEPOSITION OF JOHN S. MACDONALD.

JOHN S. MACDONALD, age 37, of 3758, 84th Street, Jackson Heights, in the County of Queens, a civil engineer, a witness produced, sworn and examined on the part and behalf of the People of the State of New York, the plaintiff, depseth and saith as follows:

30

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—With what concern are you connected, Mr. Macdonald? A.—Patrick McGovern, Inc.

Q.—For how long? A.—20 years.

Q.—Did you have any connection with making the bids for the Hammels Boulevard construction? A.—Yes, sir, I did.

Q.—Did you make the estimates and make the bids? A. I did, with the help of one of our men.

40

MR. COOK: Defendants object to all of this in regard to the Hammels Boulevard matter, as irrelevant and having no bearing on the issues.

MR. HACKETT: So do I.

MR. COOK: And request that this objection apply to the entire examination of this witness.

*John S. MacDonald for plaintiff (direct examination).*

MR. HACKETT: I make the same application.

THE COMMISSIONER: You may answer, subject to counsel's objections.

BY MR. GOUDRAULT:

10 Q.—Does your company engage in the construction of sewers, Mr. Macdonald? A.—Yes, sir.

Q.—So when you were asked to prepare estimates for this Hammels Boulevard job, that was not a novelty to you, was it? A.—No, sir.

Q.—We have produced here as evidence, marked Exhibits C-34 and C-35, summary of proposals for that sewer on Hammels Boulevard, both dated August 12, 1924; summary of proposals for Type A construction and Type B construction. And I notice that your company put in bids for both types of construction. A.—Yes, sir.

20 Q.—Your bid on Type A was \$805,151.40. Your bid for the Type B job was \$1,072,747.40. Your monolithic bid was, in round figures, \$200,000. less than your Type B or precast bid, is that right? A.—As I remember.

Q.—Can you tell us of your own knowledge what caused that difference? A.—The main reason, —

MR. O'DONNELL: Objected to as irrelevant.

30 A.—(continuing) The main reason, we were quoted a price on pipe and there was considerable, as I remember, there was considerably more concrete casing around the pipe than the total volume of the concrete in the monolithic.

Q.—Naturally enough, in making up your estimates, you took care of a reasonable profit to be made? A.—Yes, sir.

Q.—Would you tell us, in a few words, how you go about to make those estimates?

MR. O'DONNELL: That is altogether irrelevant.

40 Q.—What goes into estimates? A.—For the first thing, the overhead, bond, insurance, material and labor.

Q.—Was it you that had the quotations as regards the precast pipe in order to prepare your estimates for Type B sewer? A.—Did I have them?

MR. COOK: What is the question?

MR. HACKETT: Did he get the quotation for precast.

*John S. MacDonald for plaintiff (cross-examination).*

A.—As I remember, our purchasing agent, Mr. MacInnes, received a letter from the company furnishing the precast pipe, and then it was turned over to me, and I made my estimate.

Q.—In figuring the precast job, did you put in the pipe that you received through Mr. MacInnes, your purchasing agent?

A.—Yes, sir, we used that pipe.

10 Q.—Did you make any arrangements to get that pipe cheaper from anyone else? A.—No, sir.

Q.—Will you look at Plaintiff's Exhibit C-73, which has been produced in this case, and state if that is the quotation we are referring to for the precast pipe? A.—I don't remember that.

Q.—Anyway, you did get some quotation? A.—I remember we got a quotation.

Q.—Did your concern make a profit on that job, on the Hammels Boulevard job? A.—Yes, sir.

20 MR. GOUDRAULT: That is all.

CROSS EXAMINATION BY MR. HACKETT:

Q.—There has been some change in the prevailing way of constructing sewers, has there not, in the last 15 years? At one time the type called monolithic was almost universal, was it not? A.—Well, in the larger sewers it was, yes, sir.

Q.—And as the pipe of the larger sizes came on to the market, it became more and more frequently used, did it not?

30 A.—Yes.

Q.—Until now, most sewers of 7, 8 and 9 feet, are built out of pipe? A.—Well, I don't know about that. We have not done much sewer work since this job.

Q.—But you do know as a matter of fact that at one time there was practically no pipe of these sizes used? A.—Yes, sir.

Q.—And then that pipe came in about the time you did this job at Hammels Boulevard? A.—Yes.

40 Q.—And just as the use of this pipe has increased in volume, the method of using it has also been somewhat modified? A.—Yes, sir.

Q.—Because at first it was felt that there had to be a crib or a cradle for it to rest on, is that not true? A.—I think it was laid first in a crib.

Q.—And it was with reference to this substructure that vast quantities of cement and concrete were called for, which made it expensive. A.—Yes, there was quite a bit of excess cement.

*John S. MacDonald for plaintiff (cross-examination).*

Q.—It is to your knowledge that later on this crib or cradle was abandoned and found unnecessary? A.—I don't know about that. I have not followed that.

Q.—Did you have very much to do with the Borough of Queens when your company was executing sewer contracts for it? A.—Well, the first two or three months I was on the job practically constantly.

10 Q.—And while on the job you had to go to the Borough Hall not infrequently? A.—I have been there several times.

Q.—On business arising out of the work in hand? A.—Yes, sir.

Q.—You knew some of the engineers there? A.—Yes, sir.

Q.—As a matter of fact, there were a great many there, were there not? A.—Oh, yes.

Q.—Did you know Mr. Rice? A.—Yes, I know Mr. Rice.

20 Q.—What was his position there? A.—Mr Rice was chief engineer.

Q.—He was over a man by the name of Seely? A.—Well, I never met Mr. Seely in connection with this work.

MR. GOUDRAULT: Just a minute. I just wish to enter an objection to this line of cross-examination on the part of counsel for the defendants, for the following reasons: that this cross-examination does not arise from the examination in chief, and furthermore, because the witness is not the competent man to testify as to this.

30 BY MR. HACKETT:

Q.—You met Mr. Perrine? A.—Yes, sir.

Q.—And do you know what his position was? A.—I believe he was sewer engineer at that time.

Q.—Did you met Mr. Blake? A.—I met Mr. Blake, yes.

Q.—Do you recall what his position was? A.—I believe he was highway engineer at that time

Q.—And of course these sewers that you were constructing were built along the highways? A.—Yes, sir.

40 Q.—And his department was vitally interested in the way that you executed your work? A.—Yes, sir.

Q.—Did you come into contact with any of what we call the city engineers as distinct from the borough engineers? A. Why, there was a comptroller's engineer.

Q.—Do you remember his name? A.—I think it was Mr. Hill. He was on the Jamaica Bay Boulevard work, — I am not sure.



*John S. MacDonald for plaintiff (cross-examination).*

Q.—As a matter of fact, do you, through your long experience in public work, know anything of the co-relations between the borough and the metropolitan staff? A.—Yes, in a general way.

Q.—Just tell us how they inter-relate and to what extent they check one another.

10 MR. GOUDRAULT: I further object, for the reasons above stated, to any evidence along this line from the witness now on the stand, he not being the best witness for this purpose; and furthermore, this is not arising from the examination in chief.

A.—In our work we generally have monthly estimates, and the Comptroller's engineer checks these estimates in the field with the engineer that makes them up. And then I understand that the final estimate is checked by the Comptroller's engineer before it is paid.

20 Q.—And the plans and specifications have to run the gauntlet of the two houses? A.—Yes, sir.

Q.—The Borough house and the upper or Metropolitan house? A.—Yes, sir.

Q.—And are submitted to the engineers of both the Borough and the City? A.—Yes, sir.

Q.—Did you have more than one job in Queens? A.—Yes, sir, we built the Jamaica Bay Boulevard; Cross Bay Boulevard.

30 MR. GOUDRAULT: Was that a sewer contract?

THE WITNESS: No, that was a bridge. Immediately before this sewer job.

Q.—Restricting your evidence to sewers, will you say whether or not the work in that area was difficult of execution? A.—It was.

Q.—Why? A.—Well, it was in beach sand and very close to the water, and about 30 feet below high water.

40 Q.—And it was a difficult job to make water tight, wasn't it? A.—Yes, sir.

Q.—And inasmuch as the sewer, according to evidence already made here, was below tide water, the contents of the sewer had to be pumped at a certain point to a higher level? A.—Yes, sir.

Q.—So from an economic point of view it was imperative that the sewer be made watertight? A.—Yes, sir.

*John S. MacDonald for plaintiff (cross-examination).*

Q.—So that no seepage into the sewer take place? A.—Yes, sir.

Q.—And it was also necessary to take precautions to make the sewer impervious throughout the whole district? A.—Yes, sir.

MR. HACKETT: That is all.

10

CROSS EXAMINATION BY MR. COOK:

Q.—Mr. Macdonald, the type of sewer that was placed by the firm of Patrick McGovern & Company in the Hammels Boulevard, contract No. 71761, was the monolithic type of sewer? A.—Yes, sir.

Q.—Was it not? A.—Yes, sir.

Q.—As distinguished from what we have been calling the Type B sewer, precast sewer? A.—Precast, yes, sir.

20 Q.—It would seem from Exhibit C-73 that the late Mr. Phillips made an offer to you for the precast pipe for that work? A.—Yes. I know we had a quotation from him.

Q.—You had a quotation? A.—Yes, sir.

Q.—But that is of no consequence here, because the type that was actually inserted was the monolithic type? A.—Yes, sir.

30 Q.—So that as far as this sewer is concerned, we don't need to consider any way the cost of the precast pipes, because they did not come into the job at all. A.—No. We didn't use any of it.

Q.—And the monolithic type of sewer that you used on this job cost considerably less than, — your tender was considerably less for the monolithic than for the precast, and you were awarded the contract for the monolithic type? A.—Yes, sir.

MR. COOK: Thank you, Mr. Macdonald. I am much obliged to you.

MR. GOUDRAULT: Just a minute, Mr. Macdonald.

40

MR. COOK: Just a moment, Mr. Goudrault, please.

CROSS EXAMINATION BY MR. COOK: (Continued)

Q.—I understand that you had just finished a jog across Jamaica Bay, and had all your plant available? A.—Yes, sir.

Q.—And that of course enabled you to tender more cheaply than otherwise might have been the case? A.—Yes, sir.

Q.—For the monolithic job? A.—Yes, sir.

*John S. MacDonald for plaintiff (redirect examination).*

M. COOK: Thank you very much.

REDIRECT EXAMINATION BY MR. GOUDRAULT:

How much cheaper, would you say?

MR. COOK: We have got the prices from both.

10 A.—How much cheaper?

Q.—Yes. A.—Well, I couldn't say of hand.

MR. HACKETT: It would be a substantial sum.

THE WITNESS: We had finished our job, and we had our plant and our organization, and we did not have anything else, so this job came up right in our back yard.

20 Q.—Naturally enough, the price of precast pipe did not come in in the work, inasmuch as it was a monolithic sewer that you built? A.—Yes, sir.

Q.—But in preparing your bids for the Type B precast pipe, the price did matter quite a lot? A.—Yes, sir.

Q.—Another question: Is it to your knowledge that your company has built any other sanitary sewer in the Borough of Queens since this Hammels Boulevard was constructed? A.—No, we have not.

MR. HACKETT: Just a moment.

30 BY MR. HACKETT:

Q.—Having a plant and an organization, and nothing else to do, it might be good business for a contractor, and in particular for the McGovern concern, to take a contract in which there might be very little, if any, profit, for the purpose of keeping together its organization and using its plant pending something turning up? A.—Well, I don't think we would take it if there was not any profit.

Q.—But you might do it at a very small margin of profit under those circumstances? A.—Yes, we would.

40 Q.—It is generally in the interest of a contractor to keep together an efficient organization and to keep his plant working? A.—Yes, sir.

Q.—Because it deteriorates much more rapidly as the result of rust and inactivity than as the result of use? A.—Yes, sir.

MR. HACKETT: Thank you, Mr. Macdonald.

*Albert Decker for plaintiff recalled (direct examination)*

MR. GOUDRAULT: That is all. Thank you very much, Mr. Macdonald.

10 MR. GOUDRAULT: Mr. Hart is here, and I ask that he be requested to be here tomorrow at 11 o'clock.

(Witness Harry S. Hart appeared, but was not sworn.)

THE COMMISSIONER: Mr. Hart, you are instructed to be here at 11 o'clock tomorrow morning.

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DEPOSITION OF ALBERT DECKER  
(recalled).

20 ALBERT DECKER 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:

30 Q.—Mr. Decker, in going over these ledger sheets, Exhibits C-86, which you had yesterday, I overlooked the fact that there were some entries in back of the sheets. Will you please look at Sheet which I will mark No. 2, and the back of Sheet No. 3, and state if the payments therein appearing had anything to do with the account of your firm with John M. Phillips? A. Yes, sir.

Q.—And payments of pipe to Phillips? A.—Pipe, yes, sir.

Q.—All the checks that appear here payable to named persons, on the back of pages 2 and 3, were paid to the said persons? A.—Yes, sir.

Q.—How did it come to be that way? A.—Well, Mr. Phillips asked me to make them out that way.

40 Q.—And the other checks appearing to be for cash? A. We would pay that in cash.

Q.—Now, you handed us in the afternoon yesterday something like 1400 checks. Have you any other checks but those you have handed us, Mr. Decker? A.—No, that is all.

Q.—In checking over these 1400 checks we discovered that quite a few of them were missing. A.—Well, when I turned them over to Mr. Buckner they were all there.

*Albert Decker for plaintiff recalled (direct examination)* .

Q.—They were all there. And since that you have made searches personally to find out if you had them? A.—From Mr. Buckner?

Q.—Yes. A.—No, sir.

Q.—And in your own office, they wouldn't be there? A. No, sir. When I got them back I knew they were missing.

10 Q.—Now, do you remember having made these payments to Phillips?

MR. O'DONNELL: Objected to, any verbal evidence as to payments, as not the best evidence.

Q.—Do you remember in detail the payments made to Phillips for pipe? A.—Not each detail, no. I know I gave it to him, or Mr. Muccini.

20 Q.—But looking at this exhibit, C-86, which is your ledger sheet as regards John M. Phillips' account, can you refresh your memory as to the payments you made to Phillips?

MR. O'DONNELL: Same objection.

MR. COOK: I object to this evidence as to payments to Phillips, as not being the best evidence, and as being illegal and improper.

MR. HACKETT: I avail myself of the same objection.

30 MR. COOK: It is wrong for this witness to testify to payments when he in the same breath says they were made by checks and he has not made any effort to get the checks. I also object on the further grounds that all the evidence is irrelevant.

THE COMMISSIONER: You may answer, subject to counsel's objections.

BY MR. GOUDRAULT:

40 Q.—Can you by looking at this Exhibit C-86, refresh your memory sufficiently to tell us when you made payments to Phillips for pipe?

MR. O'DONNELL: Same objection.

Q.—Taking them item by item on that sheet? A.—What do you mean, do I remember wach individually?

MR. GOUDRAULT: Would you read my question?

(Question read by clerk.)

*Albert Decker for plaintiff recalled (direct examination)*

MR. O'DONNELL: Same objection.

A.—Why, around these dates on here.

Q.—Will you look at this check No. 164, dated January 30, for \$500, payable to Cash, and state if this check represents the payment which appears on Exhibit C-86 as of the same date and same amount? A.—Yes, sir.

10 Q.—This check was endorsed by yourself and — A.—  
John Phillips and Andrew Zorn.

MR. O'DONNELL: Defendants object to any evidence as to the endorsements of signatures other than that of the witness, as not being the best evidence.

20 Q.—Will you please look at this check for \$10,000, payable to cash, bearing No. 294, and also check for the same amount \$10,000, bearing No. 295, payable to the Comptroller of the City of New York, and state if you have any explanation to offer as regards these checks and the entries corresponding or supposing to correspond to them which appears on this exhibit, C-86?

MR. COOK: Mr. Decker, before you answer, just one moment, please. I don't want to take an objection, but I want to ask Mr. Goudrault a question. Why don't you produce the first check that you showed the witness for \$500?

MR. GOUDRAULT: I want to put them all in as one exhibit.

30 MR. COOK: You referred the witness to a check signed by Decker and signed by Zorn, and then you dropped it, apparently as though it was something wrong, some disease apparently.

MR. GOUDRAULT: No, no disease. I will show it to you.

MR. COOK: All right.

40 THE WITNESS: This must be 294, and it is entered here as 295. That is a certified check to the city. It must be simply a clerical error.

BY MR. GOUDRAULT:

Q.—Therefore, there is no — A.—It is not a double entry.

*Albert Decker for plaintiff recalled (direct examination)*

Q.—So this check here which reads 294, for the same amount, and the same date, should be entered here as 295? A. Yes, sir.

Q.—So it is just a clerical error? A.—A clerical error.

MR. COOK: Clerical error in what?

10 MR. GOUDRAULT: In just the number. I offer as evidence check No. 294, coupled with this check 295, making one sole exhibit, as Plaintiff's Exhibit C-87.

(The said checks were thereupon received in evidence, and marked Plaintiff's Exhibit C-87, of this date.)

BY MR. HACKETT:

Q.—One of these checks appears to have been made payable to the Comptroller of the City of New York. A.—Yes, sir.

20 Q.—And was cashed by the Comptroller of the City of New York, and deposited with the Empire Trust Company to the credit of Charles L. Craig, Comptroller of the City of New York. The other check, that you say was a clerical error and that bears the same date, appears to have been cashed and placed to the credit of Decker & Muccini? A.—Yes, sir. We got a check and gave him the cash. That is a clerical error in the number. When you give the City a certified check they send you another check, to qualify the contract, or if you don't win the contract they send the check back; another check, not your  
30 own check.

Q.—And that is the explanation? A.—Yes, sir.

Q.—Purely a clerical error? A.—Yes, sir, because there is only one charge.

BY MR. GOUDRAULT:

Q.—And your answer is that you paid the \$10,000 to Phillips for pipes? A.—Yes. The date is the same.

MR. COOK: What is the date?

40 MR. GOUDRAULT: The 3rd of August, 1925.

Q.—Now, will you look at a series of checks, which are offered in evidence as Plaintiff's Exhibit C-88, and which appear to be from your firm to Cash and other parties.

(Witness examines checks referred to.)

*Albert Decker for plaintiff recalled (direct examination)*

(The said checks, 34 checks, were thereupon received in evidence as one exhibit and marked Plaintiff's Exhibit C-88, of this date.)

Q.—Will you state after looking at these 34 checks if they correspond to the entries appearing on the ledger sheet C-86?

(Witness compares checks with ledger sheets.)

10 A.—Yes, sir.

Q.—And whether they are payable to cash or to a named person? A.—Yes, sir.

Q.—And they were for pipe, and the proceeds of this money, so far as you know, went to — A.—Pipe.

Q.—When a check is made payable to Mrs. Spinella, or another individual, how did they come to be payable to that said party?

20 MR. HACKETT: He told us that Mrs. Spinella had loaned them money to pay for the pipe.

THE WITNESS: And we paid it back.

MR. HACKETT: That is in the evidence twice, yesterday.

30 MR. GOUDRAULT: I now offer in evidence, as Plaintiff's Exhibit C-89, a series of 53 checks, all of which are payable to Cash or to payroll, or to cash and payroll, and all of which appear to bear the number, or a number, which is here on your ledger sheet C-86.

(The said 53 checks were thereupon received in evidence as one exhibit, and marked Plaintiff's Exhibit C-89 of this date.)

BY MR. GOUDRAULT:

40 Q.—I would like you, Mr. Decker, to explain why these checks payable to cash and as I have described them, are in excess of the amount which appears on your ledger sheet in the particular entries against Phillips' account? A.—Because we made the payroll, and when we made the payroll check we added that amount to the actual payroll, and then we drew out the cash. That would be that check plus the payroll, our actual payroll.

Q.—I see. So that the amount of cash that appears here in your ledger sheet as against Phillips' account, was taken



*Albert Decker for plaintiff recalled (direct examination)*

from the cash that you did secure from the bank through these checks? A.—Yes, sir.

Q.—In order to save time, we will save you the trouble of adding these different checks now that they are in the record, and it will be a matter for the adding machine to do in proper time, to show how much payment was made to Phillips.

10 BY MR. HACKETT:

Q.—Part of these checks was used for payroll? A.—Yes, sir.

Q.—And part to pay Phillips? A.—Yes, sir.

Q.—So if you needed \$10,000 cash, maybe \$5,000 of it was payroll, you paid your men, and used the balance for Phillips? A.—There was always an even amount added on to what is shown there.

20 Q.—You had not a very elaborate office staff over there? A.—I was the only one.

Q.—You were superintendant and engineer and book-keeper and office boy and banker? A.—Yes, sir.

BY MR. GOUDRAULT:

Q.—That Brinkerhoff Avenue contract, do you remember, Mr. Decker, it was awarded to your firm, Muccini & Decker, wasn't it? A.—Yes, there were two sections, and we won both of them.

30 Q.—You won both of them? A.—Yes.

Q.—Do you remember if it was on a first, second or third bidding? A.—Third.

Q.—Third bidding. A contractor who bids on a second advertisement of a contract would have to make his bid lower than that of the previous low bidder, wouldn't he? A.—No, sir.

BY MR. HACKETT:

40 As matter of fact, if a low bidder is unsatisfactory, for financial reasons, or others, and the bids are rejected, it may very well, with all propriety, happen that a contract would be awarded to a higher bidder at the next bidding? A.—Oh, absolutely. You are not guided by the figures before, except to this extent, if this man's figures are all right, that is, you think so in your estimation, why, you figure that he was going to bid again, that he probably would cut his prices. But there is nothing imperative about it, because this man might also have

*Albert Decker for plaintiff recalled (direct examination)*

made a nice, big blunder, and that is no reason that you have to go lower just in order to win the contract.

I have seen lots of contracts that have gone way over what the low bidders bid.

BY MR. GOUDRAULT:

10 Q.—That Brinkerhoff Avenue job, that is where there was a tunnel? A.—Yes, sir.

Q.—For a certain number of feet? A.—Yes, sir.

Q.—And your firm won both contracts on the third bidding, section 1 and section 2? A.—Yes, sir.

Q.—Amongst these contracts that you have mentioned yesterday as having been executed by the firm of Muccini & Decker, I suppose there is a series of them that were direct contracts with th City of New York and others were assigned to your firm. Is that right? A.—Yes, sir.

20 Q.—Amongst the assigned contracts to your firm, do you recollect making the work or the job on Springfield Avenue and Hempstead Avenue? A.—And Jamaica Avenue.

Q.—That is three? A.—Yes, sir.

Q.—Those were assigned to you, Mr. Decker, by — A.— The Highway Improvement Company.

Q.—And do you recollect the price of the assignment? A.—You mean what I paid for the assignment?

Q.—Yes. A.—Yes, \$36,000 for the three.

30 Q.—I see. How much for each? A.—Well, that would make it \$12,000.

Q.—Were you paid by the Highway Improvement Company? A.—No, I had to pay them.

Q.—I mean, you had to pay them? A.—Yes, sir.

Q.—You paid them? A.—Yes, sir.

Q.—You have not got those checks? A.—Aren't they in that list?

Q.—No. A.—Well, I have photostats of them. I havn't them with me. I will bring them down.

40 Q.—Now, Mr. Decker, you told us that for the period of time that you were with Joseph Sigretto & Company, that was from 1917 to 1924? A.—1914 I went with them.

Q.—And you stayed four or five years, I think? A.— Yes, I will tell you how you can get that. I went with Mr. Paino on the Myrtle Avenue contract. That would establish the date.

Q.—I see. During that period of time you told us exactly what your occupation was with Sigretto. Now, could you give us the name of other main officials for the firm of Joseph Si-

*Albert Decker for plaintiff recalled (cross-examination).*

gretto & Company working during that period of time that you were with the firm?

MR. HACKETT: He gave them yesterday. Gallo —

10 THE WITNESS: No, those were superintendents. I think when I first went with them there were Mr. DeCola and Mr. Martino. I am not sure how long they were there.

Q.—Yes. I understand that they had an interest, they were partners? A.—They were partners, yes.

Q.—I mean, then my question is main officials, such as superintendents and engineers besides yourself and Sigretto? A.—That is all.

Q.—Was that all? A.—Yes.

Q.—No other engineers? A.—No, sir.

Q.—No other supervisors of work? A.—No, sir.

20 Q.—No purchaser of materials working for Sigretto at that period of time; purchasing agent, I mean? A.—Yes. Mr. Phillips ordered some.

Q.—How much, do you know? A.—I don't know offhand. As they needed them on some of the contracts.

30 MR. GOUDRAULT: Mr. Commissioner, I have completed the examination of the witness, and I reserve my right to produce through Mr. Tully all those contracts that have been testified about by the witness. Most of them have all been produced, but there are a few of them that have to be produced.

CROSS EXAMINATION BY MR. HACKETT:

Q.—Are you still in the contracting business? A.—Yes, sir.

Q.—What type of work are you engaged in at the present time? A.—Steel water mains.

Q.—Are you doing any sewer work? A.—No, sir.

Q.—Have you done any recently? A.—No, sir.

40 Q.—In the early days, when you were in the Engineering Department of the Borough of Queens, all sewers of large dimensions were monolithic sewers, and gradually there came about a change in type as the precast pipe was developed, and its use became known? A.—Yes, sir.

Q.—Until almost all sewers of 7, 8 or 9 feet are now built of precast pipe? A.—Well, right today I don't what they are building them of, because I have not bid on any of the work.

*Albert Decker for plaintiff recalled (cross-examination).*

Q.—But your last knowledge? A.—My last knowledge, yes.

Q.—And the method of using this pipe also underwent some development. At first it was thought that it had to be supported by a concrete cradle, and then I understand that was found unnecessary. That is to your knowledge, isn't it? A.—Well, where the foundation earth was soft, yes, they put in a cradle.

Q.—Yes. And that lessened the price of construction when it could be built without a cradle? A.—Yes, sir.

Q.—We have had a witness this morning, Mr. Macdonald, who told us that when he had to bid on the Type A and on the Type B, he found the Type B expensive because the cradle work or underpinning took as much concrete as the monolithic type itself. That is to your knowledge as an employ of the Department? A.—No, I wouldn't say that. In a specific case, naturally.

Q.—And eventually they got away from this idea of a cradle, finding that the precast would stand by itself when properly put together? A.—Yes, sir.

Q.—Without the aid or assistance of a cradle. A.—Naturally, of course that would depend a whole lot on what ground you encountered. If you had soft ground, you would have to put in a cradle anyway. Maybe sometimes piles.

Q.—And throughout this entire period there was a good deal of experimental work going on in sewer construction? A. Yes, sir.

Q.—Engineers and contractors were striving to improve their methods? A.—They are today, as far as I know.

Q.—And this famous waterproofing membrane was inserted and at a later date may not have been found as effective as it was hoped and, I suppose, other devices were also cast aside? A.—Yes, sir.

Q.—That was wet ground, was it not? A.—It was full of water. You hit water three or four feet from the surface.

Q.—And it was imperative that the sewers be made watertight? A.—Yes, sir. Most of the contracts I did with the pipe I even waterproofed the joints myself, and I waterproofed the manholes, and I waterproofed all risers, at my own expense.

Q.—Because you wanted to be sure — A.—I did not want to take a chance.

Q.—And apart from the question of expense, this waterproofing device in the monolithic, known as the waterproofing

*Albert Decker for plaintiff recalled (cross-examination).*

membrane, would have made that monolithic type more impervious to water, wouldn't it? A.—Yes, sir.

Q.—And would have precluded the possibility of water penetrating? A.—Add to its efficiency, yes.

Q.—Because you had another strata, then the waterproofing and then the upper? A.—Of course, a personal objection I had to it, I thought it could be waterproofed from the outside  
10 instead of putting it in the middle.

Q.—Yes, but that was a matter of opinion? A.—A matter of opinion, yes, sir.

Q.—On which engineers differed. And when you were in the Sewer Department, what position did you hold? A.—I was draftsman, and then I became assistant engineer.

Q.—That was the position which Seely later on held? A.—No, sir. I was outside, in the field.

Q.—But you were intimately acquainted with the operation of the Department? A.—Yes, sir.  
20

Q.—And you were in the field service as assistant engineer, and had your superior officers, I suppose? A.—Yes, sir.

Q.—Who checked you up quite carefully and quite regularly? A.—Well, I will tell you how that was arranged. I was called really, what you would call me, a division engineer. They had the Borough divided, I have forgotten, in three or four sections,—or a section engineer, rather. And I had charge of one section.

Q.—But under the direction — A.—Under the engineer, absolutely.  
30

Q.—Apart from the engineers of the Borough, there was also a corps of engineers from the City, The Board of Estimate & Apportionment, was there not? A.—Yes, sir.

Q.—And they followed the plans and specifications in the execution of the work very carefully? A.—Yes. They have to check them first.

Q.—Yes. All the plans and specifications have to be approved not only by the Borough staff but by the staff of the City? A.—Yes, sir. Board of Estimate.

Q.—And they are skilled men who are supervising work in all the Boroughs of the City, are they not? A.—Yes, sir.  
40

Q.—Now, coming to the inside service, I understand that Seely was an assistant engineer? A.—Yes. I believe that was his title.

Q.—And did you know Mr. Rice? A.—Yes. He was the chief engineer of everything.

Albert Decker for plaintiff recalled (cross-examination).

Q.—Yes. And Mr. Perrine? A.—Mr. Perrine was in charge of sewers.

Q.—And Mr. Blake? A.—Mr. Blake had charge of the Highways Department.

Q.—And Mr. Bishop? A.—He was in the Sewer Department also. Let me see, when I left — I don't think he was outside at all when I left the City.

10 Q.—Mr. Burr? A.—I don't know Mr. Burr.

Q.—And do you remember the names of any of the engineers who were in the City and who checked — A.—When I was there, there was a Mr. Pine, who had charge of all the construction. That is, he was my immediate superior.

Q.—That was before 1914? A.—That was when I left, yes. And Mr. Rice had just been in there a few months. I don't know just how long.

20 Q.—When you came back, I think you said that you entered into partnership with Mr. Muccini about 19 — A.— 1924.

Q.—About 1924. You had been away from New York and the vicinity for sometime? A.—Well, I was in Jersey City with Mr. Sigretto. But I came back then with a fellow who is named Mr. Spinella. That's the fellow's wife whom we borrowed the money from. That is how Mr. Muccini knew him.

Q.—But for sometime you were away? A.—I was away—

Q.—For a year or so? A.—I was away a year where I wasn't doing any work in Queens.

30 Q.—And that was immediately before? A.—Before I went with Mr. Muccini.

Q.—Yes. Do you remember when you started business with Mr. Muccini? A.—Yes. It was the Fall of 1924.

Q.—The Fall of 1924. And you were away for a year preceding that? A.—Yes, sir.

Q.—Are you a married man? A.—Yes, sir.

Q.—Have you a family? A.—Yes, sir.

Q.—Was your family here or away with you? A.—They were away with me most of the time.

40 Q.—Where were you? A.—I was in Florida, and in Jersey.

Q.—You are quite sure of those dates? A.—Yes.

Q.—Because I see here that a witness by the name of Paulsen has testified, at page 669 of his testimony, on the 2nd or 3rd day of October, 1928, "Will you tell us when it was that you first met John M. Phillips? A.—In the Fall of 1923." Then he is asked, at page 61, "Did you ever see Phillips again

*Albert Decker for plaintiff recalled (cross-examination).*

after that occasion? A.—About two or three weeks later.” Then “Tell me the conversation that you had there? A.—He introduced me to Albert Decker at that time.” Now, were you in the Borough of Queens in the late Fall of 1923 or in the early Winter of 1924? A.—In the Fall I was part time in the Borough. But I was not connected with any sewer business or I had never seen Mr. Phillips, over a year or I had not been in his office over a year. Then I was in Jersey a few weeks, and then I went to Florida. I think it was right after the holidays, and my family went with me. My boy was in school in Florida. Then I went back sometime in the Spring and I went with the F. J. Kelly Company.

20 Q.—I find at page 819 of the cross-examination of Paulsen, “Tell me the conversation that you had there”, — referring to his second meeting with Phillips, — and he said, “He introduced me to Albert Decker at that time.” Then at page 548 “Who was there besides Phillips and yourself, on that second occasion? A.—Phillips and Andy Zorn and Decker, Bert Decker. 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.”

Now, I put it to you, Mr. Decker, did Mr. Phillips introduce you to Mr. Decker?

30 MR. GOUDRAULT: You mean to Mr. Paulsen.

Q.—To Mr. Paulsen, in the late Fall of 1923? A.—No, sir.

Q.—And were you Mr. Phillips’ engineer? A.—No, sir. That is ridiculous.

Q.—Were you ever introduced by Phillips to Paulsen as his engineer? A.—No, sir.

40 MR. GOUDRAULT: Now that the answer is in, I can put in my objection to this general line of cross-examination inasmuch as it does not arise from the examination in chief and has no bearing on the credibility of this witness.

BY MR. HACKETT:

Q.—Did Phillips sell paving material? A.—Paving?

Q.—Yes. A.—No, sir.

Q.—You had paving jobs and sidewalk jobs? A.—Yes, sir.

*Albert Decker for plaintiff recalled (cross-examination).*

Q.—In the Borough of Queens? A.—Yes, sir. I did not have contracts, I had restoral work. I had one contract too.

Q.—So your activities in Queens were not restricted to work the material for which was supplied to you by Phillips?

A.—No, sir. I built the first section of the Rockaway boardwalk, I also built that big open canal there down Jamaica Bay. That had nothing to do with sewer pipe.

10 Q.—Now, coming to this exhibit C-86, I note that there is written in lead pencil opposite many entries on different faces of these three pages, the word “missing”. Does that mean that this gentleman, Buckner, omitted to return to you some of the vouchers? A.—I don’t know. That is what is missing out of that list there. When I turned them in, they were there. That is my ledger sheet that is here.

Q.—And when they came back to you, documents were missing? A.—No, sir.

20 Q.—And there was no explanation offered to you? A.—No, sir. I told it to my attorney, and he told me to send him a list and he would get them, but I just neglected it. But I notified him immediately.

Q.—You knew something of the strange ways of the strange man Mr. Phillips. He did not restrict his activities to the sale of sewer pipe, did he? He had other interests beside? A.—Well, I know he was heavily interested in racing. That is all I know about him.

30 Q.—And you knew him well enough to know that he was interested and made money on racing? A.—Yes, sir. I have heard that. I heard he made a considerable amount of money.

Q.—Do you know of a race in which a horse by the name of Crusader won? A.—No, sir.

MR. GOUDRAULT: I wish to enter an objection to all that line of cross-examination as not arising from the examination in chief.

40 MR. HACKETT: I submit that it does. You have produced this witness and got him to produce an exhibit, C-86, a large proportion of the explanation of which concerns racing.

MR. GOUDRAULT: That was merely produced to refresh his memory.

MR. HACKETT: I cannot say for what.

MR. GOUDRAULT: All right. I think you are right as



*Albert Decker for plaintiff recalled (cross-examination).*

regards to cross-examination. I withdraw my objection as regards racing data from this witness. I am sorry.

BY MR. HACKETT:

10 Q.—I notice that from this Exhibit C-86, that Mr. Phillips appears to have been in frequent communication with men more or less prominent in the racing fraternity? A.—Yes, sir.

Q.—Who was Edward Harrison? A.—A bookmaker.

Q.—John O'Toole? A.—I don't know who he is.

Q.—Daniel Enright? A.—He is not a bookie. He was an employee of Phillips for a short period.

Q.—Thomas Cassidy? A.—Yes, sir, he is a bookmaker, I understand.

Q.—John McDonald? A.—He is a contractor.

Q.—Edward Carroll? A.—He is a bookmaker.

20 Q.—Mr. Phillips appears to have confined money to various people. We have had a man here by the name of Curran, who said that he had money for Phillips, and we have had a man by the name of Mathews, who said that he had money for Phillips. And it is in the testimony that a man by the name of Zorn had money for Phillips. And apparently you from time to time paid out money which Phillips had lost in racing? A.—Yes, sir.

Q.—But did or did you not ever receive any of his winnings? A.—I did not.

Q.—That was not your department? A.—Pardon?

30 Q.—It wasn't your department? A.—No, I had nothing to do with it. In fact, I don't know anything about racing. I was at a track only once in my life.

Q.—But you know that Phillips did race? A.—Yes.

Q.—He had a string of horses? A.—Yes. That is, he told me he did.

Q.—He told you he did? A.—Yes.

Q.—And you knew, as a matter of common repute, that he did win huge sums on races? A.—Yes, I have heard that.

40 Q.—I notice one entry here in union he apparently was not successful, \$75,000, Thomas M. Cassidy. That was a bet on a race?

MR. GOUDRAULT: I object to this. You are interpreting the exhibit there and the entry.

MR. HACKETT: Exactly. You asked the witness to interpret it for you.

MR. GOUDRAULT: No, I asked him a fact, what that special entry represented. Now you state that it is a loss of

*Albert Decker for plaintiff recalled (cross-examination).*

Phillips and a reimbursement to Cassidy. Well, you see for yourself that the question is not quite correct.

BY MR. HACKETT:

Q.—Mr. Decker, Mr. Thomas Cassidy was a well known turfman? A.—Yes, sir.

10 Q.—And he was not engaged in the contracting business?  
A.—No, sir.

Q.—And all of these payments which you made to him from time to time were made in satisfaction of bets placed by Phillips either with him or for him? A.—Yes, sir.

Q.—And this item of \$75,000, on June 3rd, on page 3, is no exception to what you have already stated? A.—No, sir.

Q.—And I believe you said that you don't know who got the winnings. A.—No, I don't.

20 Q.—Something has been said about an assignment of three contracts which you got from the Highway Improvement Company in Springfield Avenue, and Hampstead Avenue? A.—Yes, sir.

Q.—You had an organization, a plant, and a certain inclination to do work? A.—Yes, sir.

Q.—And all were set in Queens Borough? A.—Yes, sir.

Q.—Is there anything usual in the acquisition by a contracting firm of a contract awarded to someone else? A.—No, sir. It is done every day.

Q.—It is a matter of common practice? A.—Yes, sir.

30 Q.—And sometimes a contractor is willing to pay money for a contract because of a certain advantage which he has, either because he may not have work, because he has a plant, or because he is on the spot? A.—Yes, sir. It works both ways. If I may explain, he can make some quick money and the other fellow takes the hazard, maybe he will or maybe he won't. But he is willing to take that chance.

Q.—We have had here half a dozen contractors who bought and sold contracts. A.—Yes, sir.

40 Q.—And there is nothing unusual about that? A.—No, sir. It is done every day.

Q.—And the Borough had no interest in that. They had the undertaking of the original contractor? A.—Yes, sir.

Q.—I think you have told us that your office staff was not a very elaborate one. A.—Just a shanty.

Q.—Just a shanty. A.—We could move it around from job to job.

*Albert Decker for plaintiff recalled (cross-examination).*

Q.—And you were engineer, superintendent, bookkeeper, purchasing agent, and possibly water boy? A.—Practically, yes, sir.

Q.—Were you present at an interview at 49 Jackson Avenue, in Long Island City, at which Phillips said to Paulsen, “Pay Seely a thousand dollars”? A.—No, sir.

10 Q.—Were you at any interview anywhere? A.—About Paulsen, I never met Paulsen until after he won a contract, whenever that date will show up. I didn’t know the man.

Q.—Until after he won the contract? A.—After he got a contract, I don’t know which. He won a contract.

Q.—Mr. Paulsen seems to have had a great affection for you? A.—Yes, I know he has.

Q.—Because he has referred to you frequently. A.—I know it. And I never met Mr. Paulsen to my knowledge, until after he won this contract. I didn’t know who he was, I have not, even today, talked to Paulsen more than six or eight times in my life.

20 Q.—You say you didn’t see him until after he had been awarded the contract? A.—Absolutely. I never knew the man.

Q.—Paulsen was awarded a contract, and he only got one contract, which was the second section of 150th Avenue, which if my memory serves me well, was awarded to him on the 12th of March, 1925? A.—Well, that would make it the Spring of 1925.

30 Q.—The contract was signed on the 16th of March, 1925, Exhibit C-36. And in the record is a letter dated February, advising Paulsen that the contract had been awarded to him. A.—I don’t know anything about the award. I mean that was the first time I met him, after he won the contract.

Q.—After he had won the contract? A.—Yes, that was the first time I met him. I am not positive of the date.

Q.—But you are sure that he had been awarded the contract. A.—I don’t know anything about the award part. I know he won it, that he was the low bidder. I would not know when it was awarded.

40 Q.—And the bids were opened for this contract, on the 13th of February, 1925, so it must have been after that? A.—Yes, sir.

**CROSS EXAMINATION BY MR. COOK:**

(On behalf of the defendants, under reserve of all objections.)

Q.—Mr. Decker, did you ever at any time, at No. 9-11 or 49 Jackson Avenue or at any other place, hear Mr. Phillips request Paulsen to pay Mr. Seely a thousand dollars? A.—No, sir.

*Albert Decker for plaintiff recalled (redirect examination).*

MR. COOK: That is all, Mr. Decker.

REDIRECT EXAMINATION BY MR. GOUDRAULT:

10 Q.—Mr. Decker, one question on Mr. Phillips' bets. When you were questioned by Mr. Hackett on Mr. Phillips' bets of \$75,000 or something like that, I understand that you did pay the money at the request of Mr. Phillips? A.—No, I gave it to Phillips. A lot of those fellows I didn't know personally who they were.

Q.—But you didn't know personally what it was paid for, did you? A.—He told me that he was losing at the races.

Q.—Now, I understand that you were a frequent visitor at 49 and 9 or 11 Jackson Avenue? A.—Yes, sir. There is one across the street; one number is 49, and I don't know what the number across the street is.

Q.—But you were at both places? A.—Yes, sir.

20 Q.—Was there a time when you were with Mr. Phillips, very friendly with him? A.—We were very good friends.

Q.—You would see him frequently, would you? A.—I would have to, according to that list there. Then I would also have to see him about delivery of pipes. Something was turning up all the time.

Q.—During that period of time when you were in the construction business in Queens, from 1917 to 1927, do you recollect building a sanitary sewer? A.—They were all sanitary, unless they called for storm.

30 Q.—No, I mean a sanitary monolithic sewer, Type A? A.—Yes, I remember one. That was Maurice Avenue, that was a monolithic sewer.

Q.—Was that a storm sewer or a sanitary sewer? A.—That was a storm sewer. That was combined storm and sanitary. You know, you have three; you have sanitary, storm, and combined.

Q.—But strictly a Type A sewer, monolithic? A.—Sanitary?

Q.—Yes. A.—No, I don't recall.

40 Q.—Do you remember the size of the pipe that you used there for your monolithic,—that combined sewer that you built there? A.—No, that was a rectangular section. It was not circular at all. Something like this (indicating).

Q.—You could not use precast pipe in it? A.—No, sir.

Q.—So all your construction of sewers were Type B. sewers, or sewers with precast pipe. Is that right? A.—Yes, sir.

*Albert Decker for plaintiff recalled (recross examination).*

Q.—Now, I suppose you were a very busy man during that period of time when you did go in the construction business?

A.—Yes, sir. Very busy.

Q.—You could go in an office, in and out and often the same day in the same office? A.—Might possibly, yes.

Q.—And stay there just a few minutes or a few seconds?

A.—Yes, sir.

10 Q.—Whether it was at the Borough Hall or any other office? A.—Yes, sir.

Q.—Or place of business. A.—Yes, sir.

MR. GOUDRAULT: That is all.

RE CROSS EXAMINATION BY MR. HACKETT:

20 Q.—What was the type of waterproofing that you used yourself in the manholes and risers and the joints? A.—I used what they called subway fabric and hot tar. That is a special kind of waterproofing tar that when it hardens it does not get hard until it is brittle. If it gets brittle you would have a leak.

Q.—It always remains elastic? A.—Yes, sir.

Q.—You used that even though it was not specified? A.—Yes, sir.

Q.—For your own protection? A.—For my own protection.

Q.—And you naturally thought it was good practice? A.—Yes, sir. If you had a lot of leaks it would ruin you, because it is an awful hard job to plug it up.

30 Q.—Do you know if other contractors took the same precautions? A.—Some of them did, yes, sir.

MR. HACKETT: That is all.

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(Whereupon at 1 P.M. an adjournment was taken to 2 P.M.)

*Eugene J. Tully for plaintiff recalled (direct examination).*

AFTER RECESS, 2 P.M.

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, deposes  
and saith as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT:

20 Q.—Mr. Tully, we are about to examine Mr. Turner, the  
president of the Highway Improvement & Repair Co. You have  
already produced contracts and exhibits in reference to this com-  
pany. Have you any other papers to produce and file before we  
proceed with the examination of Mr. Turner; such as summary  
of proposals and original bids? A.—I have not checked up the  
list attached to the subpoena.

Q.—Well, will you produce those exhibits that you have  
in reference to this particular company, the Highway Improve-  
ment & Repair Co. You have no other papers or documents from  
the Comptroller's office in connection with the Highway Improve-  
ment & Repair Co., that you know of? A.—No, sir. I have  
looked over my list, and I am quite sure I have produced every-  
thing on it in connection with the Highway Improvement & Repair  
Company.

30 Q.—But you will produce them in the course of this exam-  
ination if you find them? A.—Certainly. If I find them I will  
produce them.

MR. GOUDRAULT: All right.

*Clifton E. Turner for plaintiff (direct examination).*

DEPOSITION OF CLIFTON E. TURNER.

CLIFTON E. TURNER, age 38, of Montclair, New Jersey, County of Essex, a 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:

10

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—What company are you connected with, Mr. Turner?

A.—The Highway Improvement & Repair Co.

Q.—Are you president of that company? A.—Not any longer. I was.

Q.—How long were you president of the Highway Improvement & Repair Co.? A.—From 1924, or 1923, I have forgotten which.

20

Q.—Until when? A.—Until 1929, I think.

Q.—Were you in the contracting business before you became president of that company? A.—Yes, sir.

Q.—With whom? A.—Warren Brothers.

Q.—What was the business of Warren Brothers? A.—Road building.

Q.—Did they do any paving work or building work? A.—Mostly paving work.

Q.—Mostly paving work? A.—Yes.

30 Q.—How long were you with them, approximately? A.—Approximately, I would say 1912,—

MR. HACKETT: Ten or eleven years.

A.—(continuing) I have been in the company and subsidiaries, I would say approximately from 1912, ten years.

Q.—Now, what was the principal work of the Highway Improvement & Repair Co.? A.—Road building work.

Q.—So that for about 15 years you have been engaged in building pavements, doing road building work? Is that right? A.—Yes, sir.

40

Q.—Have you ever built anything else except roads or pavements? A.—No, sir.

Q.—From 1924, you say, to the end of 1927, did you build any pavements in Queens? A.—Yes, sir.

Q.—How many contracts, about? Stating in figures.

MR. COOK: Mr. Commissioner, I don't see what we have to do with the building of pavements.

*Clifton E. Turner for plaintiff (direct examination).*

THE COMMISSIONER: I will allow the question, subject to counsel's objections.

THE WITNESS: Should I answer that question about how many contracts?

10 Q.—Yes. A.—I should say roughly about 75 or 80, maybe more or less, I don't know.

Q.—Do you know Mr. Connolly, did you know Mr. Connolly? A.—Yes.

Q.—How long had you known him? A.—Well, I first met him when I was over there. I think we were over there in 1912 when I was working for the Standard Bithulithic Co.

MR. HACKETT: That is the Warren?

THE WITNESS: That is a subsidiary.

20 BY MR. GOUDRAULT:

Q.—Now, Mr. Turner, from that date on, I suppose you came in with your company to bid for these contracts in 1924. about? A.—1924, about.

Q.—Then you saw Mr. Connolly then? A.—Yes.

MR. HACKETT: And you bid for these contracts in competition with a lot of other contractors?

THE WITNESS: Yes, sir.

30 Q.—Did you know John M. Phillips? A.—Yes.

Q.—How long did you know John M. Phillips before his death? A.—I think I met him the same year, 1924.

Q.—When did you get acquainted with him?

MR. HACKETT: In 1924.

Q.—I mean, explain the circumstances then in 1924, how you became acquainted with Mr. Phillips? A.—We were doing work in Queens.

40 Q.—Was he an official of the Borough of Queens at the time? A.—No, sir.

Q.—What was his business in Queen, selling pipe? A.—Selling pipe.

Q.—You knew him very well, didn't you, then, after a certain time? A.—Yes.

Q.—You saw him often? A.—Yes.



*Clifton E. Turner for plaintiff (direct examination).*

Q.—Did you used to drop in any place where Mr. Phillips would be or would have some kind of office? A.—Yes.

Q.—Where was that? A.—That was on Jackson Avenue.

Q.—Do you remember the number? A.—No.

Q.—Did you go there often? A.—Yes, sir, I went there often.

Q.—Quite often? A.—Yes.

10 Q.—You are named in Mr. Phillips' will as one of the children's guardians, are you. A.—Yes.

MR. O'DONNELL: Objected to as entirely irrelevant.

Q.—Do you know anything about a gold dinner set? A.—Yes.

Q.—Did you contribute to the gold set? A.—Yes.

Q.—How much? A.—\$2,000.

20 MR. O'DONNELL: Objected to as entirely irrelevant.

Q.—Now, you told us a minute ago that you went to a certain place on Jackson Avenue? A.—Yes.

Q.—What was the purpose of your visits there? A.—It was a sort,—as a matter of fact there was a bonding agency there that I used to go to get bonds on work, and furthermore if a sewer contractor was the low bidder you could generally find it out there, this bonding agency, or somebody else, if there was any paving to be done in connection with it. So I went there.

30 MR. HACKETT: On business?

THE WITNESS: Yes.

Q.—You didn't use any pipe in your pavement business at that time? A.—No. We used pipe, but not that type.

Q.—Not the precast pipe sold by Phillips? A.—No.

Q.—Did you see that gold dinner set that we spoke of? A.—Yes.

40 Q.—How much of it? A.—I saw a plate. It was a sample, don't you know if you go in a jewelry store and they show you what it is. I mean, I don't want to elaborate on this. But that is all I did see of it.

Q.—Were you ever working on Jackson Avenue? A.—Yes.

Q.—Your company had some job? A.—Yes. It was so bad we had to do it over again.

Q.—Do you remember the year? A.—No, I don't remem-

*Clifton E. Turner for plaintiff (direct examination).*

ber exactly. But we were doing it,—now a subway has gone through,—I should say about 5 years ago.

Q.—It would be about 1925 or 1926? A.—Somewhere around there, yes.

Q.—When you were not working on Jackson Avenue, was it not your habit to go in there and see Phillips sometimes?

10 MR. HACKETT: I object to the form of the question. It is both leading and suggestive and illegal and irrelevant.

MR. GOUDRAULT: Question withdrawn.

MR. HACKETT: You got four contracts for sewers?

THE WITNESS: Yes.

MR. HACKETT: They were Springfield, Hempstead,—

20 THE WITNESS: No, you would have to refresh my memory.

MR. GOUDRAULT: That is just what I am trying to do, Mr. Turner. If I am allowed to go on with my case and go on with my direct examination, we will come to those extracts.

THE COMMISSIONER: Will you please proceed.

MR. GOUDRAULT: Yes, in spite of all the interruptions.

BY MR. GOUDRAULT:

30 Q.—Mr. Turner, outside of the time that you were paving on Jackson Avenue, did you go into that office at 49 Jackson Avenue, or whatever the number is, and whatever your business was, frequently? A.—I went in there quite often.

Q.—What do you mean by quite often? A.—Oh, once a week, once every two weeks.

Q.—Your relations with Phillips were very friendly or not? A.—Yes, they were.

40 Q.—I assume from what you have testified that your company has never built a sewer?

MR. HACKETT: He said that three times.

MR. GOUDRAULT: Well, now, look here, if you are going to interrupt that way, we are going take a lot of time, and you complain.

MR. HACKETT: I complain bitterly.

*Clifton E. Turner for plaintiff (direct examination).*

MR. GOUDRAULT: Complain against yourself, and make your objections.

MR. HACKETT: I object to the childish way in which this examination has dragged on for weeks.

MR. GOUDRAULT: If this is childish, we are twins.

10 MR. HACKETT: It is most objectionable.

MR. GOUDRAULT: Mr. Commissioner, I would like to conduct this case as rapidly as possible.

MR. HACKETT: Well; you are not.

MR. GOUDRAULT: And it can only be done if those objections by Mr. Hackett are curtailed and stopped.

20 MR. HACKETT: Everybody is objecting, the Commissioner included, at the delay, at the unreasonable delay.

MR. GOUDRAULT: I object to that statement. Let the Commissioner speak for himself.

MR. HACKETT: Well, he has, two or three times.

30 THE COMMISSIONER: I will say this, gentleman. I think we had better proceed, and I think the objections had better be made from time to time as the occasion arises for them. And I should like you to go on with the questioning, Mr. Goudrault.

MR. GOUDRAULT: What is the question?

(Question read by clerk, as follows: "I assume from what you have testified that your company has never built a sewer".)

THE WITNESS (answering): No.

BY MR. GOUDRAULT:

40 Q.—Now, in 1926, your company put in bids for four contracts for the construction of sewers in the Borough of Queens. Is that right?

MR. HACKETT: Seven contracts.

THE WITNESS: Four.

Q.—Four or seven? A.—Four.

*Clifton E. Turner for plaintiff (direct examination).*

MR. HACKETT: You got four. You put in bids for seven.

Q.—Four contracts, isn't that right? (No answer.)

Q.—Do you know about the Foch Boulevard? Will you look at these contracts and state,—they are produced as Exhibits C-55, C-56, C-57 and C-58— A.—If I can see the name on here, I can tell. They are all Highway Improvement & Repair Co.

10 Q.—Now, I will name them for you. It is the Foch Boulevard sewer, the Jamaica Avenue sewer, the Hempstead Avenue sewer, and the Springfield Avenue sewer, is that hight, Mr. Turner? A.—That is right.

Q.—All right, sir. And you assigned the four contracts? A.—Yes.

Q.—Will you look at the four filed papers which purport to be assignments of contracts, and tell us if those are the assignments, Mr. Turner?

20 (Witness examines papers referred to.)

A.—Yes.

MR. GOUDRAULT: I now offer in evidence, as Plaintiff's Exhibit C-90, assignment of the contract for the construction of the Foch Boulevard sewer, from the Highway Improvement & Repair Co., Inc., to the Awixa Corporation, which assignment appears to have been made on the 5th of May, 1926.

30 MR. O'DONNELL: Objected to, as entirely irrelevant and illegal.

MR. HACKETT: Same objection.

(The said assignment was thereupon received in evidence and marked Plaintiff's Exhibit C-90, of this date.)

MR. GOUDRAULT: Plaintiff also offers in evidence, as Exhibit C-91, assignment of the contract for the construction of the Springfield Avenue sewer, from the Highway Improvement & Repair Co., Inc., to Muccini & Decker; dated the 5th of May, 1926.

40 MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

(The said assignment was thereupon received in evidence and marked Plaintiff's Exhibit C-91, of this date.)

*Clifton E. Turner for plaintiff (direct examination).*

MR. GOUDRAULT: Plaintiff offers in evidence, as Exhibit C-92, assignment of the contract for the construction of a sewer on Hempstead Avenue, from the Highway Improvement & Repair Co., Inc., to Muccini & Decker dated the 5th of May, 1926.

MR. O'DONNELL: Same objection.

10

MR. HACKETT: Same objection.

(The said assignment was thereupon received in evidence and marked Plaintiff's Exhibit C-92, of this date.)

MR. GOUDRAULT: Plaintiff offers in evidence, as Exhibit C-93, assignment of the contract for the construction of a sewer on Jamaica Avenue, from the Highway Improvement & Repair Co., Inc., to Muccini & Decker; dated the 5th of May, 1926.

20

MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

(The said assignment was thereupon received in evidence and marked Plaintiff's Exhibit C-93, of this date.)

BY MR. GOUDRAULT:

30 Q.—Had you any intention of building these sewers when you bid?

MR. HACKETT: I object to any evidence as to intention.

MR. COOK: I join in that objection, Mr. Commissioner.

Q.—Did you build the sewers?

MR. HACKETT: He has told us many times that he did not; that he assigned them.

40 THE COMMISSIONER: I will allow the answer, subject to counsel's objections and exceptions and reservations. You may answer.

Q.—You assigned them? A. Yes.

Q.—How?

MR. HACKETT: As appears by the exhibits C-90, C-91, C-92 and C-93.

*Clifton E. Turner for plaintiff (direct examination).*

Q.—Why?

MR. HACKETT: For \$30,000 in so far as Muccini & Decker were concerned.

THE COMMISSIONER: Let the witness answer.

10 THE WITNESS (answering): As far as the Awixa Corporation was concerned, I think it was around \$25,000.

Q.—Leave out the consideration. We will come to that later. A.—You asked me how much I assigned it for.

Q.—No, that was not the question I put. Why did you assign those contracts? A.—For that consideration.

Q.—No other reason? A.—No.

Q.—Was your company able to build those sewers when you put in those bids?

20 MR. O'DONNELL: Objected to as irrelevant. A.—Yes, sir.

Q.—Your company was? A.—In what respect do you mean?

Q.—Did you have the necessary equipment for the construction of sewers at the time that you put your bids in? A.—Not for all of them, no, sir.

Q.—What do you mean by not for all of them? A.—If you put in the bids and you expect to get one, and you get four, why, that's a different proposition. They all had to be done at once.

30 Q.—Did you build one? A.—No, sir.

Q.—It was your company that put in the bids? A.—Yes, sir.

Q.—Were you present when the bid was put in? A.—No, sir.

Q.—In estimating those four jobs how did you figure the prices of precast pipe?

MR. O'DONNELL: Same objection.

A.—I discussed it with my engineer.

40 Q.—What did you figure that precast pipe would cost for the jobs?

MR. COOK: I object, Mr. Commissioner. Really what has this to do with the case? I dislike very much objecting to my learned friend's questions. But it is absolutely irrelevant, what this gentleman did or did not do in regard to preparing for the bids.

*Clifton E. Turner for plaintiff (direct examination).*

THE COMMISSIONER: I will allow the answer, subject to counsel's objection.

A.—I don't really recall the prices. I know it was around thirty and some odd dollars, or something like that, the figure.

Q.—Those were the figures that you used in calculating the estimate, in the preparation of your bids, is that right, \$30-odd? A.—Yes.

Q.—For all sizes of pipe? A.—I am not an engineer, as far as that goes. I simply financed the thing.

Q.—I see. Did you put in the bids yourself? A.—No, sir.

Q.—You personally, did you personally know anything about the market value of reinforced concrete pipe at the time that your company put in the bids for those four jobs?

MR. O'DONNELL: Same objection.

A.—It all depends on what kind of pipe it was. That is a question that is very hard to answer.

Q.—I mean, did you personally know the market value of the reinforced concrete pipe that was to be used in those four jobs? A.—No, sir.

Q.—Who would be the man in your company who would know about that at the time? A.—My engineer.

Q.—What was his name? A.—Gonzalez.

Q.—Do you know if that engineer of yours knew Phillips? A.—I imagine he did.

Q.—Was that an engineer that you had working over in Queens on any of your paving jobs? A.—He was in charge of all the estimations, but was not on the work.

Q.—I see. But at that time, I am not speaking of now, but at the time? A.—He was in my employ at the time.

Q.—Do you remember since when he was in your employ when you put in the bids in 1926? A.—I think he came about that time.

Q.—He never had been with you before? A.—No, sir.

Q.—Did your engineer tell you the market value of the pipe at the time that you were preparing the estimates?

MR. HACKETT: I object to the form of the question as leading, suggestive and illegal.

Q.—Who did the preparation of the bids, Mr. Turner, for those four jobs on behalf of your company? A.—They were made up in my office.

Q.—By whom? A.—The engineer prepared them.

*Clifton E. Turner for plaintiff (direct examination).*

Q.—I see. And were you interested in the bids being correct? A.—Yes, sir.

Q.—And profitable to your company should the jobs be awarded to your company? A.—Yes, sir.

Q.—Did you discuss with your engineer the prices of material?

10 MR. HACKETT: I object to the form of the question as leading.

THE COMMISSIONER: I will allow the answer, subject to counsel's objection.

A.—That is a hard question to answer. I don't know what to say. It was one man's opinion against another's, that is all.

Q.—You mean a difference of opinion between the lawyers here or between you and your engineer? Did you discuss with your engineer the fact? A.—We agreed on a certain price, what-  
20 ever it was.

Q.—I see. Was it satisfactory to you? A.—Yes, I believed it could be done for that.

Q.—You relied on his knowledge of the matter? A.—Yes.

Q.—Do you recollect if he stated to you any price that he would put in his bid? A.—I have already answered the question to the best of my ability.

Q.—And what was that answer? A.—Around \$30.

Q.—You knew the County of Queens well, as a matter of  
30 fact, Mr. Turner? A.—I still do, in business.

Q.—And did you reside in Queens County at the time? A.—No, sir.

Q.—But your business was located there? A.—Yes, sir.

Q.—Were you doing more work in Queens than anywhere else at the time? A.—We were working in all the borough. I don't know whether we had more there than anywhere else.

Q.—Could you give us the proportion of your work that was being done in Queens during those years? A.—No, I can't.

40 MR. O'DONNELL: Objected to as entirely irrelevant.

THE WITNESS: I will say that we have done probably a larger percentage in Queens than we have in any of the other boroughs. But what the percentage is. I haven't any idea.

Q.—Had you heard Phillips, at the different times that you were in his office, talking about pipe prices to other people not connected with your four jobs?



*Clifton E. Turner for plaintiff (direct examination).*

MR. HACKETT: I object to any testimony concerning conversations with the deceased, Phillips.

THE COMMISSIONER: The answer will be allowed, subject to counsel's objection.

10 MR. HACKETT: Furthermore, as being entirely irrelevant and having no bearing on the issues raised in this case.

MR. COOK: I join in that objection.

THE COMMISSIONER: You may answer, subject to counsel's objection.

MR. GOUDRAULT: I may refer counsel, as regards this evidence, to the decision rendered by the Appeals Court and reported in Volume 41, K. B., page 544, in 1926, Skeene et al., vs. Dontigny.

20 What is the question?

(Question read by clerk.)

THE WITNESS (answering): Yes, sir, I have.

Q.—Often? A.—I couldn't say that it was often.

MR. COOK: He wasn't talking to you?

THE WITNESS: No, no.

30 BY MR. GOUDRAULT:

Q.—A minute ago you told us that you had some equipment for the construction of sewers when you put in those bids for those four jobs. Will you tell us what you had then? A.—Well, cranes and pumps.

MR. HACKETT: And organization?

THE WITNESS: And well points. Organization—

40 MR. HACKETT: Capital.

MR. GOUDRAULT: Wait a minute, now. Let the witness answer now, Mr. Hackett. You have put in two answers for him there, organization and capital.

MR. HACKETT: Sure.

MR. GOUDRAULT: We will come to capital in time.

*Clifton E. Turner for plaintiff (direct examination).*

BY MR. GOUDRAULT:

Q.—What line of credit would your company need to finance these four jobs aggregating two and one-half million dollars?

10 MR. COOK: Mr. Commissioner, what possible interest do we have in a question of this sort? I really protest against the irrelevancy of the evidence. I have no desire to go into the affairs of this gentleman or of his company. The question seems to me to be entirely irrelevant and improper, and taking a great deal of unnecessary time.

MR. GOUDRAULT: I insist upon this line of evidence, in all fairness to the plaintiff.

THE COMMISSIONER: I will allow the answer, subject to counsel's objection. Please proceed.

20

MR. GOUDRAULT: What is the question?

(Question read by clerk.)

THE WITNESS (answering): I couldn't tell you now, because our statement has changed a great deal.

Q.—I am not speaking of now, but at the time. Try to recollect. A.—I should say around \$250,000.

30 Q.—\$250,000. What was the largest line of credit which up to that time you had had?

MR. HACKETT: I object to this as entirely irrelevant. We are investigating the line of credit that the witness' company had for the purpose of carrying on paving contracts.

MR. GOUDRAULT: No, sewer contracts; two millions and a half.

THE COMMISSIONER: I will allow the answer, subject to counsel's objection.

40

MR. GOUDRAULT: Read the question.

(Question read by clerk.)

Q.—You were president of the company at the time? A.—Yes, sir.

Q.—Well, will you answer the question now? A.—I couldn't because I don't know what we ever borrowed at the time.

*Clifton E. Turner for plaintiff (direct examination).*

Q.—I am not asking you what you borrowed. I am just asking you what was the largest line of credit which up to that time of your bidding for those four jobs you had had? A.—Oh, I see what you mean.

Q.—Yes. A.—I remember I went to the bank and they said they would give me a line of \$100,000.

10 Q.—Did you make any effort or any arrangement to extend your line of credit before you put in your bids? A.—No, sir:

Q.—Did you make any arrangement or negotiations to extend your line of credit after you put in your bids and before you assigned these contracts? A.—No, sir.

Q.—After the bids were opened, you interviewed the Borough President, or did you not? A.—He sent for me.

Q.—He sent for you? A.—Yes, sir.

Q.—Who was he? A.—Connolly.

20 Q.—Did you have a conversation then with Mr. Connolly about your bid? A.—Yes, sir.

Q.—What did he tell you?

MR. HACKETT: I object in so far as my client is concerned, to any conversation between Mr. Connolly, who is not a party to this suit, and the witness.

MR. COOK: Same objection.

THE COMMISSIONER: I will allow the answer, subject to counsel's objections.

30 MR. GOUDRAULT: Mr. Connolly is named in the suit.

(Question read by clerk.)

THE WITNESS (answering): He asked me if we could go ahead with this work, and I simply convinced him that we could go ahead with it.

Q.—Was that before the award, or after the award? A.—That was before the award.

40 Q.—After this conversation with Mr. Connolly, were you in Mr. Phillips' office at any time? A.—Yes.

Q.—As a matter of fact, in the years 1926 and 1927, you were in Mr. Phillips' office quite often? A.—Not so very often.

Q.—Do you remember meeting people in Mr. Phillips' office?

MR. HACKETT: I object the question as leading and suggestive, illegal.

*Clifton E. Turner for plaintiff (direct examination).*

Q.—When you went to Mr. Phillips' office, did you see Mr. Phillips alone on all occasions?

MR. HACKETT: I object to the form of the question as leading and suggestive.

MR. GOUDRAULT: Question withdrawn.

10 Q.—After you had this talk with the Borough President, can you recall how long it was after that you went next to Mr. Phillips' office? A.—No, I can't.

Q.—Did you go to Mr. Phillips' office after your interview with the Borough President which you have just related? A.—Yes, I guess I did.

Q.—You do not recollect when or how long after? A.—No, sir.

Q.—Do you remember meeting anybody there? A.—Yes.

20 Q.—Who? A.—I don't know. There were a lot of people there.

Q.—A lot of people? A.—Yes.

Q.—But just limit ourselves to the visit or the immediate visits that followed your visit to the Borough President?

MR. HACKETT: I wish to point out that the witness has not stated that he made any visit to Phillips immediately after visiting the Borough President.

30 MR. GOUDRAULT: In order to refresh the memory of the witness, will you kindly read the question and answer where that fact has been brought out or not?

(Questions and answers read by clerk.)

BY MR. GOUDRAULT:

Q.—Sometime after, was it? A.—It was in that year.

Q.—Twelve months after your visit to the Borough President, or how long after, that you went to Mr. Phillips' office and met Mr. Phillips? A.—It was in that year.

40 Q.—Within the year? A.—Within the year, yes.

Q.—I will put it again to you. You stated that you saw the Borough President and had an interview with him in connection with these four jobs. You also stated that you went to Phillips' office after that? A.—Yes, sir.

MR. HACKETT: But not immediately after.

*Clifton E. Turner for plaintiff (direct examination).*

MR. GOUDRAULT: He said not immediately after, but I would like the witness himself to answer if he could tell approximately about what time after the visit to the Borough President that he went to Mr. Phillips' office for the first time and met Mr. Phillips.

10 THE WITNESS: I couldn't say. Probably sometime afterward.

Q.—What do you mean by sometime afterward? A.—Two months.

Q.—Two months. Are you sure of that? A.—I am not sure of it, no.

Q.—Could it be more or less? Could it be more? A.—It could be more, or it could be less.

Q.—Or it could be less. You do not recollect? A.—No.

20 Q.—This may help you to recollect. The award of this contract is dated the 21st of April, 1926. Bear that in mind. And the assignment of these contracts took place on the 5th of May, 1926. A.—Yes.

Q.—Well, does that help you to recollect when you went to Mr. Phillips' office the first time after you met the Borough President in connection with these four jobs? A.—I did not go there then.

30 Q.—I am not speaking of the assignments now, I am just reading to you the date of the assignment and also the date of the award of the contracts, in order to refresh your memory as to the date of your visit to Mr. Phillips after your visit to the Borough President. A.—Was that the assignment or the registration of the contracts?

Q.—That is the date of the assignment, the 5th of May, 1926. A.—What is that other date there?

Q.—This is the date of the award, April 21, 1926. Does that help you? A.—No.

Q.—Did you personally see if these four assignments were approved? A.—No, sir.

Q.—Who did on behalf of your company? A.—Nobody.

40 Q.—Do you know a man by the name of Fred Curran?  
A.—Yes, sir.

Q.—Where did you know him? A.—In Queens County.

Q.—What place in Queens County? A.—Well, he was a reporter, and then he was in Phillips' office.

Q.—Do you remember when you first met him? A.—No, sir.

*Clifton E. Turner for plaintiff (direct examination).*

Q.—Do you remember meeting him in Phillips' office?

A.—Yes, sir.

Q.—Will you now look at Plaintiff's Exhibit C-91, which is the assignment of the contract awarded to your company for the construction of the Springfield Boulevard, dated the 5th of May, 1926, this assignment being to Muccini & Decker, and tell us if this is your signature therein appearing on page No. 1?

10 A.—Yes, sir.

Q.—It is? A.—Yes, sir.

Q.—Will you tell us who witnessed your signature? A.—Fred Curran.

Q.—Will you look on page 2 of this assignment and state who acknowledged this signature of yours which appears there?

A.—Peter P. Campbell.

Q.—Do you know Peter P. Campbell? A.—Yes.

Q.—Who was he? A.—A notary public.

20 Q.—What else was he doing at the time? A.—He was in the real estate business.

Q.—Had you known him at the time? A.—Yes.

Q.—Where had you met him? A.—In Phillips' office.

Q.—In Phillips' office. Often? A.—Yes.

Q.—Do you know if he was working for Phillips? A.—No, sir, I couldn't tell you.

Q.—Do you know a man by the name of Kennedy? A.—Kennedy?

30 Q.—A contractor by the name of Kennedy? A.—You mean Kennedy & Smith?

Q.—Yes. A.—Yes, sir.

Q.—Whom did you know, Mr. Kennedy or Mr. Smith? A.—I know both of them.

Q.—Do you remember seeing either one or both of them at the time that you were bidding for these four jobs? A.—No, sir.

Q.—You don't remember? A.—No, sir.

Q.—How is it you came to Phillips' office on that particular occasion that we are speaking of now after your visit to the Borough President?

40 MR. HACKETT: I object to the form of the question, inasmuch as the witness has said many times that he did not go on any special occasion.

Q.—Did you go to Phillips' office within a certain time after your visit to the office of the Borough President in connection with these four jobs? A.—Yes.

*Clifton E. Turner for plaintiff (direct examination).*

Q.—Do you remember that occasion? A.—No. Nothing in particular to recall it.

Q.—But you went? A.—Yes.

Q.—How is it that you went? A.—Just went in, that is all.

Q.—Did Phillips call for you? A.—No, sir.

Q.—Anybody else call for you to go there? A.—No, sir.

10 Q.—Do you know Angelo Paino? A.—Yes. I know Paino, if that is what you are leading to.

MR. HACKETT: Yes, it is leading.

MR. GOUDRAULT: I don't think it is as leading as that. You see, the memory of the witness can be refreshed providing it is done in a legal way, the way it is done now.

Q.—Where did you meet Paino? A.—In Phillips' office.

Q.—I see. When? A.—After the bidding on these jobs.

20 Q.—Therefore, after the bidding on those jobs you went to Phillips' office, is that right? A.—Yes, sir.

Q.—Do you mean to say that you saw Paino on that occasion there? A.—Yes.

Q.—Whom else did you see? A.—Paulsen.

Q.—Who else? A.—That is about all, outside of Phillips himself.

Q.—On that occasion that you have now stated, how did you come to go there? A.—They asked me to go up there.

30 Q.—Who asked you to go up there? A.—I don't know. A telephone conversation, somebody said, "Come on up."

Q.—And you went up? A.—Yes.

Q.—Being on the other end of the line, did he give his name? A.—No.

Q.—He didn't? A.—No.

Q.—And you went? A.—Yes.

Q.—Did you know his voice? A.—No.

Q.—And so you went right over to Phillips' office? A.—Yes, sir.

Q.—From where did you go? A.—From my office.

40 Q.—Where? A.—In New York, 50 Church Street.

Q.—Now, when you got there, Mr. Turner, just tell us what happened. A.—It was in reference to the work. They wanted a job. Paino wanted one. I believe Paulsen wanted another, but he did not say.

Q.—What happened? A.—Phillips and Paino did most of the talking.

*Clifton E. Turner for plaintiff (direct examination).*

Q.—What did Phillips say? A.—Do you want to write it down, what he said?

Q.—Yes. A.—I wouldn't dare tell it in the Grand Jury room. Bad language, I think would be satisfactory, because those terms were not very nice and should not go in the record. There was a lot of trouble in the past between us.

10 Q.—Between whom? A.—Between Phillips and I, but that was the end of it.

Q.—Why? Say what was said? A.—We got into an argument. Paino wanted a job, as far as I know. He asked me to give him one job.

Q.—Who asked you? A.—Paino.

Q.—And then what happened? A.—That was about the end of it. It was very short.

Q.—Was that before the contracts were assigned? A.—Yes.

20 MR. HACKETT: To whom was that language addressed?

MR. GOUDRAULT: Yes, we are coming to that.

MR. COOK: Let's come to it.

THE WITNESS: The bad language was addressed to me.

Q.—It was addressed to you? A.—Yes, sir.

Q.—By whom? A.—By Phillips.

Q.—Why? A.—Because he didn't like my attitude.

30 Q.—What was your attitude at the moment. A.—My attitude was that I would build the pipe, or I wouldn't bother with it.

Q.—You would build what? A.—I would build the pipe myself, if I felt like it.

Q.—What did Phillips ask you? A.—He asked me to assign the job.

Q.—To whom? A.—To Paino.

40 Q.—Any other one? A.—No, sir. That is as far as we got. May I correct that? I think he said Paino and Paulsen, they would each like to have one.

MR. O'DONNELL: That is subject to our objections as to conversations with Phillips.

MR. HACKETT: I object too.



*Clifton E. Turner for plaintiff (direct examination).*

BY MR. GOUDRAULT:

Q.—Did you agree or did you not agree to assign any jobs?

A.—Not to them.

Q.—You did not agree? A.—No, sir.

Q.—As a matter of fact, you did assign the jobs? A.—Yes.

Q.—You assigned all of them? A.—Yes, sir.

10 Q.—The four of them? A.—Yes, sir.

Q.—To whom did you assign them? A.—To Muccini & Decker—

Q.—How many of them to Muccini & Decker? A.—Three to Muccini & Decker.

Q.—And the fourth one to Awixa Corporation? A.—To Awixa Corporation.

Q.—Will you now look at this assignment, Plaintiff's Exhibit C-93, which is the assignment from your company to Muccini & Decker of the Jamaica Avenue job, and state if this is  
20 your signature appearing on page 1? A.—Yes, sir.

Q.—And this signature of yours is witnessed by? A.—Fred R. Curran.

Q.—And the acknowledgement of that signature of yours is taken by? A.—Peter P. Campbell.

Q.—Will you now look at Plaintiff's Exhibit C-91, which is the assignment of the Springfield Boulevard job from your company to Muccini & Decker, and state if this is your signature therein appearing as president of the Highway Improvement & Repair Company, Inc.? A.—Yes, sir.

30 Q.—Witnessed by whom? A.—Fred R. Curran.

Q.—And the acknowledgment of the signature is taken by? A.—Peter P. Campbell.

Q.—Will you now look at Plaintiff's Exhibit C-92, which is the assignment from your company to Muccini & Decker of the Hempstead Avenue job? A.—Yes.

Q.—And state if that is your signature therein appearing on page 1? A.—Yes, sir.

Q.—Witnessed by? A.—Fred R. Curran.

40 Q.—And acknowledgment of the signature of yours taken by? A.—Peter P. Campbell.

Q.—Now, will you look at Plaintiff's Exhibit C-90, which is the assignment from your company to Awixa Corporation of the Foch Boulevard job, and state if this is your signature as President of the company? A.—Yes, sir.

Q.—And it is witnessed by? A.—Jefferson J. Reilly.

Q.—And the acknowledgment of your signature is taken by.—it does not seem that it has been acknowledged. Will you look

*Clifton E. Turner for plaintiff (direct examination).*

now at these three assignments that you have just examined quite thoroughly, Mr. Turner, and see if you recognize this signature of the assignee's firm, which is Muccini & Decker? A.—I should say that was theirs, yes.

Q.—Whose signature is that? A.—I don't know which one it is. Decker underneath, Albert Decker.

10 MR. O'DONNELL: Defendants object to any evidence as to the signature, as not being the best evidence.

Q.—Do you know Decker? A.—Yes, sir.

Q.—On Exhibit C-91, and on C-92 and C-93, will you also see if that is the signature of Albert Decker, of the firm of Muccini & Decker? A.—I am not sure; but I will grant you that is probably his signature.

20 MR. O'DONNELL: Same objection, as not the best evidence.

Q.—How long after that conversation that you just related did you assign these contracts? A.—It was shortly after.

Q.—Will you give us your best recollection, Mr. Turner? A.—Oh, just a few days after.

Q.—What were the negotiations for the assignment of the contracts, and who negotiated them?

MR. O'DONNELL: Objected to as entirely irrelevant.

30 Q.—Do not tell me any conversation at the moment; just tell me where they were conducted? A.—They were conducted in my office.

Q.—Who negotiated them on behalf of your company? A.—I did.

Q.—Who negotiated them on behalf of the Awixa Corporation? A.—Schlemmer.

Q.—Who negotiated them on behalf of the firm of Muccini & Decker? A.—Decker.

Q.—All four were in your office? A.—What do you mean?

40 Q.—Two people—you say that it was Mr. Schlemmer on behalf of the Awixa Corporation who negotiated for that company, the assignment from your company to that company of the Foch Boulevard, and Mr. Decker was the one that negotiated on behalf of Muccini & Decker the other three assignments? A.—Yes, sir.

Q.—That's two people. A.—Yes, sir.

*Clifton E. Turner for plaintiff (direct examination).*

Q.—Besides yourself. Were they at your office for that purpose at one time? A.—No, I don't like the way that question is put.

Q.—All right. I will put it to satisfy you, Mr. Turner. A.—You say they were all there at one time?

Q.—They weren't there at one time? A.—No, sir.

10 Q.—Mr. Schlemmer went? A.—Mr. Schlemmer and I had engagements and Mr. Decker and I had engagements.

Q.—How long had you known Decker in 1926 when these assignments were made? A.—I suppose a year or so.

Q.—How long had you known Mr. Schlemmer on the 5th of May, 1926, when these assignments were executed? A.—Well, I met him before, I believe.

Q.—How long before? A.—I don't recall. It was a good many years before.

20 Q.—Did you see him right along after those years? A.—No.

Q.—Well, Mr. Schlemmer, I understand, went to your office to negotiate? A.—Yes, sir.

Q.—I see. Well, when he did go to negotiate, how long had you seen him previous to that, the first time he went to negotiate? A.—Well, I should say a year or so before.

Q.—You had not seen him for a year before the date of the negotiations of the assignment? A.—Only casually. Naturally, when you go to places you see a man.

30 Q.—What place? A.—In the Borough Hall, or any place. We were all interested in work there, and we were all interested going up there for our payments.

Q.—Did you see Decker at 49 Jackson Avenue? A.—Yes, I have seen him there.

Q.—Often? A.—Not very often.

Q.—You have seen him there? A.—I have seen him there. yes.

Q.—The witness, on three of those assignments, is Fred R. Curran? A.—I believe it is on four.

Q.—No; Reilly is on the fourth one. A.—Oh, is Reilly on the fourth one?

40 Q.—Yes. A.—I thought Curran witnessed all of them.

MR. HACKETT: Reilly was on the Awixa.

Q.—Was Reilly in your office? A.—No, sir.

Q.—For that assignment? A.—No, sir.

Q.—Do you remember where that assignment was executed? A.—In Borough Hall.

*Clifton E. Turner for plaintiff (direct examination).*

Q.—Do you remember when Fred R. Curran witnessed your signature to the assignment? A.—That was at my office.

Q.—Your office. Where was your office? A.—50 Church street.

Q.—In New York City? A.—Yes, sir.

Q.—You told us that Decker was the man that negotiated with you the assignment of those three jobs? A.—Yes, sir.

10 Q.—Only he? A.—Only he.

Q.—And you? A.—Yes.

Q.—Who was Fred R. Curran? A.—I imagine he was an employee of Phillips, because he was there.

Q.—I see. How did Curran happen to come to your office to take your signature to an assignment to Decker, when you say that Decker negotiated these assignments? A.—That I don't know.

20 Q.—Did you know that Mr. Curran was going to come, before he got there? A.—I had a telephone conversation with Decker, stating that he was sending somebody down.

Q.—With Decker? A.—Yes.

Q.—That he was sending somebody down? A.—Yes, sir.

Q.—He did not state who? A.—No, sir.

Q.—When these four assignments were made, your company had done no work on these sewers? A.—No, we had not done any work.

Q.—This all happened in a few days' time, didn't it? A.—Yes, sir.

30 Q.—When Mr. Curran came over there and witnessed your signature at your office, did anybody come with him? A.—No, sir; he came alone.

Q.—He came alone and witnessed your signature? A.—Yes, sir.

Q.—And that is all there was to it, is that right? A.—Yes, sir.

Q.—I notice that the acknowledgment of your signature is taken by Peter P. Campbell on the same day. You have looked at the second page of the exhibit? A.—Yes, sir.

40 Q.—Do you recall whether Peter P. Campbell, a notary public of Queens County, came to your office in Church Street and took your acknowledgment? A.—No, sir, I don't think he did.

Q.—Were you present when Peter P. Campbell, Notary Public of Queens County, recites that you appeared personally before him? A.—No, sir.

Q.—Did you have a notary public in your own office? A.—No, sir.

*Clifton E. Turner for plaintiff (direct examination).*

Q.—Was there any at 50 Church Street where your office was at the time?

MR. O'DONNELL: Objected to as entirely irrelevant.

A.—I suppose there would be.

Q.—Do you know who did the typewriting of these assignments? A.—Yes.

Q.—Who? A.—Miss Novotny.

Q.—Your own secretary? A.—No, sir.

Q.—In whose office was she? A.—Warren's office.

Q.—They are in the same building as your office? A.—Yes, sir.

Q.—Did you have any stenographer of your own? A.—No, sir.

Q.—No stenographer at all in your organization? A.—No, sir.

Q.—Did you get this young woman to make this out for you, these assignments? A.—Yes, sir.

Q.—Did you hand her something to guide her, or to have her copy from? A.—Yes, sir. I handed her what they have up there, that is the usual form of assignment.

Q.—Up where, where do you mean? A.—Warren's office.

Q.—After this copy was typewritten, for these assignments to Muccini and Decker, what did you do? A.—Nothing.

Q.—Kept them in your desk? A.—I had them at my office, yes.

Q.—Did you leave them in your office? A.—Yes.

Q.—And what happened next? A.—Well, the next thing that happened, Curran came down and witnessed my signature and went out.

Q.—Was that long after they were executed; I mean, after they were typewritten? A.—I believe it was about in a day.

Q.—How did Curran come there? A.—What is that?

Q.—How did it happen that Curran came there? A.—Decker called me up and said he was sending somebody down for the assignment, copies of the assignments.

Q.—Peter P. Campbell also acknowledged the signature and the presence of Albert Decker on these assignments. Was Decker present when you signed? A.—No, sir.

Q.—How much did you get for assigning the contracts to Muccini & Decker? A.—Around \$30,000.

Q.—For one contract, or three contracts, \$30,000? A.—For the three of them.

*Clifton E. Turner for plaintiff (direct examination).*

Q.—How much for each? A.—Well, there was something there, it was divided up, it was done in a total sum, as I can remember it.

Q.—And were you paid by Muccini & Decker? Was your firm paid? A.—Yes.

Q.—How much did it receive? A.—Thirty and some odd thousand dollars. \$36,000.

10 Q.—And your company was paid? A.—Yes.

Q.—I notice that your signature is witnessed by Fred R. Curran and Peter P. Campbell as notary public, and it recites that you personally appeared before him on that day, in each of these three assignments? A.—Yes, sir.

Q.—And the three of them were signed in your office? A.—Yes, sir.

Q.—Curran was there? A.—Yes sir.

Q.—What about Campbell? A.—He was not there.

20 Q.—You said a moment ago that you negotiated the assignment to the Awixa Corporation with Mr. Schlemmer personally; is that right? A.—Yes, sir.

Q.—Where did Mr. Schlemmer talk that matter over? A.—In my office.

Q.—Did you arrive at an arrangement during that first interview? A.—No, sir.

Q.—Did you see him again? A.—Yes.

Q.—Where? A.—In my office.

30 Q.—Did you arrive at an arrangement at the second interview? A.—I don't recall whether we did or not.

Q.—But you finally— A.—We finally agreed on it.

Q.—But not at the first interview? A.—No, sir.

Q.—What arrangement did you arrive at with Mr. Schlemmer?

MR. HACKETT: Objected to, as it is evidenced by the agreement.

A.—It is pretty hard to recall it.

40 MR. HACKETT: It speaks for itself, C-90.

THE COMMISSIONER: You may answer, subject to counsel's objection.

Q.—The arrangement was in writing. I know that, but I am speaking of the negotiations. A.—It is pretty hard to recall. We reached an agreement, but what it was, I do not know.

*Clifton E. Turner for plaintiff (direct examination).*

Q.—Was the amount more or less worked out in advance as to about what it would be? A.—Yes. It was a percentage basis, I believe.

Q.—Would you be a little more precise?

10 MR. O'DONNELL: Defendants renew the objection, inasmuch as the agreement speaks for itself, and cannot be contradicted by verbal evidence.

MR. HACKETT: I avail myself of that objection. A.—It was around \$50,000.

BY MR. GOUDRAULT:

20 Q.—I notice that the contract with the Awixa Corporation was for \$638,000,—I have not got the contract before me, but that is subject to correction; the contract is there, anyway—whereas, the aggregate of the three that went to Muccini & Decker is just under two million. Do you now recall when it was that you signed the assignment to Schlemmer?

MR. O'DONNELL: Objected to. The document speaks for itself.

A.—The same day.

Q.—The same day as the Muccini & Decker assignments?

A.—I believe it was.

30 Q.—And you assigned your assignment to Schlemmer over in the Borough Hall, is that right, and had it witnessed by Jefferson J. Reilly? A.—Yes, sir.

Q.—Will you look at this Exhibit, C-90, which is the assignment from your company to the Awixa Corporation of the Foch Boulevard job, and tell us to the best of your knowledge and recollection if, before coming to this definite form, if any projected agreement or other assignment was prepared and submitted to you?

40 MR. O'DONNELL: Objected to as being entirely irrelevant and illegal. The document can not be added to or varied by the witness.

A.—It was not submitted to me.

Q.—It was not submitted to you? A.—You asked me that.

Q.—Yes, I will make it a little clearer. A minute ago you told us that you did not arrive at any arrangement with Mr. Schlemmer, representing the Awixa Corporation, at your first

*Clifton E. Turner for plaintiff (direct examination).*

interview; that you had one, or say other interviews with him, and the thing was finally arranged. Is that right? A.—Yes, sir.

Q.—Now, just tell us what took place between your first interview and the execution of this assignment between yourself and Mr. Schlemmer, or any other, if there were any other? A.—Well, there was something wrong with the assignment that was prepared, as I recall it, and changes were made, and it was signed  
10 up in Borough Hall.

Q.—When it was finally made? A.—Yes.

Q.—Yes. If changes were made—did you state that changes were made?

MR. O'DONNELL: Defendants object to any verbal evidence as to changes. The negotiations terminated in a written document, which can not be contradicted or varied by the witness.

MR. HACKETT: I avail myself of that objection. A.—It  
20 had to be signed.

Q.—Again? A.—Yes, sir.

Q.—Or re-signed? A.—Whatever it was; there was something wrong with it.

Q.—What was it? A.—I did nothing, however, with it, except sign it.

Q.—You mean sign this one, which is the final execution? A.—Yes, sir.

Q.—You have not got the corrections with you? A.—No,  
30 sir.

Q.—Was there another projected agreement?

MR. O'DONNELL: Same objection.

A.—No, sir.

Q.—You told us that it would have to be done over again, or something like that. A.—There was something wrong with it. I don't know what it was.

Q.—What was wrong? A.—I haven't any idea what was  
40 wrong.

Q.—I don't mean to say the details of what was wrong, but what was actually wrong? A.—I don't know. It may have been something that the Comptroller's office objected to.

Q.—Objected to what? A.—That is what I don't know. It had to be re-signed.

Q.—What had to be re-signed? A.—My signature had to be put on.



*Clifton E. Turner for plaintiff (direct examination).*

Q.—I see. You signed once, didn't you? Did you sign anything else but this final agreement? A.—I don't know whether I did or not. I probably might have signed the original one. What the objections were, I do not know.

Q.—Well, they were finally signed by you and witnessed by Jefferson J. Reilly? A.—Yes, sir.

10 Q.—The other documents that had to be—you say that you re-signed this one, or signed a new one, or something. I don't know. The other document, where was it?

MR. HACKETT: I object to any testimony of another document which is not produced, and which, in any event, was superseded by C-90.

A.—I don't know what was wrong with it.

Q.—This assignment superseded another one, did it? A.—I don't know. They were all made up at the same time.

20 Q.—By whom? A.—Miss Novotny.

Q.—To whom did you give—after Miss Novotny had prepared the assignment to the Awixa Corporation, to whom did you give it? Did she prepared one or two for the Awixa Corporation, or did she prepare an assignment once or twice? A.—That I don't remember.

Q.—Let us go back for a few minutes to your first interview with Mr. Schlemmer of the Awixa Corporation. You did not come to any agreement at that first interview? A.—No, sir.

30 Q.—What happened next as regard the assignment to Awixa Corporation? A.—I was getting closer all the time, making the best deal I could.

Q.—And you finally arrived at a deal? A.—Yes.

Q.—At a figure? A.—Yes.

Q.—Did you put your figures or your deal, or instructed Miss Novotny to do so? A.—No, sir.

Q.—Who made the assignments, typewrote them? A.—Miss Novotny.

Q.—Upon whose instructions? A.—Mine.

40 Q.—What payment then did you get from the Awixa Corporation for the assignment?

MR. HACKETT: The document, C-90, speaks for itself.

Q.—One dollar and other considerations. Did you get the dollar? A.—No, sir.

Q.—Did you get the other considerations? A.—I don't know what that would be.

*Clifton E. Turner for plaintiff (direct examination).*

Q.—What payment did you get from the Awixa Corporation for the assignment of the Foch Boulevard contract? A.—You mean the total amount of money?

Q.—Sure. A.—Regardless the one dollar and other considerations?

Q.—Yes. A.—Around \$25,000.

10 Q.—Do you remember if the payment from the Awixa Corporation came in one, two or several checks? A.—I don't remember now.

Q.—Your company was paid by the Awixa Corporation, was it, for the assignment of that contract? A.—Yes, sir.

Q.—Will you now look at three photostatic copies of checks, respectively bearing Nos. 2283, 2284 and 2285, all dated October 14th, 1926, payable to the order of James F. Richardson, with endorsements on the back of said checks.

20 MR. O'DONNELL: Objected to as not the best evidence.

MR. HACKETT: I object also, as not being the best evidence.

MR. COOK: Are you producing those checks?

MR. GOUDRAULT: Yes. What is the question?

(Question read by clerk).

30 Q. (continuing).—And state if you remember seeing the originals of said three checks? A.—Yes, sir. I believe I did.

MR. GOUDRAULT: Plaintiff offers as evidence, said three checks, to be filed as one exhibit, bearing No. C-94.

(The said photostatic copies of three checks were thereupon received in evidence and marked Plaintiff's Exhibit C-94, of this date).

MR. COOK: Where are the originals of those, Mr. Turner?

40 THE WITNESS: Where are the originals?

MR. COOK: Yes.

MR. HACKETT: He does not know; they are not his.

BY MR. GOUDRAULT:

*Clifton E. Turner for plaintiff (direct examination).*

Q.—Your company was paid for that amount, \$26,910, represented by the total of those three checks, by the Awixa Corporation? A.—I believe they were, yes.

Q.—I mean your company. A.—Yes, sir.

Q.—You received payment of how much from the Awixa Corporation? A.—Whatever the total amount of those checks is.

10 Q.—I see; the total amount is \$26,910. Your company was paid for that, received that money? A.—We just exchanged checks.

Q.—When did you get this payment of \$26,910? A.—We did not receive that amount of money.

Q.—No. I know you want to explain that. You remember receiving the original of those checks? A.—Yes, I remember.

Q.—Do you remember getting the cash for those checks? Or tell us what you did with them? A.—We gave them to Mr. Richardson, or sent them to him; I have forgotten which.

20 Q.—Did you ever get any more payments from the Awixa Corporation?

MR. O'DONNELL: Objected to as not being the best evidence of any such payments.

A.—After these?

Q.—Yes. A.—Not in connection with any assignment.

30 Q.—I now ask you to state whether or not you were able to tell me approximately what date you received additional payments from the Awixa Corporation? A.—I wouldn't have any idea. It might have been paving work.

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(Witnesses Joseph J. Elkin and Daniel Enright appeared, but were not sworn).

THE COMMISSIONER: Mr. Elkin and Mr. Enright, you are directed to be here at eleven o'clock tomorrow morning.

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BY MR. GOUDRAULT:

Q.—Now, I would like that you should explain yourself on these payments. I understand that evidently you did receive, according to the evidence, checks from the Awixa Corporation, three checks, payable to the order of James F. Richardson. The

*Clifton E. Turner for plaintiff (direct examination).*

originals of these photostatic copies of checks do not represent the payments that you received from the Awixa Corporation, do they? A.—No.

Q.—Did you, as a matter of fact, receive payments from the Awixa Corporation for the assignment of the Foch Boulevard job? A.—Yes.

10 Q.—Your company was paid? A.—Yes, sir.

Q.—What did you do with the money? A.—Put it in the bank.

Q.—Put it in the bank? A.—Yes.

Q.—Were you paid by check, by the Awixa Corporation? A.—Yes.

Q.—In what bank account did you deposit those checks? A.—I don't remember.

Q.—Do you remember doing business with one or two banks? A.—Two banks.

20 Q.—Two banks? A.—Yes.

Q.—With the Chatham & Phoenix Bank, would that be one of them? A.—Yes.

Q.—Was that your regular active bank? A.—Yes.

Q.—Do you remember doing business with the Vailsburg Trust Company? A.—Yes.

Q.—At which of the two banks did you deposit the payment from the Awixa Corporation? A.—I don't remember; probably in the Chatham & Phoenix Bank.

30 Q.—Did you deposit them yourself? A.—No. I might have mailed them over.

Q.—You might have mailed them over? A.—Yes.

Q.—And did you mail them with a letter or with a deposit slip? A.—I don't know whether I did or not.

Q.—Now, once the money was in your—you say in the Chatham & Phoenix Bank, which is the bank where you had your active account? A.—Yes.

Q.—Did you leave the money there? A.—Yes.

Q.—Long? A.—Well,—are you talking of those checks?

40 Q.—No, I have withdrawn those checks. A.—Now, the money that I received for the assignments went to the bank, as far as I know.

Q.—Went to what bank? A.—Chatham & Phoenix Bank.

Q.—Did you deposit whatever check or checks you received from the Awixa Corporation for the assignment to the credit of your corporation? A.—Yes.

Q.—Are you sure of the bank where you deposited them? A.—I am not positive.

*Clifton E. Turner for plaintiff (direct examination).*

Q.—It could either be the Vailsburg Trust Company or the Chatham & Phoenix Bank? A.—It could be.

Q.—And what did you do then, once the money was deposited? A.—I left it there.

Q.—You left it there? A.—Yes.

10 Q.—These are cashier's checks amounting to \$26,910, to the order of James F. Richardson; photostatic copies have been produced as Plaintiff's Exhibit C-94. Do you remember seeing the originals of these cashier's checks? A.—I believe I did.

Q.—How did they come to be cashier's checks? A.—At the request of Mr. Richardson.

Q.—Now, who asked the cashier to prepare these checks? A.—I did.

Q.—You did? A.—Yes.

Q.—What bank? A.—Vailsburg Trust Company.

Q.—That is the Vailsburg Trust Company, in New Jersey? A.—Yes, sir.

20 Q.—Was Mr. Richardson with you when he requested you to issue the checks to his order? A.—Yes.

Q.—Where was that? A.—In my office.

Q.—Your office is in New York? A.—Yes, sir.

Q.—And you had deposited the Awixa Corporation checks for the assignment, in the New Jersey Bank, which is the Vailsburg Trust Company, is that right? A.—I don't know where; probably in the Chatham & Phoenix Bank.

30 Q.—Did you give a check to the Vailsburg Trust Company for the issue of these three checks which are cashier's checks? A.—I don't know whether we did or not.

Q.—You certainly recall that you did not get these cashier's checks, unless some consideration was given? A.—Well, it was done for Mr. Richardson.

Q.—I know; I know that. Did you enclose with your deposit slip, or,—

MR. HACKETT: Don't lead him.

MR. GOUDRAULT: All right.

40 . (Question withdrawn).

Q.—What I want to get at, Mr. Turner, is, I want you to tell us the circumstances which explain the issue by the Vailsburg Trust Company of three checks to the order of James F. Richardson, at your request. Just the facts.

*Clifton E. Turner for plaintiff (direct examination).*

MR. O'DONNELL: Objected to as entirely irrelevant and not the best evidence.

A.—It was in settlement, as I understand it, of the original agreement, and then they found out that the job was not going to make as much money as we expected, and we returned them that money. Why the checks were made out this way, I have  
10 no idea at all.

Q.—But it was at Mr. Richardson's request? A.—Mr. Richardson asked me to make the checks out in those amounts.

Q.—Why did you return the Highway Improvement & Construction Company's checks, and why did you have cashier's checks issued to Mr. Richardson? A.—You will have to ask Mr. Richardson. I did it at his request.

Q.—The cashier's checks were not your idea? A.—No, sir.

Q.—Which of the two banks was your active bank, or was your most active bank account, the Vailsburg Trust Company or  
20 the Chatham & Phoenix? A.—At the time, the Chatham & Phoenix was.

Q.—Can you tell us, just in order to clear this matter up, once and for all, how much your company actually received for that assignment to the Awixa Corporation? A.—I believe around \$25,000.

Q.—And that was all? A.—That was all.

Q.—But you returned to James F. Richardson of that company, \$26,910? A.—Whatever that amount is.

Q.—You returned to Mr. Richardson or the Awixa Corporation, more than you received, or would it be just the amount?  
30 A.—That was just the amount.

Q.—So you received the payment, and you turned a payment over to Richardson, is that it? A.—Of that amount, yes.

Q.—Was there any other amount? A.—Only the amount that we received.

Q.—What is that? A.—\$25,000.

Q.—Did you keep that? A.—We kept that.

Q.—About \$25,000, or \$25,000? A.—I think it was \$25,000.

Q.—That would be \$51,910? A.—Yes, sir.  
40

Q.—And you turned over to Mr. Richardson, at his request, by cashier's checks, and to his order, out of that total, \$26,910; is that it? A.—Yes, sir.

Q.—And the matter was settled? A.—Yes, sir.

MR. GOUDRAULT: I thank you, Mr. Turner; that is all.

*Clifton E. Turner for plaintiff (cross-examination).*

CROSS EXAMINATION BY MR. HACKETT:

Q.—Mr. Turner, I understood you to say that you had sufficient capital and money to do this sewer work? A.—We had sufficient—we had borrowing capacity that could have been arranged without any question at all.

10 Q.—There was no difficulty about finances? A.—No difficulty.

Q.—You told us that in the office of Warren Brothers there was a form for assignments? A.—Yes, sir.

Q.—Assignments of contracts is a very ordinary thing in the contracting business, isn't it? A.—It is being done every day.

Q.—Every day? A.—Yes.

Q.—And contracts are bought and sold like apples on the street, almost? A.—Yes.

Q.—I can tell you a number of witnesses have told us that. A.—Well, we do it every day.

20 Q.—And there was nothing unusual about the acquisition of this,—about the sale of these contracts? A.—No, sir.

Q.—And the Awixa people didn't make as much money as they hoped to, and you remitted part of the price? A.—That was understood.

Q.—And that is all there was to it? A.—That is all there was to it.

Q.—That is the whole story? A.—Just a matter of book-keeping; that is what caused the checks.

30 Q.—And you signed those assignments in your office in the presence of Curran, in the ordinary way? A.—Yes.

Q.—And whom he got to say that you had signed before, you don't know? A.—No.

Q.—Campbell did not go to your office? A.—No, sir, he was not there. He recognized my signature.

Q.—Had Phillips anything to do with these assignments? A.—No.

MR. HACKETT: I am through with the witness, Mr. Commissioner.

40 THE COMMISSIONER: Thank you, Mr. Turner.

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*William Goldsmith for plaintiff (direct examination).*

DEPOSITION OF WILLIAM GOLDSMITH.

10 WILLIAM GOLDSMITH, age, 47; residence, 245 Westchester Avenue, Crestwood, Westchester County; occupation, 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:

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—What is the name of your company? A.—Riverdale Construction Company.

Q.—What is your position in that company? A.—Secretary and treasurer.

20 Q.—Were you ever president? A.—No,—I was president at one time.

Q.—You know Mr. Elkin? A.—I do.

Q.—When did you take him on? A.—I don't remember the exact year; it was about three years after we organized.

Q.—Did he become president at one time? A.—He became president later on. The exact year I don't remember.

Q.—And he is still the president? A.—He is.

30 Q.—Now, do you remember your company, the Riverdale Construction Company, making bids on seven jobs on July 14, 1926? A.—No, I don't. I have no knowledge of that.

Q.—Did you know at any time during 1926, that Mr. Connolly, President of the Borough of Queens, had awarded to your corporation, three jobs? A.—I did not.

Q.—Did you know that, limiting ourselves to the period of 1926, that Mr. Elkin had signed a contract with the City of New York on behalf of your company, and had received some money for it? A.—I did not.

Q.—When is the first time you found that out? A.—It was afterwards, when the matter came up in the investigation.

Q.—Do you remember the investigation? A.—Yes.

40 Q.—What is the name of the investigation? A.—The investigation of this Connolly matter.

Q.—Do you remember the year? A.—I think it was 1927.

Q.—And your company, I understand, had put in bids in 1926 and secured three contracts out of the seven, in 1926? A.—Yes, I learned that later.



*William Goldsmith for plaintiff (direct examination).*

Q.—Will you just give us in a few words, the circumstances that brought to your knowledge the fact that this Mr. Elkin, the president of your company, had made \$5,000?

MR. HACKETT: He has not mentioned that.

10 THE WITNESS: In the investigation it came out that the Riverdale Construction Company had these contracts and had assigned them. And then we found that out, and I was made aware of it, I think it was in 1927, and Mr. Elkins notified the company at that time that he took that money and—

MR. HACKETT: Just a minute. I object to anything that Mr. Elkins may have told you.

MR. GOUDRAULT: Yes.

20 THE COMMISSIONER: I will allow the witness to answer, subject to counsel's objection.

MR. GOUDRAULT: I mean to say, that part of the evidence should be struck out. You can not tell us any conversation with Mr. Elkins.

Q.—Just tell us the facts. A.—We had a resolution passed—

Q.—Who is "we"? A.—The Riverdale Construction Company had a resolution passed. I don't know what the wording is, saying that it was all right that Mr. Elkin took his \$5,000.

30 Q.—Don't say that. It is in the resolution? A.—Yes, it is in the resolution.

MR. GOUDRAULT: And the resolution speaks for itself.

Q.—You were aware at a certain time, that Mr. Elkin had received money; is that right? A.—Yes.

Q.—He was the president of your company? A.—Yes.

Q.—And that was on the occasion you said of this investigation of the Connolly affair? A.—Yes.

40 Q.—That you were aware of that? A.—Yes.

Q.—Where did you get that knowledge about this \$5,000? A.—From Mr. Elkin.

Q.—Did you see it anywhere else? A.—No.

Q.—Was that long after the contracts with the Riverdale Corporation had been awarded? A.—More than a year; it was more than a year.

*William Goldsmith for plaintiff (cross-examination).*

MR. GOUDRAULT: More than a year. That is all.

CROSS EXAMINATION BY MR. HACKETT:

Q.—You are still in partnership with Mr. Elkin? A.—The company is still in existence, but is inactive. It has not been doing anything since that time.

10 Q.—You are still associated with the company? A.—I am still secretary and treasurer of the company, and Mr. Elkin is still president of the company.

MR. HACKETT: That is all.

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20 (Whereupon, at 4.30 o'clock p. m., an adjournment was taken to tomorrow, Thursday, February 5th, 1931, at eleven o'clock a. m.)

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Depositions of witnesses, sworn and examined on the 5th day of February 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  
10 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 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:

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DEPOSITION OF EUGENE J. TULLY.

EUGENE J. TULLY was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposed and saith as follows:

MR. GOUDRAULT: Will you look at this original contract and produce same and the six other contracts that you now have in your possession and which are to be described by you,  
30 the whole of these seven contracts forming form of the evidence, and which are now offered to complete Mr. Decker's testimony, the whole in accordance with the reserve appearing at page 982 of the depositions.

MR. O'DONNELL: Defendants object to the production of the said documents as being irrelevant and illegal.

MR. HACKETT: Same objection.

THE WITNESS: This is contract No. 84419, between  
40 Muccini & Decker and the City of New York, for the construction of a sewer and appurtenances in Decker Street, et cetera. Date of award June 20, 1927, date of contract June 24, 1927. This is an original contract.

MR. GOUDRAULT: I offer in evidence, as Plaintiff's Exhibit C-95, the said original contract.

*Eugene J. Tully for plaintiff recalled (direct examination).*

MR. O'DONNELL: Defendants object to the production of this document as irrelevant and illegal.

MR. HACKETT: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-95, of this date.)

10 THE WITNESS: This is contract No. 84312, between Muccini & Decker and the City of New York, for the construction of a sewer and appurtenances in Beach 32nd Street, et cetera. Date of award June 7, 1927, date of contract June 17, 1927. This is an original contract.

MR. GOUDRAULT: I offer in evidence, as Plaintiff's Exhibit C-96, the said original contract.

20 MR. O'DONNELL: Defendants object to the production of this document as irrelevant and illegal.

MR. HACKETT: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-96, of this date.)

30 THE WITNESS: This is contract No. 84156, between Muccini & Decker, and the City of New York, for the construction of a sewer and appurtenances in 38th Street, et cetera. Date of award May 28, 1927, date of contract June 17, 1927. This is an original contract.

MR. GOUDRAULT: I offer in evidence, as Plaintiff's Exhibit C-97, the said original contract.

MR. O'DONNELL: Defendants object to the production of this document as irrelevant and illegal.

MR. HACKETT: Same objection.

40 (The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-97, of this date.)

THE WITNESS: This is contract No. 84159, between Muccini & Decker and the City of New York, for the construction of a sewer in Rockaway Boulevard, et cetera. Date of award May 28, 1927, date of contract June 10, 1927. This is an original contract.

*Eugene J. Tully for plaintiff recalled (direct examination).*

MR. GOUDRAULT: I offer in evidence, as Plaintiff's Exhibit No. C-98, the said original contract.

MR. O'DONNELL: Defendants object to the production of this document as irrelevant and illegal.

MR. HACKETT: Same objection.

10 (The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-98, of this date.)

THE WITNESS: This is contract No. 84157, between Muccini & Decker and the City of New York, for the construction of a sewer and appurtenances on Ditmars Avenue, et cetera. Date of award May 28, 1927, date of contract June 10, 1927. This is an original contract.

20 MR. GOUDRAULT: I offer in evidence, as Plaintiff's Exhibit C-99, the said original contract.

MR. O'DONNELL: Defendants object to the production of this document as irrelevant and illegal.

MR. HACKETT: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-99, of this date.)

30 THE WITNESS: This is contract No. 77392, between Muccini & Decker and the City of New York, for the construction of a sewer in Polk Avenue, et cetera. Date of award November 13, 1925, date of contract December 5, 1925. This is an original contract.

MR. GOUDRAULT: I offer in evidence, as Plaintiff's Exhibit C-100, the said original contract.

MR. O'DONNELL: Defendants object to the production of this document as irrelevant and illegal.

40 MR. HACKETT: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-100, of this date.)

THE WITNESS: This is contract No. 84158, between Muccini & Decker and the City of New York, for the construction of sewers and appurtenances in Rockaway Boulevard, et cetera.

*Eugene J. Tully for plaintiff recalled (direct examination).*

Date of award, May 31, 1927, date of contract June 10, 1927.  
This is an original contract.

MR. GOUDRAULT: I offer in evidence, as Plaintiff's Exhibit C-101, the said original contract.

10 MR. O'DONNELL: Defendants object to the production of this document as irrelevant and illegal.

MR. HACKETT: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-101, of this date.)

20 MR. GOUDRAULT: Mr. Commissioner, we have just produced and offered in evidence seven original contracts, Exhibits C-95, C-96, C-97, C-98, C-99, C-100 and C-101. I may state that we had these contracts before us and before yourself and the witness Decker when he was examined the day before yesterday and yesterday. And the only reason for not filing them at the time was that we wanted to check them up so that no mistake would be made, and we did reserve our right to produce them, and that is why we now proceed to their production.

Before we complete this matter I want to ask a question of Mr. Tully as regards the form of entries made when these contracts for the construction of sewers in the Borough of Queens are paid through the Comptroller's Department.

30 BY MR. GOUDRAULT:

Q.—Mr. Tully, will you look at Exhibit C-95, which is one of those contracts awarded to Muccini & Decker for the construction of a sewer in the Borough of Queens and state what this sheet that I am now indicating to you, and which is the second sheet, or the first sheet after the cover, is? A.—This is known as a summary sheet, on which all payments that are received in the Comptroller's office pertaining to this particular contract, a record is made on this summary sheet. It gives the date the  
40 payment was received in the Comptroller's office, also the amount of the voucher.

Q.—You said "payments received". Do you mean paid out by the Comptroller's Department? A.—I mean received. The voucher itself is received in the Comptroller's office preparatory to making out the check. This is the date the voucher is received. (Indicating)

*Eugene J. Tully for plaintiff recalled (direct examination).*

Q.—And then? A.—Some two weeks afterward, or possibly a little more, the warrant or check is made ready.

Q.—I see, but these figures are shown and appear there under a heading which reads “Payments, amounts retained, and earned.” Would you tell us, in a few words, what is meant by that? A.—This is the total amount earned in this particular voucher, \$94,560.

10 Q.—You mean in this particular contract? A.—This particular voucher; one voucher. There were nine payments represented on this summary for payment of different vouchers on this contract. Now, the first one we will take, the amount earned was \$94,560, of which the contractor received \$80,376 and the City retained \$14,184.

MR. HACKETT: In the proportion of 85-15.

THE WITNESS: That is the idea.

20 Q.—And then when that sheet is completed, does that indicate payment by the Comptroller’s Department to the contractors? A.—Yes, sir. When the final certificate is received it is entered on this summary the same as all previous payments. And if it is the final, this summary is marked “In Full.”

Q.—I see. Your evidence that you have just given on this particular contract or Exhibit C-95, does that apply to all contracts for the construction of sewers in the Borough of Queens that we have filed before this commission, inasmuch as the said contracts do contain the said sheets of particulars? A.—It applies, yes, sir, to all contracts in the Comptroller’s office.

30 Q.—It says here, in the second column, the first column being for the date, under the heading “Payments” you have a series of figures, and coming down to the addition there, this total corresponds with the total in the last column. Would that indicate that vouchers of payments have been made according to this sheet? A.—Yes, sir. Vouchers have been issued and warrants or checks in payment of same have been made.

Q.—To the,— A.—To the contractor.

40 Q.—And in looking at this Exhibit C-95, this evidence of yours applies to all similar contracts? A.—Positively. The summary sheet is on every contract in the Comptroller’s office.

MR. O’DONNELL: All this evidence is subject to the defendants objection as to the irrelevancy of the documents filed or any of them.

*Eugene J. Tully for plaintiff recalled (direct examination).*

MR. HACKETT: Same objection.

Q.—We are, now, Mr. Tully, going to examine as a witness before this Commission Joseph J. Elkin. And have you in your possession, in your capacity as employee of the Comptroller's Department of the City of New York, any documents? A.—Yes, sir.

10 Q. (continuing).—That you were required to produce. And are these the documents? A.—Those are all the documents pertaining to those particular contracts, yes, sir.

Q.—Will you look at this document, and state what it is? A.—Yes, sir. This is the bid sheet for the construction of a sanitary sewer on Brinkerhoff Avenue, et cetera, Type A.

Q.—Bids to be opened on what date? A.—Bids to be opened on July 14, 1926. The bid sheet is signed by the Riverdale Construction Co., Inc.

20 MR. GOUDRAULT: I now offer in evidence, as Plaintiff's Exhibit C-102, this original bid sheet on Type A sewer.

MR. O'DONNELL: Defendants object to the said document as irrelevant and illegal, and not being the best evidence of the signature thereon.

MR. HACKETT: Same objection.

(The said bid sheet was thereupon received in evidence and marked Plaintiff's Exhibit C-102, of this date.

30 BY MR. GOUDRAULT:

Q.—Will you now look at this document, describe it and say what it is? A.—This is a bid sheet for a letting that was held on July 14, 1926, for bids for the construction of a sanitary sewer in Brinkerhoff Avenue, et cetera, Type B. This bid sheet was signed by the Riverdale Construction Co., Inc.

MR. GOUDRAULT: I now offer in evidence as Plaintiff's Exhibit C-103, this original bid sheet on Type B sewer.

40 MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

MR. COOK: It is the same as the other, except that it is Type B?

THE WITNESS: Yes, sir.



*Eugene J. Tully for plaintiff recalled (direct examination).*

(The said bid sheet was thereupon received in evidence, and marked Plaintiff's Exhibit C-103, of this date.)

BY MR. GOUDRAULT:

10 Q.—Will you now look at this document, describe it and say what it is? A.—This is a bid sheet for a letting which was held July 14, 1926, for the construction of a sanitary sewer and appurtenances in Brinkerhoff Avenue, et cetera, Type A. This bid sheet was signed by the Riverdale Construction Co., Inc.

MR. GOUDRAULT: I now offer in evidence, as Plaintiff's Exhibit C-104, this bid sheet.

MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

20 (The said bid sheet was thereupon received in evidence and marked Plaintiff's Exhibit C-104, of this date.)

BY MR. GOUDRAULT:

Q.—Will you look at this document and state what it is? A.—This is contract No. 80343, between the Riverdale Construction Co., Inc., and the City of New York. It is for the construction of a sewer in Brinkerhoff Avenue, et cetera. The date of award is July 26, 1926. The date of contract is July 29, 1926. This is an original contract.

30 MR. GOUDRAULT: I offer in evidence, as Plaintiff's Exhibit C-105, the said contract.

MR. O'DONNELL: Defendants object to the production of this document as being irrelevant and illegal.

MR. HACKETT: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-105 of this date.)

40 BY MR. GOUDRAULT:

Q.—Will you look at this document, describe it, and say what it is? A.—This is a bid sheet for a letting held July 14, 1926, for the construction of sanitary sewers and appurtenances in Farmers Boulevard, et cetera. This bid sheet was signed by the Riverdale Construction Co., Inc.

*Eugene J. Tully for plaintiff recalled (direct examination).*

MR. GOUDRAULT: I offer in evidence, as Plaintiff's Exhibit C-106, this original bid sheet.

MR. O'DONNELL: Defendants object to the production of this document as entirely irrelevant and illegal, and not the best evidence of the signature thereon.

10 MR. HACKETT: Same objection.

(The said document was thereupon received in evidence and marked Plaintiff's Exhibit C-106, of this date.)

BY MR. GOUDRAULT:

Q.—Will you look at this document, and state what it is?

20 A.—This is contract No. 80342, between the Riverdale Construction Co., Inc., and the City of New York for the construction of sewers and appurtenances in Farmers Boulevard, et cetera. The date of award is July 26, 1926, the date of contract July 29, 1926. This is an original contract.

MR. GOUDRAULT: I now offer in evidence, as Plaintiff's Exhibit C-107, the said contract.

MR. O'DONNELL: Defendants object to the production of this contract as irrelevant and illegal.

MR. HACKETT: Same objection.

30 (The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-107, of this date.)

BY MR. GOUDRAULT:

Q.—Will you look at this document, and state what it is?

40 A.—This is a bid sheet for a letting held July 14, 1926, for the construction of sanitary sewer and appurtenances in Jamaica Avenue, et cetera. This is Type A. The bid sheet was signed by the Riverdale Construction Company, Inc.

MR. GOUDRAULT: I now offer in evidence, as Plaintiff's Exhibit C-108, the said bid sheet.

MR. O'DONNELL: Defendants object to the production of this document as irrelevant and illegal, and not the best evidence of the signature thereon.

MR. HACKETT: Same objection.

*Eugene J. Tully for plaintiff recalled (direct examination).*

(The said bid sheet was thereupon received in evidence, and marked Plaintiff's Exhibit C-108, of this date.)

BY MR. GOUDRAULT:

Q.—Will you look at this document and state what it is?

10 A.—This is contract No. 80311, between the Riverdale Construction Co., Inc. and the City of New York, for the construction of sewers and appurtenances in Jamaica Avenue, et cetera. Date of award July 26, 1926, date of contract July 29, 1926. This is an original contract.

MR. GOUDRAULT: Plaintiff now offers in evidence, as Exhibit C-109, the said contract.

MR. O'DONNELL: Defendants object to the production of this document as irrelevant and illegal.

20 MR. HACKETT: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-109, of this date.)

BY MR. GOUDRAULT:

Q.—Will you look at this paper and state what it is?

30 A.—This is a letter dated July 26, 1926, addressed to the Riverdale Contracting Co. stating that the following contract has been awarded to them: Contract for sewers and appurtenances in Farmers Avenue, et cetera. This letter is signed by Maurice E. Connolly, President of the Borough of Queens.

Q.—Do you know Mr. Maurice E. Connolly's signature?

A.—I do.

Q.—Do you recognize the signature there? A.—I do. That is Mr. Connolly's signature.

MR. GOUDRAULT: I now offer in evidence, as Plaintiff's Exhibit C-110, the said letter.

40 MR. O'DONNELL: Defendants object to the said letter as irrelevant and not the best evidence of the signature thereon.

MR. HACKETT: Same objection.

(The said letter was thereupon received in evidence and marked Plaintiff's Exhibit C-110, of this date.)

*Eugene J. Tully for plaintiff recalled (direct examination).*

BY MR. GOUDRAULT:

Q.—Will you look at this paper and state what it is? A.—  
This is a letter dated July 26, 1926, addressed to the Riverdale  
Contracting Co. notifying them they have been awarded the fol-  
lowing contract: For the construction of sewers on Jamaica  
Avenue, et cetera, Type B. This letter was signed by Maurice  
10 E. Connolly, President of the Borough of Queens.

Q.—Do you recognize the signature of Maurice E. Con-  
nolly? A.—I do, yes, sir. That is Maurice E. Connolly's sign-  
ature.

MR. GOUDRAULT: I now offer in evidence, as Plaintiff's  
Exhibit C-111, the said letter.

MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

20 (The said letter was thereupon received in evidence and  
marked Plaintiff's Exhibit C-111, of this date.)

BY MR. GOUDRAULT:

Q.—Will you look at this paper and state what it is?  
A.—This is a similar letter, with a different location, Brinker-  
hoff Avenue, et cetera, for Type B. The letter is signed by  
Maurice E. Connolly, President of the Borough of Queens.

30 Q.—Do you recognize the signature of Maurice E. Con-  
nolly? A.—I do, yes, sir. That is Maurice E. Connolly's sign-  
ature.

MR. GOUDRAULT: I now offer in evidence, as Plain-  
tiff's Exhibit C-112, the said letter.

MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

40 (The said letter was thereupon received in evidence and  
marked Plaintiff's Exhibit C-112, of this date.)

BY MR. GOUDRAULT:

Q.—Will you look at this document and state what it is?  
A.—This is a summary of proposals on contract for the construc-  
tion of sewer in Farmers Boulevard, et cetera, Type B. Bids  
opened July 14, 1926.

*Eugene J. Tully for plaintiff recalled (direct examination).*

MR. GOUDRAULT: I now offer in evidence, as Plaintiff's Exhibit C-113, the said summary of proposals.

MR. O'DONNELL: Defendants object to the production of the said document as irrelevant and illegal and not the best evidence of the bids of which it purports to be a summary.

10 MR. HACKETT: Same objection.

(The said summary of proposals was thereupon received in evidence and marked Plaintiff's Exhibit C-113, of this date.)

BY MR. GOUDRAULT:

Q.—Will you look at this document and state what it is?

A.—This is a summary of proposals on contract for the construction of a sewer on Jamaica Avenue, et cetera, Type B. Bids opened July 14, 1926.

20 MR. GOUDRAULT: I now offer in evidence, as Plaintiff's Exhibit C-114, the said summary of proposals.

MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

(The said summary of proposals was thereupon received in evidence and marked Plaintiff's Exhibit C-114 of this date.)

BY MR. GOUDRAULT:

30 Q.—Will you look at this document, and state what it is?  
A.—This is a summary of proposals, contract for the construction of sewer on Brinkerhoff Avenue, et cetera, Type B. Date of letting, July 14, 1926.

MR. GOUDRAULT: I now offer in evidence, as Plaintiff's Exhibit C-115, the said summary of proposals.

MR. O'DONNELL: Same objection.

40 MR. HACKETT: Same objection.

(The said summary of proposals was thereupon received in evidence and marked Plaintiff's Exhibit C-115.)

BY MR. GOUDRAULT:

Q.—Mr. Tully, will you now look at these three last exhibits, which are summaries of proposals, Type B, for award to

*Eugene J. Tully for plaintiff recalled (direct examination).*

the Riverdale Construction Co., bearing respectively numbers C-113, C-114 and C-115, and state if on the said summary of proposals appears anything that will show the award of the contract? A.—To whom it was awarded?

Q.—Yes. A.—To the lowest bidder, Riverdale Construction Co., Inc.

10 Q.—Yes, but is there anything in pen writing there which would indicate that it had been awarded? A.—There is a memorandum to award, yes.

MR. HACKETT: Haven't we got the contract.

Q.—Do you know whose handwriting this is? (indicating)  
A.—I imagine it is Connolly's.

MR. O'DONNELL: Same objection, not the best evidence of the signature.

20 MR. HACKETT: Same objection.

Q.—Will you look at this document and state what it is?  
A.—This is an assignment from the Riverdale Construction Co., Inc., to Carmine Petracca. It is dated August 3, 1926, for the construction of sanitary sewers in Farmers Boulevard, et cetera.

MR. GOUDRAULT: I now offer in evidence, as Plaintiff's Exhibit C-116, the said assignment.

30 MR. O'DONNELL: Defendants object to the production of the said document as irrelevant, and not the best evidence of the signature thereon.

MR. HACKETT: Same objection.

(The said assignment was thereupon received in evidence and marked Plaintiff's Exhibit C-116, of this date.)

BY MR. GOUDRAULT:

40 Q.—Will you look at this document, and state what it is?  
A.—This is an assignment from the Riverdale Construction Co., Inc., to Everett Contracting Co., Inc. This assignment is dated August 3, 1926. It is for the construction of a sewer on Brinkerhoff Avenue, et cetera.

MR. GOUDRAULT: I now offer in evidence, as Plaintiff's Exhibit C-117, the said assignment.

*Eugene J. Tully for plaintiff recalled (direct examination).*

MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

(The said assignment was thereupon received in evidence and marked Plaintiff's Exhibit C-117, of this date.)

BY MR. GOUDRAULT:

10

Q.—Will you look at this document and state what it is?  
A.—This is an assignment from the Riverdale Construction Co., Inc., to the Awixa Corporation, of Islip, New York. The date of this assignment is August 6, 1926. It is for the contract for the construction of sewer on Jamaica Avenue, et cetera.

MR. GOUDRAULT: I now offer in evidence, as Plaintiff's Exhibit C-118, the said assignment.

20

MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

(The said assignment was thereupon received in evidence and marked Plaintiff's Exhibit C-118, of this date.)

30

MR. HACKETT: I state that in every instance where you produce and offer for evidence a summary of proposals for Type B, that you should also produce summary of proposals for Type A, the reason being that the bid was one document and was for a sewer of Type A and Type B, and the summary being for only one type is incomplete and should be accompanied by Type A in every instance.

MR. COOK: I join in that.

BY MR. GOUDRAULT:

Q.—Mr. Tully, that would not be in your department?

A.—Not in our department.

Q.—Not in your department? A.—No.

40

MR. GOUDRAULT: And furthermore, Plaintiff's contention is that there was no Type A monolithic sewer constructed in Queens County after the Hammels Boulevard. I mean sanitary sewer.

MR. HACKETT: Mr. Reilly has also been asked to file or to produce for inspection the Type A summaries. I under-

*Joseph J. Elkin for plaintiff (direct examination).*

stand that Mr. Reilly is the clerk in charge of these documents in the Borough of Queens?

THE WITNESS: He is, yes, sir. But these have been going around so much, Mr. Hackett, in these different investigations, that it is possible that some of them have been mislaid.

10 MR. GOUDRAULT: Naturally enough, Plaintiffs reserve their right to produce in the course of this Commission, or at the trial itself when it will be held before our Court, any further documents that may pertain to the matters that have been put in evidence by witnesses in the Commission.

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DEPOSITION OF JOSEPH J. ELKIN.

20 JOSEPH J. ELKIN, age 47, of 3973 — 64th Street, Woodside, Long Island, in the County of Queens, a superintendent of construction, 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.—With what company are you connected? A.—I was connected with the Riverdale Construction Co.

30 Q.—Have you long been connected with that company?  
A.—Yes. I was connected about seven or eight years.

Q.—Who is interested in the Riverdale Construction Co.?

A.—There was William Goldsmith, and some few others, minor interests.

Q.—And then yourself? A.—Yes.

Q.—You and Mr. Goldsmith are the principal owners?

A.—That is right.

Q.—Did you organize the Riverdale Construction Co.?

A.—No.

40 Q.—And before you joined Mr. Goldsmith in the Riverdale Construction Co., what were you doing? A.—I was acting for him,—no, I was with the Borough of Queens.

Q.—I see. What department? A.—Sewer Department and Highway Department.

Q.—And then you went with? A.—With the Riverdale Construction Co.

Q.—In what capacity first? A.—As superintendent.



*Joseph J. Elkin for plaintiff (direct examination).*

Q.—Superintendent of construction? A.—That is right.

Q.—And did you ever build a disposal plant anywhere?

A.—Yes.

Q.—Where was that? A.—New York City, Canal and West Streets.

Q.—Was there any sewer construction in connection with that disposal plant? A.—Yes.

10 Q.—How many feet? A.—Approximately, altogether maybe four or five hundred feet.

Q.—What kind of pipe? A.—Well there was reinforced concrete and clay pipe, and so forth.

Q.—This sewer construction was in connection with the disposal plant that you did construct? A.—That is right.

Q.—Now, outside of the fact that you have just mentioned, sewer pipe in connection with this disposal plant, did your company, the Riverdale Construction Company, ever build a sewer?

20 MR. O'DONNELL: Objected to as entirely irrelevant.

A.—No.

Q.—Now, did the Riverdale Company bid in Queens Borough on some sewer jobs in 1926?

MR. O'DONNELL: Objected to as not being the best evidence.

A.—In 1926.

30 Q.—Yes? A.—Somewheres around there about, we bid on some sewer work. I don't know the exact date.

Q.—You know that there some bids put in by your company? A.—Yes.

Q.—How many? A.—I think 3 or 4. I am not sure.

Q.—You don't recall the exact number of bids you put in? A.—I do not.

Q.—You were with the Riverdale Construction Co. in 1926, weren't you? A.—Yes.

Q.—Were you its president then? A.—Yes.

40 Q.—I now show you, in order to refresh your memory, three bids, three original bids, for the construction of a storm sewer.

MR. COOK: Have these already been produced?

MR. GOUDRAULT: No.

Q. (continuing).—In each case it is a storm sewer. The first one is on Long Street; the second bid is for a storm sewer

*Joseph J. Elkin for plaintiff (direct examination).*

in Long Street also, but contract No. 2, for a different section of that storm sewer; and the third one is also for the same street, for another section, and seems to be contract No. 3. Will you look at these three documents and state if as a matter of fact they are original bids signed by your company, by you on behalf of your company?

10 (The papers referred to were examined by counsel for defendants.)

MR. O'DONNELL: Defendants object to the production of these documents as irrelevant and illegal.

MR. HACKETT: Same objection.

A.—Yes, sir.

Q.—You signed them? A.—Yes, sir.

20 MR. GOUDRAULT: I now offer in evidence, as Plaintiff's Exhibit C-119, the said three original bids.

(The said three original bids were thereupon received in evidence and marked Plaintiff's Exhibit C-119, of this date.)

Q.—Those exhibits speak for themselves. Your company did, under your signature, put in a tender or bid for the construction of those three sections of storm sewer on Long Street? A.—Yes.

30 Q.—Now, will you look at Exhibits C-103 and C-104, which are original bids of Type A and Type B for the construction of a sewer on Brinkerhoff Avenue, from 180th Street, et cetera, and state if you there recognize your signature and the name of your company? A.—Yes, I do.

Q.—Now, will you look at Plaintiff's Exhibit C-102, which is an original bid, apparently signed by your company per yourself as president, for the construction of a Type A sanitary sewer in the Borough of Queens on Brinkerhoff Avenue, from 193rd Street, et cetera, and state if that is your signature and the name of your company? A.—It is.

40 Q.—Now, look at Plaintiff's Exhibit C-108, and state if that is the original bid of your company and signed by yourself? A.—Yes, that is right.

Q.—For the construction of a sewer on Jamaica Avenue? A.—Yes, that's right.

Q.—Will you now look at Plaintiff's Exhibit C-106 and state if that is the original bid signed by yourself on behalf of

*Joseph J. Elkin for plaintiff (direct examination).*

your company as its president, for the construction of sanitary sewer in the Borough of Queens on Farmers Boulevard? A.—Yes, that right.

Q.—Now, while I asked you to identify your own signature, you did look at the dates of these bids, and did you notice what date they were, the seven of them? A.—I didn't look at all seven. But they were all the 13th, as far as I saw.

10 Q.—The 13th of what? A.—July.

Q.—The year? A.—1926.

Q.—Now you are in a position to state that there were seven bids put in by your company under your signature, all on the same date? A.—Yes, sir.

Q.—Do you recollect how many of these jobs you secured from the Borough of Queens? A.—I think there were three.

Q.—Three? A.—I think there were three.

20 Q.—Three. That would be the three contracts that appear here to have been awarded to your company and which have been filed as Plaintiff's Exhibits C-105, C-107 and C-109. Is that right? A.—That's right, yes.

Q.—Did your company build any of these sewers? A.—No.

MR. COOK: The three agreements were assigned, is that right?

THE WITNESS: That's right.

30 Q.—And the assignment of these three contracts are Exhibits C-116, C-117 and C-118 that I now show you? A.—That's right.

Q.—Will you see if the three of them bear the signature of Maurice E. Connolly, President of the Borough of Queens?

MR. O'DONNELL: Objected to as not being the best evidence of Mr. Connolly's signature.

A.—They do.

40 Q.—And they contain also the signature of the assignees and of the assignor, which is your company per yourself? A.—Yes. Those are the assignments.

MR. O'DONNELL: Objected to as not the best evidence of the signatures other than that of the witness.

Q.—Where were those bid sheets that we have shown you made out, Mr. Elkin? A.—In my office.

*Joseph J. Elkin for plaintiff (direct examination).*

MR. O'DONNELL: Objected to as being irrelevant and illegal.

Q.—In whose handwriting were the bid sheets made out?  
A.—I don't recall.

Q.—Were they all made out when they came to you? A.—  
No.

10 Q. (continuing).—For signature? A.—No. They were  
made out in my office.

Q.—By whom? A.—I don't recall by whom. Who wrote  
the figures out, that I don't recall.

Q.—But when they came to you for signature, since you  
have signed them as I have shown to you, who brought them to  
you for the purpose of signing; these seven bids we have shown  
you? A.—Who brought them to me?

Q.—Yes. A.—They were in my office.

Q.—All filled in? A.—No.

20 Q.—Who filled them in? A.—Somebody in my office, I  
presume.

Q.—Who? A.—I don't know who.

Q.—Did you sign them? A.—I signed them, yes.

Q.—Well, when you signed them, were they filled in? A.—  
The tabulations had to be gone over before, and this is only a  
matter of filling in the little form.

Q.—But it is on that little form that the contracts are  
awarded, though. It is very important. A.—With the figures  
on, yes. But the figures were made up in our office.

30 Q.—You don't remember by whom? A.—Well, I helped  
to make them up.

Q.—When they came to you for signature, were they all  
made up, all filled in? A.—Yes. They were all ready for sign-  
ature subsequent to the figures being agreed upon.

Q.—With whom? A.—In our office.

Q.—With whom did you agree upon the figures? A.—  
Well, I was there, and possibly two others, one of whom I think  
was Bert Decker.

40 Q.—Do you remember the other man? A.—I don't know.  
The estimators who are in our office, sometimes they go and  
come.

Q.—Was Bert Decker working for you in the Riverdale  
Construction Co.? A.—No.

Q.—Did you know Bert Decker then? A.—Yes.

Q.—Who was he? A.—Well, he was a member of the firm  
of Muccini & Decker.

*Joseph J. Elkin for plaintiff (direct examination).*

Q.—How long had you known him? A.—I have known him for a long while.

Q.—I see. But at the time. These contracts were in 1926. A.—Oh, about 14 years.

Q.—Did you meet him often? A.—Once in a while.

Q.—Once in a while around 1926? A.—And before that.

10 Q.—Just once in a while? A.—Yes, occasionally I would run into him or we would make an appointment to meet at a place to go somewhere Saturday. Not very often.

Q.—Did you make any deposit in connection with the filing or producing of these bids of your company for the construction of these sewers in the Borough of Queens? A.—I don't quite get the question.

MR. O'DONNELL: Objected to as not being the best evidence of any such filing.

20 Q.—Did you put up any security? A.—Yes.

Q.—How much? A.—I don't recall. That is a matter of record.

Q.—Well, now look,—of course, it is a matter of record.

MR. COOK: The record is the best evidence.

Q.—But can't you give us your best recollection? A.—I really can't.

Q.—What did you put it up in? A.—Checks.

Q.—Checks payable to the order of whom? A.—Order of the Comptroller of the City of New York.

30 MR. O'DONNELL: Defendants object to any verbal evidence, as not being the best evidence.

Q.—Are you positive of that? A.—That is my best recollection.

Q.—Have you got those checks with you? A.—No, sir.

Q.—Where are they? A.—Where are those checks?

Q.—Yes. A.—I don't know.

40 Q.—What was the bank of the Riverdale Construction Co. at the time? A.—Yonkers Trust Co.

Q.—You didn't do business anywhere else, your firm? A.—At that time, no.

Q.—You don't recollect the amount of the security, you said a minute ago? A.—No, I do not.

Q.—Do you know a bank by the name of Chatham & Phoenix? A.—Yes, sir.

*Joseph J. Elkin for plaintiff (direct examination).*

Q.—Have you ever been there? A.—Yes, at different times.

Q.—I see. Was it one of the banks of the Riverdale Construction Co.? A.—No, sir.

Q.—You were the president of the company, and you did put in that guarantee. Where did you put that guarantee,—I mean how did you send it? How did you transmit same?

10

MR. COOK: Mr. Commissioner, what in the world has this to do with the case?

MR. GOUDRAULT: I can put the question very directly. It will be very leading.

MR. COOK: But, my dear friend, it has nothing whatever to do with the case. None of us are questioning the witness' financial arrangements. That does not interest us.

20

MR. GOUDRAULT: Do you want me to be leading? With your permission.

THE COMMISSIONER: I will allow the answer, subject to counsel's objection. Will you please proceed, Mr. Goudrault.

BY MR. GOUDRAULT:

Q.—Now, Mr. Elkin, take your time and refresh your memory. You have testified as to this before, as to all these facts? A.—Yes, I believe so.

30

Q.—And you don't remember the amount of the security you put up? A.—No, sir, I do not.

Q.—Was it a million dollars? A.—No, it was a whole lot less. Just what it was, I don't know. We put up bids from time to time continually, but I don't know how much each certified check is that goes in. I don't recall that.

Q.—Do you always put in certified checks? A.—As a rule, yes, sir.

Q.—Sometime you put in Cashier's checks? A.—Sometimes.

40

Q.—They come from a bank. A.—Yes, sir.

Q.—Did you in this case? A.—I think we did.

Q.—I see. Cashier's checks? A.—I think we did.

Q.—Where did you get the money?

MR. O'DONNELL: Objected to as absolutely irrelevant and illegal.

*Joseph J. Elkin for plaintiff (direct examination).*

A.—Well, the money in this case was given or helped,— Bert Decker was financially interested in these jobs if we got the jobs. And his aid was obtained in this work and he helped me out financially.

Q.—To what extent? A.—I really don't know.

10 Q.—You don't remember the number of checks that you put in with those bids? A.—One for each bid.

Q.—That is seven checks? A.—Yes.

Q.—And you just stated a moment ago they were Cashier's checks? A.—I think that is true.

Q.—The Cashier's checks were issued provided you did give funds? A.—Oh, yes, funds were given as checks were given.

Q.—By whom? A.—Bert Decker assisted me in getting the funds for these bids.

Q.—Do you remember where you got the checks, what bank? A.—That I do not.

20 Q.—You had some experience as a contractor? A.—Some experience.

Q.—And you are used to making bids, since on that date you made seven bids on the same work? A.—We put them in on one day. We did not figure them on one day.

Q.—Well, in looking up the amount of the bids, could you state the amount of security put up for them? A.—That is a matter of record, because it is called for in the advertisement, how much you put up for each particular bid.

30 MR. O'DONNELL: The bid is not considered unless you comply with the requirements?

THE WITNESS: That is right.

Q.—Am I right in stating that you said that Bert Decker was interested in some of these contracts providing your company would have them awarded to it? A.—Yes.

Q.—I see. Do you remember to what extent? A.—That I don't recall. Some percentage. I really don't recall now, because we didn't go through with it.

40 Q.—Let me get you right. You say that your financing for the filling of security on these seven bids was made in part by Bert Decker? A.—That is right.

Q.—That is right? A.—Yes.

Q.—By Cashier's checks? A.—I think that's right.

Q.—Haven't you the faintest idea of the amount? A.—No. That is a matter of record on those bids. I don't carry that in

*Joseph J. Elkin for plaintiff (direct examination).*

my mind at all. Some may be \$2,000, some may be \$22,000. I don't carry that in my mind at all.

Q.—You said a minute ago the best of your recollection was there must have been seven checks put in. A.—Yes, one for each bid.

Q.—What was the proportion of each of these checks, of Bert Decker? A.—That I don't recall.

10 Q.—To get those cashier's checks from the bank, how did you do it, what did you give the bank or the cashier? A.—Cash.

Q.—How much cash? A.—I don't recall now.

Q.—Did you do that personally? A.—That I don't recall. I think I was there, but I am not sure about that.

Q.—Who else was there? A.—Possibly Bert Decker was with me.

Q.—Anybody else?

10 MR. COOK: Or possibly one of your clerks. A.—I don't think so.

Q.—Anybody else? A.—I don't think so. I don't recall.

Q.—Now, did you have an account, or did your company have an account, at the bank where you had those cashier's checks issued? A.—No.

Q.—You did not? A.—No.

30 Q.—At the time that you put in these bids and were awarded these three contracts, which aggregated a million dollars, was your company, the Riverdale Construction Co., doing a job of some kind? A.—It was finishing up a job at that time.

Q.—Where? A.—In Corona, Long Island.

Q.—How many men had you working on that job that you were finishing? A.—I don't recall.

Q.—You don't recall?

MR. COOK: Mr. Goudrault, I cannot understand the relevancy of going into back contracts of the Riverdale Construction Co. And if we are going into discussions of this sort we will be here until doomsday, if we are alive.

40 I object to all this evidence as being absolutely irrelevant and illegal and improper, and we are taking up a great deal of time and a great deal of expense for no possible result.

MR. GOUDRAULT: Now, Mr. Cook, this Commission is coming to an end, and we want to show by this witness the organization they had to put in seven bids all on the same day for some work, a kind of work they never had done before.



*Joseph J. Elkin for plaintiff (direct examination).*

MR. O'DONNELL: They had Decker behind them.

BY MR. GOUDRAULT:

Q.—You don't remember how many men were working for you when finishing that job in Corona? A.—Possibly a hundred; maybe 150. I don't recall.

10

Q.—And maybe— A.—No, it was somewheres near that.

Q.—What kind of a job was that? A.—That was an inspection shed.

Q.—Inspection shed? A.—Inspection shed, yes.

Q.—I see. I spoke about,—you said a minute ago that you were finishing a job out? A.—Yes.

Q.—How many men did you have? A.—I have answered that.

20

Q.—You are positive of that? A.—That is my recollection, yes. We usually have that force on a job; that size job, at least that force.

Q.—I know for the job, but when you are finishing it— A.—It goes right on until it is finished.

MR. COOK: What has this to do with the other contracts you were examining him on a few minutes ago?

Q.—Now, do you remember the sharing with Mr. Decker, as to his part of the profits? A.—I have answered that.

30

Q.—Well, answer again. A.—I don't recall the exact percentage, but he was interested, or his company was interested, financially if we would do the work. The exact percentage I don't recall.

Q.—The three contracts which were awarded to your company were assigned, weren't they? A.—That's right.

Q.—And there is an interest there of \$1 in each. Would that be the interest of the assignment? A.—That was the interest on two of them.

MR. O'DONNELL: Defendants object to any verbal evidence, inasmuch as the documents speak for themselves.

40

Q.—We will take them one by one. You recognized your signature on these documents. You have stated that already, haven't you? A.—There is my signature, on the front page.

Q.—Who witnessed your signature on each of these assignments? A.—I don't recall.

Q.—Then look. A.—Maybe Bert Decker did. I am not sure. (Witness examines papers referred to.)

*Joseph J. Elkin for plaintiff (direct examination).*

Q.—Now you are sure? A.—Albert Decker, yes.

Q.—On this assignment by your company for the Jamaica Avenue job to Awixa Corporation, will you tell us who took the acknowledgment of your signature? A.—Jefferson Reilly.

Q.—Do you know who he was? A.—Yes, I know Jeff Reilly very well.

10 Q.—Now, will you look at the other two assignments of the other two contracts awarded to your company, and tell us who took the acknowledgment of your signature on these? A.—Pete Campbell.

Q.—On both? A.—Yes.

Q.—Who is he? A.—Mr. Pete Campbell was a man who was pretty much around the Borough Hall.

Q.—I see. A.—And while I didn't know him very well, I was introduced to him by Bert Decker, and he took the acknowledgments.

20 Q.—Did you see that man often, Mr. Peter Campbell? A.—No. Not prior to that, no.

Q.—After that? A.—Occasionally.

Q.—Where? A.—At the trial I saw him quite often.

Q.—But where did you see him previous to the trial? A.—I don't recall seeing him much before. I could reach him at that time through Bert Decker.

Q.—Did you know John M. Phillips? A.—No, sir.

Q.—You never met Mr. John M. Phillips? A.—No, sir.

30 MR. COOK: You never met Mr. Phillips?

THE WITNESS: Never met him.

Q.—Did you appear personally at Mr. Campbell's office to have the acknowledgment of that signature of yours taken? A.—No. I think he took it at Borough Hall. I am not sure about that.

Q.—Mr. Reilly was at Borough Hall? A.—Yes. I met Mr. Reilly, and I think he was out at lunch one day, and I met Pete Campbell.

40 Q.—Do you know the place bearing No. 49 Jackson Avenue? A.—Yes, sir.

Q.—Where is that? A.—That is right near 5th Street.

Q.—Were you ever there? A.—I think I was there once.

Q.—Once only? A.—Yes.

Q.—That is all? A.—That is all.

*Joseph J. Elkin for plaintiff (direct examination).*

Q.—Do you remember the occasion? A.—It was just about the time we were taking the signatures for acknowledgment these bids.

Q.—I see. 49 Jackson Avenue, what was that? If you went there, you must know what it was. A.—I think it was an undertaker's shop.

10 Q.—Undertaker? A.—That's right.

Q.—Now, was your company paid anything for the assignment of these contracts? A.—It was, in one case.

Q.—Which one? A.—On the Awixa.

Q.—How much? A.—\$5,000.

Q.—In what? A.—In money.

Q.—Who got the money? A.—I think,—what is his name, Schlemmer; Clare Schlemmer got the money.

Q.—Whom did he pay it to? A.—To me.

Q.—How much was it? A.—\$5,000.

20 Q.—What did you do with it? A.—I put it in my pocket.

Q.—You put it in your pocket? A.—That's right.

Q.—How long did it stay there? A.—That I don't know.

Q.—Did you ever speak to Mr. Goldsmith about this \$5,000.00, your partner? A.—I think I did occasionally. I think I did at times. He used to come in there once or twice a week, and I think I mentioned it to him, although I don't recall now whether I did or not.

Q.—Was it entered in the books of your company? A.—No, not at that time.

30 Q.—When was it entered in the books of your company? A.—Subsequent.

Q.—What is exactly meant by you by subsequent? A.—Two months, or three months, or six months, after this thing happened. Maybe longer than that. I don't recall just when.

Q.—Do you remember the date that you did receive this \$5,000 from Schlemmer? A.—No, I don't.

Q.—The month? A.—It was in the Fall sometime, of that same year.

Q.—That would be what year? A.—1926, I think.

40 Q.—I see. A.—Sometime in the Fall of 1926.

Q.—And when you had the amount entered in the books of your company, how long after the Fall of 1926 would that be? A.—I really don't know.

Q.—The books would show? A.—Yes. The books ought to show.

Q.—I see. You didn't look at your books? A.—I never do.

Q.—You never do. A.—It is not part of my work.

*Joseph J. Elkin for plaintiff (direct examination).*

Q.—Now, will you look at this letter and state if that reminds you of anything? A.—Yes.

Q.—What does that remind you of? A.—Just a letter to qualify.

Q.—I see. Do you remember receiving the original of this? A.—That I don't. But I have seen enough of those to know what they are.

10 Q.—To several of my questions you have answered that you could not recollect, that you did not know. As regards the number of men that were finishing up the Corona job at the time that these seven bids were put in by your company, are you sure of the number of men that were there?

MR. HACKETT: I object to this, Mr. Commissioner, as it is apparently an attempt to discredit plaintiff's own witness.

MR. GOUDRAULT: I don't want to discredit him.

20 MR. HACKETT: He has told us that he had in his employ on this job that he was ending, between 100 and 150 men.

Q.—Are you definite as to that? A.—Approximately that, yes.

Q.—Did you ever testify as to this before? A.—Not that I recall.

Q.—That you don't recall? A.—No, sir.

30 MR. GOUDRAULT: Plaintiff now offers in evidence, as Exhibit C-120 this letter dated July 15, 1926.

MR. O'DONNELL: Objected to as irrelevant and not the best evidence.

(The said letter was thereupon received in evidence and marked Plaintiff's Exhibit C-120, of this date.)

THE WITNESS: I have seen this.

Q.—You have seen what? A.—I have seen this sheet.

40 Q.—And when you saw that sheet, on what occasion was it? A.—The last time prior to this hearing, I saw that, I believe, at the inquiry before the trial.

Q.—Did you see the original of that letter? A.—I don't recall that I did.

Q.—Did you ever answer that letter? A.—I don't recall that we ever did.

*Joseph J. Elkin for plaintiff (cross-examination).*

Q.—In those estimates or bids of your company, the Riverdale Construction Co., do you know if there was in the estimates precast pipe for the Type B sewer that was to be constructed, three of which were awarded to your company? A.—I don't quite get the question.

10 Q.—I am just driving at the answer. A.—I don't quite know what you are getting at in the question. Will you kindly restate it.

Q.—Yes. I am telling you that in your seven bids that you did file on that same day, with the Borough of Queens, three of which bids were successful, you had to prepare your estimates? Is that right? A.—Yes.

Q.—In those estimates did you include the price of precast pipe where precast pipe had to be used? A.—Yes, sir.

Q.—Where did you get your price to include in your estimate?

20 MR. O'DONNELL: Objected to as entirely irrelevant.

A.—Bert Decker.

Q.—Bert Decker? A.—Yes.

MR. GOUDRAULT: That is all.

CROSS EXAMINATION BY MR. HACKETT:

Q.—You and Decker were fellow-employees of the Borough of Queens? A.—At one time.

30 Q.—And your acquaintance and friendship dates from that? A.—That is right.

Q.—Were you acquainted with a good many of the engineers in the Department? A.—Yes.

Q.—You knew something of the routine there? A.—Yes.

Q.—Did you know Mr. Rice? A.—Yes.

Q.—Who was he? A.—He was Captain Rice, in charge of construction.

Q.—And Seely was under him? A.—Yes, sir.

Q.—And Perrine, you knew him? A.—Yes, sir.

40 Q.—What was he? A.—Well, Perrine was in different capacities at different times.

Q.—In charge of the construction of sewers? A.—And in charge of construction and in charge of design. And Perrine and Seely would collaborate on various things.

MR. GOUDRAULT: Just a minute. Before you put another question, I object to this line of cross-examination, for two

*Joseph J. Elkin for plaintiff (cross-examination).*

reasons: As not arising from the examination in chief, or direct examination, and furthermore, because the witness is not a competent witness on the matter.

BY MR. HACKETT:

Q.—You knew Mr. Blake? A.—Yes, sir.

10 Q.—He was also an engineer? A.—Yes, sir.

Q.—And you knew Mr. Bishop? A.—Yes, sir.

Q.—And Mr. Pine? A.—Yes, sir.

Q.—Mr. Pine, I believe, was with the City as distinct from the Borough, wasn't he? A.—Well, there was a Mr. Pine in the sewer department.

Q.—There was? A.—He was in the sewer department under Mr. Seely.

20 Q.—Yes. And you know that plans and specifications have to be submitted to the engineers in both the department in Queens and in the Board of Estimate, of the City? A.—Yes, sir.

Q.—And have to be approved by all those engineers? A.—They are made at the point of origin in Queens and submitted to the Board of Estimate.

Q.—And men like Rice and Perrine had to pass upon the work of their subordinates? A.—Yes.

Q.—And as a matter of fact they very carefully checked? A.—That is right.

MR. HACKETT: Nothing more.

30 MR. COOK: I have no cross-examination.

*Daniel E. Enright for plaintiff (direct examination).*

DEPOSITION OF DANIEL E. ENRIGHT.

DANIEL E. ENRIGHT, age 57, of 3405 — 28th Avenue, Long Island City, in the County of Queens, a teacher, 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. Enright, did you know John M. Phillips in his lifetime? A.—I did, yes.

Q.—When? A.—Oh, over a period of nearly 25 years.

Q.—Did you ever work for him? A.—I did.

Q.—From what time to what time? A.—From 1926 to 1927; just about a year.

Q.—About a year. Do you remember when you started? A.—About the 1st of July, 1926.

Q.—What was your job with Mr. Phillips? A.—Well, it wound up by making the pipe, as near as I can find out. You might call it superintendent of that particular work.

Q.—Now, I hand you some bids, sheets, papers, that have been filed in evidence before Mr. Commissioner Fales, and will you tell me if you know anything about these. I could describe them, if you wish, and it will be easier, or else you can read them. You are a school teacher. A.—No, there is no way that I can tell anything about this first one. (indicating).

Q.—Will you examine them and see if you recognize the handwriting. That is, seven of them.

MR. COOK: Would you mind referring to the exhibits that they are, Mr. Goudrautl? Just the numbers of the exhibits, that is all I want.

MR. GOUDRAULT: Mr. Cook, they are Exhibits C-119, C-104, C-103, C-106, C-108 and C-102. I am sorry I don't give them to you in order, but they have been manipulated by the witnesses.

MR. COOK: All right.

THE WITNESS: (indicating) That is my handwriting.

Q.—It is, on that original bid which is marked C-119. Will you look rapidly at the others, and see if you recognize anything there? A.—That is my handwriting. (indicating).

*Daniel E. Enright for plaintiff (direct examination).*

MR. COOK: Are they all in your handwriting?

THE WITNESS: The first two are.

MR. HACKETT: What are the ones that are in his handwriting?

MR. GOUDRAULT: C-119.

10 Q.—What about this one, C-104? A.—That is my handwriting.

Q.—What about this one, C-103? A.—That is my handwriting.

Q.—C-106? A.—That is my handwriting.

Q.—C-108? A.—That is my handwriting.

20 Q.—Now, will you look at plaintiff's Exhibit C-107, where the specifications for Type B sewer appears here on an annexed sheet that I indicate to you, and state if that is your handwriting or not? A.—Yes. I think that's my handwriting.

BY MR. HACKETT:

Q.—All of this writing has to do with the sewer pipe? A.—Yes.

Q.—And pipe size. A.—I don't know about the pipe size. I don't know very much about that.

BY MR. GOUDRAULT:

30 Q.—And on C-105? A.—That looks like my handwriting.

Q.—It does? A.—Yes.

MR. HACKETT: With regard to pipe is it?

THE WITNESS: I don't know anything at all about it, except that page.

Q.—That page, you mean the typewritten pages that I am indicating to you now, and where there are figures entered? A.—Yes.

40 Q.—Otherwise—because I understand it is largely typewritten, the sheet is? A.—I don't know, myself.

Q.—My question is probably not clear. On these contracts that I have shown you, on C-105 you will note there that on page 2, a sheet which is annexed to page 2? A.—You mean this in here?

Q. (continuing).—I mean whatever is in writing in there, is yours? A.—Yes.



*Daniel E. Enright for plaintiff (direct examination).*

Q.—That is what you want to testify to? A.—Yes.

Q.—And this exhibit, C-107, what is written in ink on that typewritten page, Type B, for sizes of pipe and prices of pipe, is also in your handwriting? A.—No. I don't think that is my handwriting.

Q.—You do not think it is? A.—No.

10 Q.—Will you now look at original bid, Exhibit C-108, and state if the sizes and figures appearing here on this sheet for Type A sewer are in your handwriting? A.—Yes, that is my handwriting.

Q.—Where did you make those entries or those bids?

MR. HACKETT: Don't call them bid sheets.

Q.—I mean those entries on the bids; those entries that we have shown you.

20 MR. HACKETT: But what I would like to make clear is, —

MR. GOUDRAULT: Yes.

MR. HACKETT (continuing): That there is nothing to indicate that when the witness wrote the pages that have been shown to him, that they formed part of the contract. They were merely a price on which the company for which he was working would supply pipe.

MR. GOUDRAULT: I quite agree with that.

30 MR. HACKETT: Yes.

MR. GOUDRAULT: Then my question might have been a bit misleading.

MR. HACKETT: That is all right.

BY MR. GOUDRAULT:

Q.—Do you remember when it was that you wrote those sheets? A.—Yes, I remember.

40 Q.—Where? A.—It was down on Merrick Road passing, I think, from one yard to another yard I passed by a place where Decker had an office, and he stopped me and asked me to do some writing for him.

Q.—Who gave you the figures? A.—Decker gave the figures.

Q.—And the amounts? A.—Yes.

*Daniel E. Enright for plaintiff (cross-examination).*

Q.—Was that an office? A.—Well, it was a kind of an office, yes, sir. It was an old barn, I think. He had a desk in it, and some old machinery or old wagons.

Q.—How did you happen to be in that barn? A.—In going from one yard down to another yard, you pass by the place.

BY MR. HACKETT:

10 Q.—One yard where you manufactured and kept pipe, to another yard where you manufactured and kept pipe? A.—Yes, to another yard.

CROSS EXAMINATION BY MR. HACKETT:

Q.—You were in the employ of Mr. Phillips for a year? A.—Yes, just about a year. I didn't start work until nearly the 1st of September, I didn't do much for the first two or three months I was there.

20 Q.—And these sheets of papers on which your handwriting appears, were engrossed by you in Decker's field office? A.—Yes.

Q.—He merely asked you to do some writing for him? A.—That is all, yes.

Q.—Decker has been here and he has told us that he was everything from office boy to engineer there, and I suppose he was glad to have somebody's assistance? A.—Yes.

Q.—And these were loose leaves at the time you wrote them? A.—Yes.

30 Q.—You didn't know what they were for? A.—No, I didn't know what they were for.

Q.—And you were in transit from one point where you were fulfilling your duties, to another point where you had other duties? A.—Yes.

BY MR. COOK:

Q.—And you assisted Mr. Decker at his request? A.—Yes, at his request.

40 Q.—That is all you know about it? A.—When I first went with Mr. Phillips he said you go from yard to yard, and from place to place,—

MR. GOUDRAULT: But I mean at the time.

THE WITNESS: He said he was going to make me superintendent. Breaking me in, that was all.

MR. HACKETT: That is all.

*Allan M. Hirsh for plaintiff (direct examination).*

MR. COOK: Thank you very much, Mr. Enright.

(Whereupon at 1 o'clock, p. m., an adjournment was taken to 2 o'clock, p. m.)

10

AFTER RECESS, 2 P. M.

DEPOSITION OF ALLAN M. HIRSH.

ALLAN M. HIRSH, age 51, of Montclair, New Jersey, in the County of Essex, a manufacturer, 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:

20

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—With what company are you connected? A.—Lock Joint Pipe Co.

Q.—Where is their place of business? A.—Ampere, New Jersey.

Q.—What is your relation to that company? A.—President.

Q.—How long have you been president of the Lock Joint Pipe Co.? A.—I think it is since 1918.

30

Q.—What kind of pipe does the Lock Joint Company make? A.—Reinforced concrete pipe.

Q.—What is the reinforced concrete pipe? A.—Pipe made of concrete reinforced with steel.

Q.—What sizes of pipe do you make, Mr. Hirsh? A.—Practically all sizes from 12 inches to 108 inches in diameter.

Q.—Do you make pipe to be used in sewers? A.—Yes, sir.

Q.—What size pipe do you make to be used in sewers? A.—Those sizes stated.

40 Q.—Have you sold pipe for sewer work of more than eight feet dimension? A.—Yes, sir.

Q.—Generally throughout the country? A.—I don't know what you mean by generally. It is sold throughout the country, wherever there is a demand for it.

Q.—I understand, Mr. Hirsh, when you were asked to testify before this Commission, that you were asked to look into your books and into the records of your company in connection

*Allan M. Hirsh for plaintiff (direct examination).*

with the manufacturing of pipe and selling of pipe, were you not? A.—Oh, yes. Mr. Buckner requested me.

Q.—Oh, yes. I mean before this Commission also were you asked? A.—Mr. Moore.

Q.—Do you know if you ever sold any pipe, sewer pipe, in Queens of a dimension more than 8 feet, in the Borough of Queens? A.—I don't think we did, no, sir.

10 Q.—When you speak of sewer pipe, how long sections do you make of sewer make? A.—Four feet.

Q.—Where is your sewer pipe generally made? A.—We have permanent yards at some places; and other places wherever the job happens to be.

Q.—In Queens, do you remember where the pipe was being made whenever any precast pipe was being used for sewers in Queens Borough? A.—You mean the exact location?

20 Q.—Well, I mean to say,— A.—The pipe that we made in the Borough of Queens for use of the Borough of Queens, was made in the Borough of Queens. If that is what you mean.

Q.—That is right, Mr. Hirsh. You have no factory there? A.—Not now.

Q.—Without going into too many details, we would like to get from you as an expert and as a manufacturer, the general process of sewer pipe manufacturing when same is made in the field. A.—Well, first, of course, you have to take the apparatus necessary, which consists chiefly of molds, mixers and wheelbarrows, and so forth, to the site of the work. They have to be set up, and then the ingredients of the pipe, which are sand, cement, stone, gravel and reinforcing steel, are brought to the site.

30 The concrete is mixed, the concrete being composed of sand, cement and gravel, and water, and transported to and placed into the molds, which are of steel, after, however, the reinforcing has been placed in the molds.

That mixture is then allowed to set for a while, and after it has set, removed from the mold, rolled out, and then stored in the yard, and cured.

40 And at a later date transported to the trench where it is to be eventually laid. That is the general way.

Q.—Now, would you state something more specific as regards the molds? A.—The molds—you mean the nature of the molds?

Q.—Yes. A.—The essential parts of the molds are the bottom ring, which is of cast iron and molds the bell end of the pipe; the top ring, which is also of cast iron and molds the spigot

*Allan M. Hirsh for plaintiff (direct examination).*

end of the pipe, those two rings being at the ends of the molds. And in between those are two circular steel casings, one called an outside form and the other called an inside form, and between those two forms the body of the pipe is molded. I might also add that they are what we term collapsible so that they can be taken apart and put together again in order to get the pipe out.

10 Q.—How is the material put into the mold? A.—Sometimes by rolling it in a wheelbarrow and dumping it on a platform in the center of the inside mold. Sometimes by transporting it by means of buckets and cranes. After it is put in between the two upright forms it is then tamped or spaded in order to settle it and compact it as much as possible.

Q.—Now, a minute ago you spoke about the ingredients that go into this pipe, and you mentioned, I understand, sand, stone, cement and water and other ingredients? A.—Yes.

20 Q.—Now, what is the ordinary mixture in proportion, in figures, or what mixture did you use in Queens? A.—We used over there what is generally, what we generally term a standard mixture for sewer pipe,—1 part of cement and 2 parts of sand and 4 parts of gravel and broken stone. And of course water.

Q.—What is put into the mold before the concrete is put in? A.—Steel, for reinforcement.

Q.—It is a steel cylinder? A.—No. For sewer pipe it is a steel mesh.

BY MR. HACKETT:

30 Q.—That goes in before the concrete, of course? A.—Yes.

Q.—Placed about midway between the two forms? A.—Nearer the inside.

BY MR. GOUDRAULT:

Q.—Now, Mr. Hirsh, will you describe the joints of the Lock Joint Pipe that you made in Queens? A.—Now, as a suggestion, if it is in order, if you will let me go over that before taking it down and then let me go over it again, so as not to have it too unintelligible,—

40 Q.—Yes, it has been very clear so far. A.—As I understand it now, you want me to describe the Lock Joint, this joint (indicating). Not in comparison with anything else?

Q.—No, no. Just the one you were manufacturing during, I will say, a given period of time. A.—Yes.

Q. (continuing).—Say from 1917 to 1927. A.—Yes. The joints, which of course come at the end or between the ends of

*Allan M. Hirsh for plaintiff (direct examination).*

the two abutting pipes, are formed first by reason of the fact that the bell end of the pipe is longer than the spigot end. Therefore, when these two pipes are placed together the space or recess is left between the bell end and the spigot end. This recess in the case of Lock Joint pipe comes on the interior of the pipe, leaving an annular space all the way around the pipe on the inside.

10 Q.—Just a minute. Mr. Hirsh, you have just been describing us the pipe. Would this be a model of the pipe that we are speaking of (indicating)? A.—Yes.

MR. GOUDRAULT: Plaintiff now offer in evidence, as Exhibit C-121, this model, model of Lock Joint Pipe.

(The said model was thereupon received in evidence and marked Plaintiff's Exhibit C-121, of this date.)

20 Q.—Would you kindly mark with the letter "S", the spigot part of the pipe, and with the letter "B" the bell? A.—This is the spigot end (indicating), sometimes called the male end. And this is the bell end, sometimes called the female end. (indicating).

MR. COOK: That is Exhibit 121 that you are marking?

MR. GOUDRAULT: Yes, that the witness has marked.

30 Q.—Now, will you look at this pipe, and state what that is? (indicating) A.—This is a model, the same as the other, except that the reinforcement projecting from the spigot end of the pipe has been cut off.

Q.—You said that a part of the pipe that I now show you has been cut off? A.—Part of the reinforcement has been cut off.

Q.—Is it of the same make as this Exhibit C-121? A.—In all other respects it is the same.

Q.—Do you know the purpose of this reinforcement being taken out? A.—Oh, yes.

Q.—You can explain that.

40 MR. GOUDRAULT: When I offer this in evidence, as Plaintiff's Exhibit C-122.

Q.—Will you look at this pipe, and state if that has been manufactured by your company? A.—We made that up for Mr. Buckner, at his request.

*Allan M. Hirsh for plaintiff (direct examination).*

MR. GOUDRAULT: I see. I now offer this in evidence, as Plaintiff's Exhibit C-122, this model of pipe.

The said model was thereupon received in evidence and marked Plaintiff's Exhibit C-122 of this date.)

10 MR. GOUDRAULT: You might as well put the explanation that you said a minute ago of these two pipes. They seem to fit well, this Exhibit C-121 and C-122.

THE WITNESS: I was in the midst of answering another question with reference to joints. Shall I complete that answer first?

MR. GOUDRAULT: Yes.

(Previous answer read by clerk, as follows:

20 "The joints, which of course come at the end or between the ends of the two abutting pipes, are formed first by reason of the fact that the bell end of the pipe is longer than the spigot end. Therefore, when these two pipes are placed together the space or recess is left between the bell end and the spigot end. This recess in the case of Lock Joint pipe comes on the interior of the pipe, leaving an annular space all the way around the pipe on the inside.")

30 THE WITNESS: So far this is no different from any other pipe with what is commonly called an interior joint. In the case of Lock Joint Pipe the reinforcement projects from both ends of the pipe and overlaps in this annular space, so that when this space is filled with cement or mortar, and this cement or mortar is allowed to harden, the two pipes are tied together by virtue of the reinforcement overlapping itself in this mortar key.

Q.—Is this where the reinforcement overlaps? (indicating place marked "A") A.—Yes, sir.

40 Q.—That is where you pour in the concrete? A.—The grout.

Q.—The grout? A.—Yes, sir.

Q.—In order to what? A.—In order to lock the pipe together.

Q.—This opening is broken in when, at what particular moment of the operation? A.—The opening for the purpose of pouring the grout into the joint is broken into the pipe after the pipe has been laid.

*Allan M. Hirsh for plaintiff (direct examination).*

Q.—In the sewer? A.—Prior, immediately prior to the time that the next pipe is to be laid. In other words, after the pipe is laid the next thing you do is break a hole in it.

Q.—What do they do after that in respect to the interior recess? A.—Fill it with mortar and gravel.

10 Q.—How is that done? A.—Generally by troweling the mortar into the bottom half of the joint by means of a man going inside of the pipe and doing the work. And the top half is generally done by putting over and around the entire joint a flexible steel band or a form in order to support the grout which is poured from the opening which has previously been broken in the bell at the top of the pipe.

Q.—Does this piece of metal represent what you just stated, Mr. Hirsh? A.—It could represent it.

Q.—Is that the way these pieces of metal are fit in once the grout is put in? A.—Entirely in contact, yes.

20 MR. GOUDRAULT: Plaintiff offers in evidence, as C-123, this piece of metal.

(The said piece of metal was thereupon received in evidence, and marked Plaintiff's Exhibit C-123, of this date.)

Q.—I understand these pipes were sold by the Lock Joint Pipe Co. in various sizes from 24 inches to 108 inches, in Queens County, during the period I have stated?

30 MR. COOK: 12 inches, Mr. Goudrault, to 108.

THE WITNESS: No, sir. I said we made pipe 12 to 108. I did not say we made it from 12 to 108 in Queens.

Q.—In Queens, what were the sizes? A.—24 to 96, is my best recollection.

Q.—That is according to your books, bills, and accounts and ledgers? A.—I know that the Lock Joint Pipe was made in the Borough of Queens only between the sizes of 24 and 96 inches.

40 Q.—And between those two extreme sizes, could you tell the number of sizes? A.—I haven't counted them up.

Q.—If you enumerate the sizes by diameter,— A.—Well, we made pipe in sizes varying in diameter every three inches. That is our custom: 24, 27, 30, 33, 36, 39, 42, 45, 48, 51, 54 and so forth.



*Allan M. Hirsh for plaintiff (direct examination).*

Q.—I see. But I mean this, Mr. Hirsh, from 2 feet or from 24 inches to 96 inches, that you made in Queens, how many sizes would that comprise?

MR. HACKETT: He has told us. There are four sizes to each foot.

10 A.—I can't answer that, that each one of those sizes was made in Queens; I couldn't answer that without reference to something. I can say that the majority of those sizes were made there, but I can't tell accurately just exactly which were.

Q.—Now, was there a patented feature in this Lock Joint Pipe that your company manufactured?

MR. HACKETT: I object to that as irrelevant.

MR. O'DONNELL: As not being the best evidence.

20 THE COMMISSIONER: I will allow the answer, subject to counsel's objection. Proceed, please.

THE WITNESS: (answering) There was a patent on the pipe known as Lock Joint Pipe, yes, sir.

Q.—What section of the pipe did it affect? A.—The joint.

Q.—Did that patent expire on a certain date? A.—Yes.

Q.—Would you recollect the year? A.—I think it was 1925. Subject to correction.

30 MR. O'DONNELL: Defendants object to all evidence in regard to the patent, as not the best evidence.

Q.—How thick are the walls of the pipe? A.—What size?

Q.—Each size, from 24 inches,—take from 24 inches, for instance, Mr. Hirsh. A.—Three inches.

Q.—How does it vary in the larger sizes? A.—Generally the thickness of the pipe in inches is equal to feet diameter plus one inch. A three foot pipe, for instance, is 4 inches thick; a four foot pipe is 5 inches thick; and a five foot pipe is 6 inches thick.

40 Q.—You stated that ordinary pipe mixture was 1-2-4, is that right, Mr. Hirsh? A.—That is right.

Q.—Was that particularly for pipe that was sold and delivered in Queens between 1917 and 1927? A.—I couldn't answer that. I don't know. We didn't sell any pipe in Queens after 1921.

Q.—Who was selling them after 1921? A.—Mr. Phillips.

*Allan M. Hirsh for plaintiff (direct examination).*

Q.—And from 1917 to 1921? A.—From 1917 to 1921, why, the mixture of 1-2-4 was what was used by us.

Q.—Did you ever hear of a 1-1-2 mix for re-enforced concrete pipe, Mr. Hirsh? A.—Yes.

Q.—What does that mean, a 1-1-2 mix? A.—It means one part of cement and one part of sand, and two parts of gravel.

10 Q.—What would be the difference between a 1-2-4 mix and a 1-1-2 mix, from the standpoint of the pipe manufacturer? A.—A 1-1-2 mix is a richer mix.

Q.—It makes a better pipe? A.—I should make a better grade of concrete.

Q.—How much would it cost a pipe manufacturer to manufacture a 1-1-2 mix and a 1-2-4 mix on the same basis of price of cement and gravel and sand, assuming that they are the same kind and that you were making the two kinds on the same day, or on the same occasion?

20 MR. HACKETT: Objected to as irrelevant.

Q.—What would be the difference in cost? Have you had occasion to make that calculation, Mr. Hirsh?

MR O'DONNELL: Same objection.

THE WITNESS: Shall I answer?

THE COMMISSIONER: Yes, you may answer, subject to counsel's objections.

30 THE WITNESS: (Answering) That question was asked me by Mr. Buckner, and I did at that time have occasion to figure it out and estimate it for him.

Q.—What would be the difference in cost? Give us the percentage, if you recollect? A.—My recollection is that it came to 14 per cent.

Q.—How long are you with the Lock Joint Pipe Company? A.—How long?

Q.—Yes; the period? A.—Since 1905.

40 Q.—What were your duties during most of that time? A.—Treasurer and president.

Q.—More of an executive nature, that kind of work? A.— Well, I have been the chief executive for some little while, but my duties lead me to other things, too. I have, for instance, a good deal to do with estimating and determining prices.

*Allan M. Hirsh for plaintiff (direct examination).*

Q.—Does it take any change in equipment or any change in personnel if you do change from a 1-1-2 mixture to a 1-2-4 mixture? A.—A change in form or personnel, do you say?

Q.—Yes. A.—No, I shouldn't think so.

Q.—You mean the same equipment and the same personnel could be used to make either mixture? A.—Yes, sir.

10 Q.—Are you familiar with other pipe manufacturing concerns? A.—I suppose I would say so, yes.

Q.—Manufacturing sewer pipe, those concerns? A.—Yes, sir.

Q.—Pipe similar to that which you make? A.—Pipe used for the same purpose.

Q.—Yes. A.—Yes.

Q.—Several of those concerns? A.—Yes, sir.

Q.—Would you state the figure, Mr. Hirsh? A.—How many of them?

20 Q.—Yes. A.—Quite a few. It is hard to tell you the number.

MR. HACKETT: That number has increased as the use of pipe has increased?

THE WITNESS: Yes.

30 Q.—In making your statement or giving your opinion as regards the 1-1-2 and the 1-2-4 mix, did you have, I may say, data or any book to refer to as the basis for your opinion? Perhaps my question is not clear. A.—Yes, I know what you mean there.

40 Q.—Yes. A.—Yes, we did. The 1-2-4 mix, of course we had actual data from actual experience. The 1-1-2, the data in so far as the ingredients, that was obtained from what is known as Taylor & Thompson's, I think it is "Handbook on Concrete". It is a standard publication. And in the Taylor & Thompson's book there is a table showing all different kinds of mixes of concrete, showing the different amounts of each ingredient going into the different mixes. That was the basis upon which I worked in order to arrive at the figure I gave Mr. Buckner at that time.

Q.—And the figures that you are now giving us also? A.—The same as I gave Mr. Buckner.

Q.—You have ascertained from that authority what the quantities are per cubic yard if you were going to make a 1-1-2 mixture? A.—It is a standard book, and is one that is generally accepted by people using concrete. It is a reference table

*Allan M. Hirsh for plaintiff (direct examination).*

that one turns to when some mixture different from what he is accustomed to is to be used.

MR. HACKETT: A sort of a concrete cook book.

THE WITNESS: Yes.

10 Q.—You haven't got the last edition of that book, have you, Mr. Hirsh? A.—I haven't with me, no.

MR. GOUDRAULT: Plaintiffs reserve the right to produce said book.

THE WITNESS: Here is a table right here. It is copied in the American Steel & Wire Book, Volume of concrete based on a barrel of cement. You can see it in that.

20 MR. GOUDRAULT: Well, then we might as well now produce, and we offer as evidence, as Exhibit C-124, book bearing the name,—the title of which is "Wire Re-enforcing fabric in Buildings", apparently published by the American Steel & Wire Company.

MR. O'DONNELL: Objected to as irrelevant and illegal, and not the best evidence.

MR. HACKETT: I object to the production of this book as illegal.

30 MR. COOK: I join in that objection.

(The said book was thereupon received in evidence and marked Plaintiff's Exhibit C-124, of this date).

THE COMMISSIONER: It is received in evidence subject to counsel's objection.

BY MR. GOUDRAULT:

40 Q.—Is there a page there, Mr. Hirsh, in this book, wherein appears a reference to this Taylor & Thompson tabulation as regards the mixture of 1-1-2? A.—Yes, sir.

Q.—Will you state the page?

MR. COOK: Same objection.

MR. HACKETT: Same objection.

A.—Table 20, on page 45.

*Allan M. Hirsh for plaintiff (direct examination).*

Q.—During those years of experience that you have had in the manufacturing of concrete sewer pipe, Mr. Hirsh, I suppose you have had occasion to refer to Taylor & Thompson's?

A.—Yes, sir. These tables are what is supposed to be standard and referred to by everyone. The name of that is "Taylor & Thompson, Concrete, Plain and Re-Enforced". I think that it would be better if you would refer both to tables 20 and 22; they supplement each other.

MR. COOK: What pages are those?

THE WITNESS: Pages 45 and 47.

BY MR. GOUDRAULT:

Q.—Now, Mr. Hirsh, did you know Maurice E. Connolly?

A.—I met him.

Q.—When did you first meet him? A.—You would really have to refresh my memory on these dates; I will have to look this up.

Q.—Do you remember where you met him? A.—I met him at the Borough Hall.

Q.—In his office? A.—In his office.

Q.—You knew he was president of the Borough of Queens then? A.—I did.

Q.—Do you remember the circumstances of your being there? A.—Yes.

Q.—How did you happen to be there? A.—I went there with the then president of our company, Mr. Merriwether.

Q.—Is that the first time that you recollect meeting Mr. Connolly, Mr. Hirsh? A.—Yes, sir.

Q.—You said that you were there with Mr. Merriwether. Was anybody else there? A.—Mr. Rice, the chief engineer.

Q.—What was the purpose of your visit there, Mr. Hirsh?

MR. HACKETT: To sell pipe, wasn't it?

THE WITNESS: To lay the foundation for selling pipe.

MR. HACKETT: Of course.

A.—The occasion of that business, we had been—precast pipe had been included in the specifications for sewers in Queens. The specifications had been prepared, and Mr. Merriwether asked me to go with him and see Mr. Rice and go over these specifications, the purpose being to see whether or not we could

*Allan M. Hirsh for plaintiff (direct examination).*

comply with those specifications for pipe which we manufactured.

Q.—And that is the time you saw Mr. Connolly for the first time? A.—That was the time I saw Mr. Connolly, yes, sir.

Q.—Who introduced you to Mr. Connolly? A.—Mr. Rice.

Q.—What specifications do you refer to, Mr. Hirsh? A.—  
10 Specifications as adopted by the Borough of Queens for precast re-enforced concrete pipe.

Q.—Did that conversation last very long that first interview of yours, with Mr. Connolly? A.—Not very, no.

Q.—Do you recollect? A.—I recollect the substance of it.

Q.—Would you state it in a few words?

MR. HACKETT: I object to any evidence of conversation.

THE COMMISSIONER: The answer will be taken subject to counsels objection.  
20

A.—Mr. Rice introduced both Mr. Merriwether and me to Mr. Connolly.

MR. HACKETT: Mr. Rice was the engineer?

THE WITNESS: Mr. Rice was the engineer.

MR. HACKETT: Chief engineer?

THE WITNESS: Chief engineer. And the conversation  
30 was entirely with regard to pipe and the pipe specifications. Mr. Connolly was particularly anxious to know whether the specifications as drawn by Mr. Rice precluded the use of any but a patented article.

I am sure I told him, and I think Mr. Merriwether told him, that in our opinion they did not preclude anything but patented articles, because there was nothing, so far as we knew, in the specifications, calling for a patented article.

Q.—Did you tell that to Mr. Connolly yourself? A.—I  
40 told that to Mr. Connolly. Mr. Connolly explained that of course they could not specify a patented article, and I told him that in my opinion he was not specifying a patented article.

Q.—Did you tell him that there was a patented feature in the type manufactured by the Lock Joint Pipe Company? A.—There was a patented feature which related solely to the joint, the make-up of the joint.

*Allan M. Hirsh for plaintiff (direct examination).*

Q.—The overlapping of re-enforcing in the joint? A.—The overlapping of the re-enforcing in the joint. I think you can take that and embrace all of the patented features in connection with that pipe.

Q.—A minute ago you spoke of specifications prepared by Mr. Rice. Where did you see those specifications? A.—Mr. Rice showed me them.

10 Q.—On that occasion? A.—Yes, sir.

Q.—Did he have them in Mr. Connolly's office? A.—I don't recall whether he did or not.

MR. HACKETT: It is a usual thing for a manufacturer to try to have his wares comply with specifications?

THE WITNESS: Surely.

MR. HACKETT: There is nothing improper in that, is there?

20

THE WITNESS: No.

MR. HACKETT: In fact, it is a part of the art of salesmanship, isn't it?

THE WITNESS: Surely.

BY MR. GOUDRAULT:

30 Q.—Now, I will show you, Mr. Hirsh, Plaintiff's Exhibit C-9, which is the Collins Avenue contract with the City of New York, and dated April 10, 1917, and a typewritten page annexed to page 66, and will you read there and see if a certain paragraph refers to the jointing of the pipe? A.—Yes, sir, it does.

Q.—Now, will you read that paragraph?

MR. HACKETT: Is that the specification that Rice showed you?

40 THE WITNESS: If this is the contract that was entered into at that time, it would seem to be; and if it is, I think so, yes. That is my recollection.

Q.—Do you remember the name of the contractor, without looking at the contract? Have you seen it? A.—No, I haven't seen it. It is Sigretto, I think.

Q.—Does that help you to refresh your recollection as to the time of the talk with Connolly as regards your pipe and

*Allan M. Hirsh for plaintiff (direct examination).*

the specifications? A.—I don't think that it would. My recollection is that it was somewhere around about 1916 or 1917.

Q.—You have read that paragraph, Mr. Hirsh? A.—Yes, sir.

Q.—Does that description substantiate the form of specification that was used by your own company in 1917? A.—Yes, sir, that description is almost identical, word for word, with what appeared in the specifications which we distributed to engineers all over the country.

Q.—I see. Will you identify this specification and state if that is what you are referring to when you speak of the specifications of your company? A.—That is.

MR. GOUDRAULT: Plaintiff now offers in evidence, Exhibit C-125, the specifications of the Lock Joint Pipe Company, of Ampere, New Jersey.

20 (Said specifications were thereupon received in evidence and marked Plaintiff's Exhibit C-125, of this date.)

BY MR. HACKETT:

Q.—These specifications were printed and issued broadcast by you to engineers, that they might include in specifications for work coming on? A.—Yes, sir. The specifications were either for adoption or guidance of engineers.

Q.—In the hope of doing business? A.—Yes, sir.

30 BY MR. GOUDRAULT:

Q.—Was that the first time you had seen Captain Rice, on that occasion, Mr. Hirsh? A.—I think it was.

Q.—At that time in 1917, was there a pipe company in the United States except your own, that made a joint that had an interior recess? A.—I think so.

Q.—Do you know Joseph L. Sigretto? A.—I did know him, yes.

Q.—When did you get acquainted with him? A.—When?

40 Q.—Yes, Mr. Hirsh. A.—I can't tell you exactly. The trial of 1917, if that is a satisfactory answer.

Q.—Do you remember how you happened to meet Mr. Sigretto? A.—No, I do not.

Q.—Did you know Mr. John M. Phillips in his lifetime? A.—Yes, sir.

Q.—When did you first meet him? A.—As I recall it now, the latter part of 1917.



*Allan M. Hirsh for plaintiff (direct examination).*

Q.—Had you met Sigretto before or after you met Phillips? A.—Before.

Q.—Where did you meet Phillips? I am speaking of the first time. A.—I think it was in my office.

Q.—Was anybody present at the time? A.—I think Mr. Sigretto brought him in then.

10 Q.—Did you have any conversation with Sigretto then?  
A.—Naturally, yes.

Q.—I mean in the presence of Mr. Phillips? A.—I think so.

Q.—Now, will you give me a conversation that you had with Mr. Sigretto in Mr. Phillips' presence?

MR. HACKETT: I object to any evidence of conversation with the deceased Phillips.

MR. GOUDRAULT: No; with Mr. Sigretto.

20 MR. HACKETT: With Sigretto, until Sigretto himself has been questioned concerning it. It is hearsay.

MR. COOK: I also make the same objection.

THE COMMISSIONER: The answer will be allowed, subject to counsel's objection.

30 THE WITNESS: (Answering) I think the conversation at that time was in regard to an agreement with Sigretto which our company had, and our decision to terminate it. Mr. Sigretto was told whatever agreement our company had with him terminated, and I think he had been told prior to that time,—he came in and repeated,—

Q.—Was it by yourself? A.—I beg pardon?

Q.—Did you make the statement to Sigretto yourself?  
A.—I made the statement to Sigretto, that whatever agreements we had with him were terminated then and there.

Q.—In Phillips' presence? A.—In Phillips' presence.

40 MR. HACKETT: Just a moment. I understood you to say that that was reiteration in Phillips' presence.

THE WITNESS: I did say that. Sigretto asked me to repeat that it was terminated, in front of Mr. Phillips.

*Allan M. Hirsh for plaintiff (direct examination).*

BY MR. GOUDRAULT:

Q.—Was there any other conversation then? A.—I don't think so.

MR. O'DONELL: Same objection.

Q.—Did you see Mr. Phillips again? A.—Yes.

10 Q.—That was for the second time, I am speaking of now. Do you remember where, now, Mr. Hirsh? A.—Yes. I think I saw Mr. Phillips again within a few hours after that time.

Q.—Where would that be? A.—That was in Mr. Sigretto's office in East Orange, New Jersey.

Q.—When you saw Mr. Phillips on that occasion, was anybody with him? A.—Mr. Sigretto.

Q.—Was there any conversation then, Mr. Hirsh? A.—Yes.

20 MR. COOK: Same objection.

MR. HACKETT: Same objection.

A.—Sigretto wanted to know now that we,—

MR. GOUDRAULT: No, no; just a minute. That is not the evidence we want.

MR. COOK: Well, if that is not the evidence you want, why don't you give the evidence yourself?

30 MR. GOUDRAULT: No. Mr. Cook knows that I mean formal evidence from the witness.

Q.—What was the conversation you had with Phillips?

MR. COOK: Same objection.

MR. HACKETT: Same objection.

A.—With Phillips or with Sigretto?

40 Q.—With Phillips. A.—I had no conversation with Phillips.

Q.—Was Phillips there? A.—He was there.

Q.—Did you make any statement to Sigretto? A.—I made conversational statements with him, sure.

Q.—But you are not confusing the interviews? I am speaking of the second interview. A.—I am speaking of the second.

*Allan M. Hirsh for plaintiff (direct examination).*

Q.—Also? A.—Yes.

Q.—Was it the same day that this second meeting took place? A.—Yes, sir.

Q.—Did you see Mr. Phillips again without Sigretto? A.—Subsequent to that time?

Q.—Yes. A.—Yes.

10 Q.—Will you tell us the occasion and the spot or the place? A.—I saw Mr. Phillips a number of times subsequent to that. Generally in my office. He generally came over there.

Q.—Could you give us the next occasion after those meetings that you had with Sigretto and Phillips? Just tell us the fact. A.—Some time after the meeting with Sigretto and Phillips, Mr. Phillips came to our office and asked whether we had made any arrangements for the sale of our pipe in the Borough of Queens. He was told that we had not.

Q.—Did you tell him that? A.—Yes, sir.

20 Q.—And then? A.—He wanted to know if we had anything definite in mind, and I told him that we had not. He then made a suggestion that we allow him to sell our pipe in the Borough of Queens. The matter was discussed, and we agreed that we would sell him the pipe, and he would re-sell it for us.

Q.—Do I understand that that was the substance of that conversation that occurred at that time? A.—That was the substance of that conversation.

30 Q.—This conversation being by whom? A.—By Mr. Phillips and myself.

Q.—Was this arrangement reduced to writing? A.—No, sir.

MR. O'DONNELL: That is all under our reserve and objection as to conversations with Mr. Phillips.

MR. HACKETT: I join in that.

40 Q.—In that conversation was there anything said about the price of pipe to Phillips, or not? A.—The whole thing was that we would sell him the pipe at a fixed price, and whatever profit he made on it would have to be made by selling it at a higher price.

Q.—How was your arrangement made with Phillips as regards the billing of the pipe to be sold thus? A.—Phillips was to make the contract with his purchasers. Those contracts were made whereby the purchaser paid direct to us, and when we received payments, we deducted the amount due us according

*Allan M. Hirsh for plaintiff (direct examination).*

to the price at which we sold the price to Phillips, and then whatever balance there was, was paid to Phillips.

Q.—How long did that arrangement last? A.—Two years.

Q.—What years? A.—1917 and 1918.

Q.—During those two years how was the pipe billed?

A.—The pipe was billed to his customers.

10 Q.—During those two years, that period of time which I understand to be 1917 and 1918, who built the pipes that were sold? A.—You mean constructed the pipes?

Q.—Yes. A.—The Lock Joint Pipe Company.

Q.—Your company? A.—Yes.

Q.—Where? A.—In the Borough of Queens.

Q.—At what price were the pipes billed?

MR. O'DONNELL: Objected to as entirely irrelevant and not the best evidence.

20 THE COMMISSIONER: You may answer, subject to counsel's objection.

A.—The pipe was billed at price that Mr. Phillips sold them to customers, according to what showed on the orders.

Q.—To the best of your recollection, how long did that arrangement last, Mr. Hirsh? A.—Two years.

Q.—Was there a subsequent arrangement made, or subsequent conversation held by you and Phillips?

30 MR. O'DONNELL: Same objection.

Q. (Continuing).—As regards pipe selling in Queens? A.—Yes, there was. We told Mr. Phillips we were not willing to bill the pipe to his customers any more, and we would bill them direct to him, and he would have to do his own collecting.

Q.—Where did that conversation take place? A.—In my office.

Q.—Who was present? A.—Mr. Phillips and myself.

Q.—Do you recollect the year? A.—Probably towards the end of 1918.

40 Q.—Was that arrangement reduced to writing? A.—No, sir.

Q.—How long did that arrangement last? A.—I think it was three years.

MR. COOK: You are referring to the last agreement?

MR. HACKETT: The second agreement.

*Allan M. Hirsh for plaintiff (direct examination).*

Q.—Did you deliver the pipe direct to the people who were buying the pipe, by virtue of that second agreement? A.—Yes. Mr. Phillips sold the pipe and we manufactured it for him and delivered it to his customers.

MR. COOK: He collected the money?

10 THE WITNESS: He collected the money and paid us.

MR. COOK: And paid you?

THE WITNESS: Yes.

BY MR. GOUDRAULT:

Q.—Where was it being made during that period? A.—The Borough of Queens.

Q.—By whom? A.—By the Lock Joint Pipe Company.

20 Q.—By your own men? A.—Yes, sir.

Q.—During the period of time that the first arrangement lasted, did you reject any customer that Phillips sent you?

MR. O'DONNELL: Objected to as irrelevant and illegal.

A.—Not that I recall.

Q.—Did you ever make any inquiry as to the financial standing of any customer that he sent you during that period?

MR. O'DONNELL: Objected to as irrelevant and illegal.

30 A.—We knew the financial standing, in a general way, so far as is known of contractors, yes, sir.

Q.—Did you make any investigation as to the financial standing of Phillips? A.—I didn't think that Mr. Phillips had any great financial responsibility.

MR. O'DONNELL: Same objection.

Q.—Did you know what his business was?

40 MR. O'DONNELL: Same objection.

A.—I didn't understand that he was in any business.

Q.—Was that the last of your agreements with Phillips?  
A.—No.

Q.—There was a third one? A.—There was a third.

Q.—Do you remember the year of its inception and of its completion? A.—I think it was 1921 up to 1927 or 1928.

Q.—Who made that arrangement? A.—I did.

*Allan M. Hirsh for plaintiff (direct examination).*

Q.—Do you remember where? A.—In my office.

Q.—Was that arrangement reduced to writing? A.—No, sir.

Q.—That is the arrangement you referred to a minute ago that lasted from 1921 to 1927? A.—Yes, sir.

Q.—Could you tell us in substance what was that arrangement?

10

MR. HACKETT: I object to that.

MR. COOK: I object to that.

Q.—Give us the substance of the conversation that you had with Phillips?

MR. HACKETT: Objected to.

MR. COOK: Objected to.

20

Q. (Continuing).—In respect to that third period you are speaking of now. A.—We told Mr. Phillips we did not wish to manufacture and sell pipe in the Borough of Queens any longer, and therefore intended to quit. Mr. Phillips said that we had a plant in the Borough of Queens, which of course was true, and that a lot of pipe would be used over there, and that if we did not wish to have our pipe used in preference to not having it used at all. And we of course said we would. But we did not wish to engage any longer in the manufacture and sale of pipe in the Borough of Queens.

30

He then suggested that we rent our plant to him, and after a conversation on that point it was agreed that we would rent our plant to him, and that he would pay for its rental stipulated sums per lineal foot for the different sizes of pipe which were to be manufactured with that plant. That arrangement was the last one we had with Mr. Phillips.

Q.—Now, Mr. Hirsh, when you gave the substance of your conversation with Phillips as regards what we may term the third arrangement, you stated, if I am not mistaken, that it was a royalty paid,—

40

MR. O'DONNELL: No, he did not.

THE WITNESS: No, sir, we did not consider it a royalty. It was rental of the plant. We gave Mr. Phillips something much more tangible than the use of a patent.

*Allan M. Hirsh for plaintiff (direct examination).*

MR. O'DONNELL: This is all under reserve of the objections which have been made.

BY MR. GOUDRAULT:

10 Q.—I understand that in your books you would have for the period covered by that third agreement all entries concerning the pipe manufactured by Phillips in Queens Borough during that period of time? A.—Yes.

Q.—And your company was paid in full for whatever Phillips sold during that period of time? A.—Yes.

MR. GOUDRAULT: Plaintiffs declare the examination of this witness completed, and reserve the right to have Mr. Hirsh, or any other witness, heard on this same subject.

MR. HACKETT: On this what?

20 MR. GOUDRAULT: On this same subject. I mean to say, not before this Commission; I may not want to have Mr. Hirsh here again, but I reserve the right to call him at the trial, if I wish.

MR. HACKETT: That is not my understanding. You can not have him back. The purpose of coming to New York was simply because these people could not go to Montreal.

30 THE WITNESS: I have something to say about that. I expressed my willingness to go to Montreal with the understanding that it would be entirely at my convenience. My idea when I made that statement was that it was a hearing like this. If I am to be asked to go to Montreal and appear in court at the trial, and all that stuff, why, unless I am legally bound to do it, I will tell you gentlemen now that I will not do it.

MR. GOUDRAULT: With your permission, Mr. Commissioner, may I discuss a question with the witness?

THE COMMISSIONER: If Counsel will agree.

40 MR. GOUDRAULT: Will you agree, Mr. Cook?

MR. COOK: Undoubtedly. Take him outside and let it be short.

(Mr. Goudrault and witness confer).

MR. COOK: We don't want any misunderstanding now. I object to Mr. Hirsh being examined again on any subject.

*Allan M. Hirsh for plaintiff (direct examination).*

BY MR. GOUDRAULT:

Q.—Before I declare this examination of Mr. Hirsh terminated on this question of the arrangement between himself and Mr. Phillips, I want to find out if Mr. Hirsh knows the amount of royalties—not the royalties, but the amount of money that he received from Phillips for the manufacturing of precast  
10 pipe during the period of the third arrangement of your company with Phillips? A.—We received from Mr. Phillips during this period, in payment of the rental of the plant, a sum between \$105,000 and \$106,000.

MR. O'DONNELL: Objected to as not the best evidence.

THE WITNESS: The exact amount of dollars I can not give.

Q.—Will you look at this paper. Could you tell how  
20 much you were paid on each size? A.—I will have to look at the paper first.

Q.—You would have to look at the paper. That will help you to refresh your recollection? A.—Yes, sir. That paper gives the sizes, the amount that he paid on each size and the number of feet made of each size, and I think the total amount received by us during that period. In other words, that is a complete record of receipts which we got during this so-called third period.

Q.—Was that gathered from your books? A.—Yes, sir.  
30

MR. HACKETT: Who prepared this?

THE WITNESS: That was prepared by my bookkeeper under my orders, and checked by me.

Q.—Checked by yourself? A.—Yes.

BY MR. HACKETT:

Q.—What makes me ask if it is by you, is I see the word  
40 “royalty” used here, and you used the word “rental”. A.—Well, royalty or rental, what does it say there?

Q.—It says “royalty per foot of pipe manufactured”.  
A.—Then that particular word was not very well checked.

BY MR. GOUDRAULT:

Q.—But were the figures checked by you?



*Allan M. Hirsh for plaintiff (direct examination).*

MR. COOK: One minute. Wait a minute, please.

MR. GOUDRAULT: He is my witness.

MR. COOK: But we have a right to look at your exhibit.

MR. GOUDRAULT: All right.

10 (Paper examined by defendants' attorneys).

MR. GOUDRAULT: I now offer in evidence this detailed statement, as Plaintiff's Exhibit C-126.

MR. HACKETT: I object to the production of this exhibit.

MR. COOK: I, too, object to it.

20 MR. O'DONNELL: Objected to as irrelevant and not the best evidence, and not binding on Phillips.

THE COMMISSIONER: The exhibit will be taken in evidence, subject to counsel's objections.

(The said statement was thereupon received in evidence and marked Plaintiff's Exhibit C-126 of this date).

BY MR. GOUDRAULT:

30 Q.—I understand, Mr. Hirsh, you told us that that was prepared by your instructions? A.—Yes, sir.

Q.—Could you tell us, in a few words, as to the details of the preparation of that statement? I mean to say, did you personally attend to any part of the preparation of that statement, or what did you do in connection with it? A.—I did the same thing as any other person in my position would have done. I ordered my bookkeeper to prepare an accurate statement and satisfy me that it was correct. I am perfectly well satisfied that that is an accurate and correct statement of the amounts which Mr. Phillips owed and paid to us from 1922 to 1927, inclusive, for this so-called third period during which Mr. Phillips was manufacturing Lock Joint Pipe in the Borough of Queens.

40 MR. HACKETT: In your plant?

THE WITNESS: In our plant. The total amount, \$105,428.62.

*Allan M. Hirsh for plaintiff (direct examination).*

MR. O'DONNELL: Defendants renew the objection already made, and object to any verbal evidence in connection with the exhibit.

BY MR. GOUDRAULT:

10 Q.—And during the existence of that third agreement, between your company and Phillips, did I understand you to say that Phillips had the right to use your forms and equipment when he manufactured the pipe in the Borough of Queens?  
A.—Yes, sir.

Q.—From that statement it would appear that the various sizes of pipe—I mean the various sizes of pipe do appear on that? A.—Yes, sir. This statement has the various sizes of pipe, the amount that he was to pay per foot for each of the different sizes, the number of feet of pipe of each size manufactured the total amount due for each year, and the total amount  
20 due for the six years.

MR. O'DONNELL: Same objection.

Q.—You have already told me that you had some arrangement with Sigretto previous to that arrangement which you made with Mr. Phillips?

MR. HACKETT: I object to this as entirely—

MR. COOK: I object also. I don't remember any such  
30 statement.

MR. O'DONNELL: It is absolutely irrelevant, anyway.

MR. HACKETT: The witness has told us that he terminated the agreement with Sigretto.

MR. GOUDRAULT: So my statement is correct.

MR. HACKETT: But irrelevant.

40 THE COMMISSIONER: I will allow the answer, subject to counsel's objection. Please proceed.

Q.—Now, you did, as a matter of fact, make that statement. So did you ever pay Phillips any money on account of any arrangement you had with Sigretto in the beginning?

MR. O'DONNELL: Objected to as entirely irrelevant.

THE WITNESS: Shall I answer that?

*Allan M. Hirsh for plaintiff (direct examination).*

THE COMMISSIONER: Yes, you may answer that, subject to counsel's objection.

10 THE WITNESS: (Answering) We paid Mr. Phillips some money arising out of the so-called Sigretto agreement. There was an amount standing on our books that we owed Sigretto, and Mr. Sigretto told us to pay it to Phillips, so we paid it to Mr. Phillips, because Sigretto told us to pay it to him.

Q.—Was that for pipe that had been furnished to Sigretto? A.—No.

MR. GOUDRAULT: I have no further questions to ask the witness. I reserve plaintiff's right, however, to examine the witness in Montreal, if the Court in Montreal allows the witness to be heard.

MR. HACKETT: I shall most certainly opposed any examination of any witness heard here, again in Montreal.

20 MR. GOUDRAULT: On subject matter different.

MR. HACKETT: If there is any further matter on which you wish to examine this witness, now is the time for him to be examined.

MR. COOK: I associate myself with Mr. Hackett in that, Mr. Goudrault, and so that there shall be no misunderstanding between us as to the stand we are taking.

30 MR. GOUDRAULT: No, there will be no misunderstanding because it is taken down by the stenographer.

May I ask him one more question?

BY MR. GOUDRAULT:

Q.—What was the cost of the mesh re-enforcement which your company used? There was a mesh re-enforcement that went into that joint, wasn't there, Mr. Hirsh? A.—Yes.

Q.—How much did your company pay for it? What was the price?

40 MR. O'DONNELL: Objected to as not being the best evidence, and it is entirely incompetent for the witness to testify to the price.

THE WITNESS: Price where?

Q.—Price f.o.b. A.—Delivered at the manufacturing yard?

Q.—You would receive the wire in bundles, wouldn't you? A.—Yes.

*Allan M. Hirsh for plaintiff (cross-examination).*

Q.—And you would deliver it at the manufacturing yard?  
A.—Yes. The wire was worth 5 cents a pound delivered at the manufacturing yard.

Q.—Did your company sell to Phillips the said mesh?  
A.—We did.

Q.—At what price? A.—Exactly the same price that we purchased it at.

10 MR. GOUDRAULT: All right.

MR. HACKETT: Have you finished with the witness, Mr. Goudrault?

MR. GOUDRAULT: Yes.

CROSS EXAMINATION BY MR. HACKETT:

Q.—The use of concrete pipe for the construction of sewers has been gradually increasing for the last 15 years, has it not? A.—It has.

20 Q.—There was a time when sewers were constructed in what is called here the monolithic type almost exclusively? A.—Monolithic type of sewer preceded the precast type.

Q.—Yes. Like crinolines and short skirts, it has gone out of fashion. A.—Replaced by lingerie; pretty much the same.

Q.—Sewers, regardless of size, are now exclusively built of precast pipe? A.—They are built to a much greater extent than formerly with precast pipe.

30 Q.—And like most improvements, they had to be introduced and prejudice overcome? A.—Yes, sir.

Q.—And your company was one of the first to engage in the manufacture of the precast pipe for sewer purposes? A.—Yes, sir.

Q.—And today I suppose there are many companies making this type of pipe in competition with you? A.—Yes.

Q.—Now, is it going too far to say that most sewers are built out of pipe now? A.—No, I don't think so.

Q.—And the advantage of this type of structure as compared with nonolithic is almost universally admitted today?

40 A.—It is admitted to a much greater extent than formerly, yes.

Q.—The pipe when constructed is allowed to cure for a certain time? A.—Yes.

Q.—That is supposed to be beneficial to anything made out of concrete, isn't it? A.—Yes, sir.

Q.—It ripens and should not be used until it has been made what length of time? Four weeks? A.—The ordinary length of time is generally around 14 days.

*Allan M. Hirsh for plaintiff (cross-examination).*

Q.—I notice that in the specifications which the Borough of Queens wrote for a pipe like yours, it is stipulated that it shall not be used until it is cured for 28 days. A.—That is a matter of choice or preference of the engineer.

Q.—It is eliminating any hazard that might result from using pipe that was improperly cured? A.—It may be so construed. yes.

10 Q.—Did you meet any of the other engineers in Queens—any of the engineers in Queens other than Mr. Rice? A.—I don't recall that I did. I may or may not. I was over there very little.

Q.—Are you familiar with the Borough system and the relationship between it and the Board of Estimate and Apportionment A.—I think so, generally.

Q.—You know that there are corps of engineers in each borough, and in the City as well, and that they check and cross-check one another? A.—Yes, sir.

20 Q.—And that plans and specifications have to be passed upon by the borough engineers and then by the City engineers? A.—Yes, sir.

Q.—And that that work is checked both from a financial point of view and an engineering point of view, and re-checked by both corps? A.—That is my understanding.

Q.—And you have been in work which has brought you into relation with them for 20 years or so? A.—We have done work under them.

30 Q.—You have made some reference to a conversation between Mr. Merriwether, your president, and the engineer in chief of the Borough of Queens, concerning the use of your pipe, and it was your contention at that time that the only patented feature which might preclude it from use had been eliminated; is that correct? A.—Eliminated from what?

Q.—From the specifications. A.—For the Borough of Queens?

Q.—For the Borough of Queens. A.—Yes.

40 Q.—Just make that clear, will you please? A.—We presented to Mr. Rice our specifications for guidance. Our specifications, of course, described our pipe, and in describing our pipe naturally it had all of the features connected therewith, which included that part which was patented. Mr. Rice, as parts of the identical language of the two specifications will show, followed our specifications to a considerable extent. However, when we came to the question of joints—

*Allan M. Hirsh for plaintiff (cross-examination).*

Q.—Which was the only patented part of your pipe? A.—Which was the only patented part of our pipe, that part of our specifications which did cover the patented feature was not included in Mr. Rice's specifications covering joints. And it was our contention at the time, and I have repeated it since, that the specification which was drawn by the Borough of Queens did not call for a patented article, and that anyone who was willing to  
10 do so could make a pipe to fully comply with those specifications, and I know of no one who could have legally stopped them.

Q.—We had a man here yesterday who said that he told Phillips that he intended to make pipe on Queens specifications and it resulted in a row between him and Phillips, according to his testimony. A.—Of course, that is something I know nothing about.

Q.—Your specification, or a specification, the substance of which came from your company, had been used in other boroughs and in other municipalities since 1910, I am instructed? A.—Our  
20 specifications have been used to a very considerable extent all over the United States and in Canada. As a matter of fact, the extent of it is that the actual pipe is in 40 or more of the states of this country, and in Canada, both before and since the patent had expired.

Q.—You exacted some financial assurance from Phillips when you sold him large quantities of pipe? A.—Well, we exacted the financial assurance of being paid, if that is what you mean.

Q.—Yes. A.—Certainly.

30 MR. HACKETT: That is all.

THE WITNESS: There was no trouble at all about payments from Mr. Phillips. Mr. Phillips paid very promptly.

THE COMMISSIONER: Mr. Cook, do you want to ask some questions?

MR. COOK: No, Mr. Commissioner. No cross-examination.

40 Messrs. Slack, Welsh and Peterson, witnesses, were called but not sworn).

THE COMMISSIONER: Gentlemen, you are directed to be here at 11 o'clock tomorrow morning.

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(Whereupon, at 4.00 p. m. an adjournment was taken to tomorrow, Friday, February 6, 1931, at 11.00 a. m.)

Depositions of witnesses, sworn and examined on the 6th day of February, 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, 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:

MR. GOUDRAULT: Mr. Commissioner, I have an application to make this morning. This application is that I would like to have Mr. Joseph L. Sigretto in to have him identify three contracts, his signature on three contracts which have been filed after he was first examined, by one Albert Decker, Decker having testified that it was he that made certain corrections in the said three contracts, Exhibits C-83, C-84 and C-85. These contracts are between Joseph L. Sigretto and John M. Phillips. In each one of them they refer to the contracts that have been awarded by the City of New York to Joseph L. Sigretto & Company for the construction of the Hull Avenue, Atlantic Avenue, and McComb Place sewers.

My only purpose is to enlighten the Court, the Commission and the Court, on the facts pertaining to these three contracts and to connect them, if they are to be connected or not, I don't know, with those three contracts awarded by the City of New York to Joseph L. Sigretto & Company.

I do not purpose asking Mr. Sigretto any other questions.

MR. HACKETT: If my friend has fully stated the purpose of recalling Mr. Sigretto, I declare, Mr. Commissioner, in so far as my client is concerned, that I am willing to admit that were he recalled he would say that the contracts in question bear his signature.

MR. COOK: I am prepared to admit on behalf of the defendants, in regard to Exhibits Nos. C-83, C-84 and C-85, that the signature on these contracts, Joseph L. Sigretto Co., Inc. by

J. Sigretto, President, was affixed by Mr. Joseph Sigretto. The words "Joseph L. Sigretto Co., Inc., by" and the word "President" are in typewriting; the words "J. Sigretto" are in writing.

Is that satisfactory?

MR. GOUDRAULT: No. I would like to ask that Mr. Sigretto be called in and testify along the lines. I have stated.

10 MR. HACKETT: I point out, Mr. Commissioner, that Mr. Goudrault has stated fully the purpose of recalling Mr. Sigretto. And both parties have admitted the evidence which plaintiff declared it was his intention to make through Mr. Sigretto.

THE COMMISSIONER: Well, if Mr. Sigretto has any further information that Mr. Goudrault wishes to elicit, I will hear it.

MR. GOUDRAULT: I think so, because I do think I put in a proviso.

20 THE COMMISSIONER: Subject, of course, to any objections and exceptions and reservations that counsel wish to make.

MR. HACKETT: Yes; but I ask that Mr. Goudrault be called upon to state what evidence he wishes to make from Mr. Sigretto, as Mr. Sigretto has been heard, examined, cross-examined and re-examined twice.

THE COMMISSIONER: I think that will appear from Mr. Goudrault's questions, unless he wishes to otherwise state.

30 MR. HACKETT: I merely point out, Mr. Commissioner, that when a witness is recalled, it behooves counsel to state the purpose; otherwise we may begin the entire list over again without any control on the part of the Commissioner.

THE COMMISSIONER: Well, my directions are very broad in that regard, to take all the evidence.



*Joseph L. Sigretto for plaintiff recalled (direct examination).*

DEPOSITION OF JOSEPH L. SIGRETTO  
(recalled).

JOSEPH L. SIGRETTO 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: (Continued):

Q.—Mr. Sigretto, you have testified already and you have been sworn? A.—Yes, sir.

20

Q.—And under the same oath would you kindly answer my questions, if you are allowed to do so by the Commissioner under reserve of the objections. There has been introduced by Albert Decker, three contracts C-83, C-84 and C-85, which are contracts in reference to an agreement between yourself and John M. Phillips, or your company per yourself and John M. Phillips. C-83 is as regards the Hull Avenue sewer; C-84 is as regards the Atlantic Avenue sewer, and C-85 is as regards the McComb Place sewer.

MR. O'DONNELL: Defendants renew the objections which were made in regard to these contracts at the time they were produced, and ask that they avail with reference to evidence of this witness.

30

MR. HACKETT: I avail myself of the same objection.

BY MR. GOUDRAULT:

Q.—Just to refresh your memory, Mr. Sigretto, will you look at the contract, Exhibit 8, which is the Hull Avenue contract awarded to Joseph L. Sigretto & Company.

40

MR. COOK: I object, Mr. Commissioner. This witness is brought back regarding Exhibits C-83, C-84 and C-85. No question is asked him, and then my friend goes to C-8.

MR. GOUDRAULT: The purpose of my questioning, Mr. Cook, is this: I have mentioned a minute ago to Mr. Sigretto—

MR. COOK: Yes; but we want Mr. Sigretto to mention to us. We don't want you to mention to Sigretto.

MR. GOUDRAULT: Then don't object to my question.

*Joseph L. Sigretto for plaintiff recalled (direct examination).*

MR. COOK: I do object to your questions.

MR. HACKETT: Can't you go on, Mr. Goudrault?

MR. GOUDRAULT: Yes, I am going on.

MR. HACKETT: I haven't said a word to you.

10 MR. GOUDRAULT: Well, somebody else has.

MR. COOK: Well, I won't any more.

BY MR. GOUDRAULT:

Q.—Now, will you look at Exhibit C-83, and will you state if that is there your signature appearing? A.—It is.

Q.—Do you recognize John M. Phillip's signature?

20 MR. O'DONNELL: Defendants object to any evidence as to the signature of John M. Phillips.

Q.—Will you look at Exhibit C-83, and tell us if you recognize the signature of John M. Phillips? A.—This is his signature (indicating), and this is my signature, (indicating). I never remember that that was on top there when we signed the contract.

Q.—You mean the writing; you mean the pen writing part?

A.—Yes, the pen writing part.

30 MR. HACKETT: I object to any evidence tending to vary the terms of the written document.

MR. COOK: I join in that objection.

Q.—Will you now look at Exhibit C-84, which purports to be an agreement between you and John M. Phillips as regards sewer contract on Atlantic Avenue, and state if that is your signature there appearing on sheet No. 2— A.—That is my signature.

Q.—Do you recognize the signature of John M. Phillips?

40 A.—Yes, sir.

MR. O'DONNELL: Same objection as regards John M. Phillips' signature.

Q.—Will you look at Exhibit C-85, which is an agreement between your company per yourself, and John M. Phillips for the McComb Place sewer, and state if that is your signature? A.—Yes, sir.

*Joseph L. Sigretto for plaintiff recalled (cross-examination).*

Q.—And do you recognize Mr. Phillips' signature? A.—  
Yes, sir.

MR. O'DONNELL: Same objection.

MR. GOUDRAULT: I am satisfied.

10 MR. HACKETT: Are you finished?

MR. GOUDRAULT: Yes.

CROSS EXAMINATION BY MR. HACKETT: (Under  
reserve of the objections to the recalling of this witness and to  
his testimony):

20 Q.—Now, Mr. Sigretto, do you wish the Commissioner to  
understand that if the name of John M. Phillips, and the name  
of half a dozen other people were shown to you on the same piece  
of paper, that you could pick out the name of Phillips? A.—  
Well, the reason I can pick out this name, that is my signature  
there.

Q.—Yes. You told us when you were examined before, that  
you knew your own signature? A.—Yes.

Q.—But you also told us that you could not read? A.—No.

30 Q.—Now, I ask you, Mr. Sigretto, if I were to show you a  
piece of paper with the signature of John M. Phillips on it, and  
the signature of half a dozen other people; let us say the  
signature of Mr. Cook, or of Mr. Goudrault, Mr. Moore, Mr.  
Schultz, could you pick out the signature of Phillips? A.—I  
might could.

Q.—You might? A.—Yes.

Q.—Are you sure you could? A.—I might could. If it is  
the same name and the same signature, I can. I can always re-  
member.

Q.—You can always remember? A.—Remember.

40 Q.—I am not suggesting that you can't, but I want to know  
if I show you a half a dozen names, if you can pick out the  
signature of Phillips? A.—I think I might could. Even if I  
didn't see any since 1916 or 1917.

Q.—That is all I wanted to know, if you are certain you  
could identify Phillips' signature. A.—I think I could.

Q.—You think you could? A.—Yes.

Q.—Was this document signed in your presence? A.—One  
was.

Q.—Which one? A.—I forget the one. I had one contract  
with Phillips. I never remember signing the three of them.

*Joseph L. Sigretto for plaintiff recalled (cross-examination).*

Q.—So then if you don't remember signing three, will you go so far as to say you did not sign three? A.—Well, only one that I signed. I said that, that is plain enough, isn't it?

Q.—Yes. A.—And I remember that plain. It was only one contract.

Q.—So you did not sign the other two? A.—I don't think I did.

10 Q.—Then it is quite possible that Mr. Phillips did not sign the other two? A.—That I couldn't say.

Q.—No? A.—But he may be know who did sign this; and that was between him and Decker.

Q.—Then inasmuch as you did not sign two of these three contracts, being C-83, C-84 and C-85, I wish you could tell me which two you did not sign? A.—I couldn't tell.

Q.—You can not tell? A.—Because the name is so perfect on that, it is exactly like mine.

20 Q.—Yes. Do you not see, Mr. Sigretto, that if you can not tell which signature is yours and which is not yours, that there should be some doubt in your mind as to which signature is Mr. Phillips' and which is not his? A.—Just looking at those three contracts, and looking at the signature; look at mine. It is exactly the same.

Q.—I see. So you wish the Commissioner to take this as your evidence,—

MR. GOUDRAULT: I object to this form of question.

30 MR. HACKETT: Undoubtedly you do.

MR. GOUDRAULT: I will tell you why. You are not going to put in the answer of the witness.

MR. HACKETT: Oh, yes, I am.

MR. GOUDRAULT: Well, it is under my objection that you do put it in. Mr. Sigretto knows that, and he has testified—

THE COMMISSIONER: Propound your question.

40 MR. GOUDRAULT: All right.

BY MR. HACKETT:

Q.—So then Mr. Sigretto, you wish your testimony to be this,—

MR. GOUDRAULT: I object to that form. It is perfectly illegal.

*Joseph L. Sigretto for plaintiff recalled (cross-examination).*

MR. O'DONNELL: The Court will pass upon that.

THE COMMISSIONER: Propound your question, Mr. Hackett, please.

BY MR. HACKETT:

10 Q.—So then, Mr. Sigretto, you wish your testimony to be this: That of the three documents before you, two are forged, and you can not say which two are forged as regards your own signature, but you are perfectly certain that all three bear the signature of Mr. Phillips? A.—Yes.

Q.—And that is your testimony? A.—Yes.

MR. HACKETT: That is all; thank you.

MR. GOUDRAULT: Not all with me.

20 MR. COOK: One minute, please; allow me.

CROSS EXAMINATION BY MR. COOK (Under reserve of all objections):

Q.—Mr. Sigretto, I show you Exhibits C-83, C-84 and C-85. You are, I understand, unable to read these contracts. A.—Correct.

Q.—That is correct, is it not? A.—Yes.

30 Q.—Now, sir, will you please tell me which of the three bear— A.—I couldn't tell which one of the three, but if you tell me the first contract, the first earliest date, that is the one, the earliest one.

Q.—So you would say that to the best of your knowledge, (the first exhibit, C-83, is the one you signed? A.—What date is that?

Q.—They all bear— A.—Different dates.

Q.—They all bear the same date, Mr. Sigretto, April 27, 1917. A.—All the same date?

40 Q.—They all bear the same date. Now, I ask you to look at these exhibits carefully, C-83, C-84 and C-85, and tell me which of those three actually bear your signature? A.—As I said before, the signature is mine, looks like mine. And John M. Phillips shows the same, to my mind, as far as I can recollect. One he keep and one was for my file. When the third one came in, I can not say no more than this writing on the top here. That never was on my contract with him, and this one here (Indicating).

*Joseph L. Sigretto for plaintiff recalled (cross-examination).*

MR. HACKETT: I object to any evidence tending to vary the terms of the written exhibit.

THE COMMISSIONER: I will allow the answer. You elicited the answer.

BY MR. COOK:

10 Q.—You said, when you were examined this morning, that you only had one agreement with Phillips in regard to these contracts? A.—One agreement. He had one copy and I had one copy.

Q.—But there was only one agreement? A.—One agreement,—like a pair, like that (indicating). He wouldn't sign a contract that I won't have any, or else I wouldn't sign a contract and he wouldn't have any. I remember my handwriting, and if I ain't making a mistake, that is Decker's handwriting.

20 MR. HACKETT: I don't know whether this witness is brought here to impair the testimony or Decker or not,—

MR. GOUDRAULT: I told you the purpose.

MR. HACKETT: Yes.

MR. GOUDRAULT: And I will stick to it.

MR. HACKETT: Except that the evidence you made was not for the purpose stated.

30 MR. GOUDRAULT: Well, I differ, and my request is entered.

THE WITNESS: And I would tell you the same thing if Decker was sitting here next to me. I will tell him this never was here when I signed this contract, and nobody had the control of those contracts except him, and nobody else, and myself.

MR. GOUDRAULT: When you say "him", you mean whom?

40 THE WITNESS: Decker.

BY MR. COOK:

Q.—Well, Mr. Sigretto, when Mr. Hackett examined you regarding these three exhibits, C-83, C-84 and C-85, you said that there was one original and two forgeries? A.—I didn't say forgeries; I beg your pardon.

*Joseph L. Sigretto for plaintiff recalled (cross-examination).*

Q.—What did you say? A.—I didn't say nothing of the kind. I said it looked like my signature, but I always signed two contracts. And the other one I don't know. Put it any way you want it but I didn't say that word.

Q.—You didn't use the word. I don't mean that. A.—No. But don't you put it that way, either.

10 Q.—Well, that is the way I do put it. A.—No, I didn't say the word.

Q.—Is there one forgery? A.—I don't know; I wouldn't say.

Q.—You don't know? A.—The only thing I can say is I signed two copies, one I keep and the other one,—and still I say this writing was not there when I signed the contract.

Q.—And you don't say that among those three documents there, there is any forgery? A.—I don't know. But I know I signed two of them.

20 Q.—And your signature appears on three? A.—Appears on three, yes.

Q.—But you only signed two? A.—Yes, two copies.

Q.—Therefore, one of them must be a forgery? A.—I don't know; that is for you to put any way you like. I didn't say that.

Q.—You didn't say so? A.—No.

Q.—But do you say so now? A.—No, I don't.

Q.—What do you mean to say, that if three documents bear your signature, two only were signed by you? A.—I say, that is my recollection, only two I signed, two copies.

30 Q.—Only two? A.—Yes, sir.

Q.—And you have three in front of you? A.—Yes, sir.

Q.—Now, will you now admit that one of the three is a forgery? A.—I won't say it. Why should I say so? Not even if I was to benefit \$100,000, I wouldn't say so.

Q.—You would not say so? A.—No.

Q.—But if it was true, would you say it? A.—No, I would not say anything of the kind. I said one word, and I will stick to it. I signed two, but I never signed the third one.

40 Q.—But your signature appears— A.—Yes, it appears. If you put the two together, anybody can see it.

Q.—Can you say to me which of those three documents you did not sign? A.—No, I can not tell you, because there are three there exactly the same and I will say Phillips is the same. And I couldn't tell you which one it is. No, I can not tell you.

Q.—I refer you, Mr. Sigretto, to Exhibit C-85. Are you able to tell me from looking at that exhibit, what that alteration

*Joseph L. Sigretto for plaintiff recalled (redirect examination).*

at the bottom of the first page and the top of the second page means? A.—I do not.

Q.—You can not say? A.—No. If there is any alteration, when I sign anything I generally put my initial on it, either on the back or on the front.

Q.—And you don't know, you can not say what that alteration means? A.—I do not.

10 Q.—And your initial does not appear on that? A.—No, sir.

Q.—And for all you can say, Mr. Sigretto, the alteration embodies the terms of your agreement with Mr. Phillips? A.—That is, I don't know what it is there for.

Q.—You don't understand what it is there for? A.—No. I do not. I don't understand what that alteration could be that way.

Q.—And you don't know what that alteration is? A.—No, I do not. I couldn't even tell you now.

20 MR. COOK: Thank you. That is all.

REDIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—If the alteration was read to you, though, you could understand the terms of it? A.—Yes, I could. I generally have a secretary when I do business. At the time Mr. Decker was my secretary, and generally when I done any changing of contract, I would put my signature and the party whoever I make the contract with puts their initial either back here or on the end.

30 Q.—But if it is read to you, you know what it means? A.—I do. I certainly do.

MR. HACKETT: Mr. Commissioner, I am sorry to ask to cross-examine this witness again, but I want to be quite certain of his testimony.

MR. GOUDRAULT: We do not object.

THE COMMISSIONER: You may proceed, Mr. Hackett.

RECROSS EXAMINATION BY MR. HACKETT:

40 Q.—Mr. Sigretto, the words that are written in at the top of the second page on C-85 concerning which you have been questioned, are the following: "And it is agreed that if this contract is sold, sublet or an assignment is made, that the said John M. Phillips is to participate in 50 per cent. of the profits." A.—That is why I tell you that never was there,



*Joseph L. Sigretto for plaintiff recalled (recross-examination).*

Q.—That was never there? A.—No. According to that contract, when I sold the contract to—

Q.—Just a second. A.—Well, I will tell you why he put in 50 per cent.

10 Q.—But I brought to your attention that in the body of the contract it is stated “And it is further agreed that in the event of the said payment being less in aggregate than 50 per cent. of the said net profits of said contract with the City of New York, then the said John M. Phillips shall be paid the difference between the sum of all the payments made to him and 50 per cent. of the net profits on said City contract above set forth”. Was that in the original? A.—I can tell you better if you read from the top when that change was made, and who made it, and why they made it.

MR. GOUDRAULT: That is fair.

20 Q.—“It is further agreed that in the event of said payments being less in aggregate than 50 per cent. of the net profits of said contract with the City of New York, then the said John M. Phillips shall be paid the difference between the sum of all payments made to him and 50 per cent. of the net profits of said City contract above set forth.” A.—No, I don’t remember that—

Q.—You don’t remember that as being a part of the original contract? A.—(Continuing) —of the contract between him and I to get 50 per cent. of the profits.

30 Q.—All that I want to be quite certain of is that to the best of your memory, the paragraph which I have read to you formed no part of the three agreements, C-83, C-84 and C-85, when signed by you?

MR. GOUDRAULT: Objected to, as you only read one paragraph of C-83.

40 Q.—I read one paragraph of C-85, not C-83. And I am under the impression that C-83, C-84 and C-85 contain an identical paragraph, and it is on that assumption that I put the question to you. A.—I am telling you there never was that writing on when I signed that contract. If there was, there would be my initial on it. And they wasn’t smart enough to put my initial on, whoever did it. They could do it just as well as they did that.

Q.—But the paragraph which I have just read you, and which I now read to you from C-84, “It is further agreed that in the event of said payments being less in aggregate than 50 per cent. of the net profits of the said contract with the City of

*Joseph L. Sigretto for plaintiff recalled (recross-examination).*

New York, then the said John M. Phillips shall be paid the difference between the sum of all payments made to him and 50 per cent. of the net profits of said City contract above set forth".  
A.—Will you please read it from the top down.

10 Q.—My question is, Mr. Sigretto,— A.—I can not answer that question one way or the other. I answered it before, and I said there never was any writing with the pen on the contract I signed.

Q.—But what I have asked you, Mr. Sigretto, is if the paragraph which I have read to you constituted part of the agreement to which you affixed your signature and which is filed as C-84, C-85 and C-83? A.—Why, this paragraph put in here, where it say 5 per cent. and 5 per cent.? Will you read that, Mr. Commissioner, for me?

THE COMMISSIONER: Would you like me to read this paragraph for you?

20 THE WITNESS: Yes.

THE COMMISSIONER: "And it is further agreed that he shall be paid 5 per centum. (5%) of each and every payment made by the City of New York in payment of said contract and at the time of said payments."

THE WITNESS: That is correct.

30 THE COMMISSIONER: Now, do you want me to read the next paragraph?

THE WITNESS: Yes, right down to the other, 50%.

THE COMMISSIONER: "It is further agreed that in the event of said payments being less in aggregate than 50 per cent. of the net profits of the said contract with the City of New York, then the said John M. Phillips shall be paid the difference between the sum of all payments made to him and 50 per centum (50%) of the net profits of said City contract above set forth".

40 THE WITNESS: That is right there in the contract, the first part, and that is why I said this never was—that is why I say that never was in the contract I signed, in pen writing.

BY MR. HACKETT:

Q.—Yes. But do you not see, Mr. Sigretto, that I have read to you on three or four separate occasions, the second paragraph that the Commissioner has read to you, and you seemed to

*Joseph L. Sigretto for plaintiff recalled (redirect examination).*

be uncertain whether or not the stipulations embodied in the contract were in the contract that you signed? A.—This far is correct, up to the 50 per cent. (indicating).

Q.—But there was nothing in it about 50 per cent.? A.—Below that, beyond that.

Q.—Well, was there a 50 per cent. stipulation in it? A.—Yes. It is right there. It was 5 per cent. to be paid on each payment, and the 5 per cent. which makes up the 50 per cent. would be on the final assignment of the contract in question.

Q.—Now, I am going to read this to you again, and ask you to please say whether or not it was in the contract as you signed it, and whether or not it formed a part of your agreement with Phillips. I ask you to listen while I read from C-85. “It is further agreed that in the event of said payments being less in aggregate than 50 per cent. of the net profits of the said contract with the City of New York, then the said John M. Phillips shall be paid the difference between the sum of all payments made to him and 50 per cent. of the net profits of said City contract above set forth”. A.—Is that the part you read now, or is it written out with a pen, or the general,—

Q.—You see, Mr. Sigretto, I don’t want to tell you whether it was the part that is written with the pen or whether it is the part that was typed. I want to test your memory as to whether or not what I have read,— A.—My memory is plain enough, and I can remember plain. It was my contract with him—any contract I give,—

Q.—I want to know whether the paragraph I have read to you embodying a definite stipulation was part of the agreement between yourself and Phillips as contained in the document which you signed? A.—No.

Q.—It was not? A.—No.

Q.—You are quite sure, Mr. Sigretto? A.—Yes.

MR. HACKETT: All right.

REDIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—I will read you now, according to your request, the entire contract. A.—From the top down.

Q.—Yes. A.—You requested it three times, and it would be only fair that you should hear it.

MR. COOK: Which one?

MR. HACKETT: All of them.

*Joseph L. Sigretto for plaintiff recalled (redirect examination).*

MR. GOUDRAULT: C-85—no, let us take C-83: “Contract for services. The undersigned, Joseph L. Sigretto Co., Inc., organized and incorporated under the laws of the State of New York, doing business at Woodhaven, Long Island, New York, and John M. Phillips, of 112 Academy Street, Long Island City, Borough of Queens, City of New York, contract and agree as follows:

10 “That the said Joseph L. Sigretto Co., in considering of services rendered by the said John M. Phillips hereby agrees to employ and hire him to perform the following services, to wit: To supervise and assist in the execution of a certain work known as contract No. 47339, for the construction of a sewer, and appurtenances in Hull Avenue, from Morris Avenue to Willow Avenue; Willow Avenue from Jay Avenue to Grand Street; Hull Avenue from Willow Avenue to Hamilton Place; Hamilton Place, from Hull Avenue to Grand Street; Grand Street from Hamilton Place to Monteverde Avenue, Second Ward of the Borough of Queens. And it is further agreed that the said John M. Phillips shall  
20 receive as compensation and wages for said employment one-half of the profits which may arise from the said contract above mentioned and known as above set forth. And it is further agreed that he shall be paid five per cent. of each and every payment made by the City of New York in payment of said contract and at the same time of said payment. It is further agreed that in the event of said payment being less in aggregate than 50 per cent. of the net profits of said contract with the City of New York, then the said John M. Phillips shall be paid the difference between the sum of all payments made to him and 50 per cent. of  
30 the net profits of the said City contract above set forth.

“It is further agreed that the said John M. Phillips shall pursue his duties”—

Now, there comes in something—

THE WITNESS: Read the typewriter part of it.

MR. GOUDRAULT: You mean just the typewriting?

THE WITNESS: Just the part of the typewriter.

40 MR. GOUDRAULT: “It is further agreed that the said John M. Phillips shall pursue his duties”,— here is scratched out some pen writing.

THE WITNESS: What is scratched out?

MR. GOUDRAULT: “In such manner”,—

*Joseph L. Sigretto for plaintiff recalled (redirect examination).*

MR. HACKETT: Just a moment. I object to reading into the record anything that does not form part of this document.

MR. GOUDRAULT: I am reading it solely at the request of Mr. Sigretto, who says he cannot read and wishes to have the contract read thus.

10 MR. HACKETT: Just a moment. I submit that the document having been put in by Mr. Goudrault must stand as produced by him, and that it is not competent either for him or his witness to vary the terms of the document. And all reading from the document as it may have been before it was corrected is denaturing it and placing before the Court an alteration of a document which it is not competent for the witness to make.

MR. COOK: On behalf of the defendants I join in the objection taken by Mr. Hackett.

20 MR. HACKETT: And I point out that this document emanated from the plaintiff, has been produced by their witnesses and proved by them.

MR. GOUDRAULT: In order to save any further testimony, I will ask the Commissioner to read the document to the witness himself, who has requested three or four times that it should be read, and I am satisfied.

30 It is a question of justice. This man wishes the document to be read, and I ask the Commissioner to do so, in order to save all further objections.

THE COMMISSIONER: I think, Mr. Goudrault, you should read your own documents. I would be putting myself in the position of an advocate if I proceeded to read the document.

40 MR. GOUDRAULT: I would like to satisfy the witness in all fairness in what he requests. I don't care what part of the document he wishes, but he asks it to be read all over again, as it is, in its entirety.

MR. HACKETT: You must read it as it is.

MR. GOUDRAULT: But he wants the other.

MR. O'DONNELL: After you have read it as it is.

MR. GOUDRAULT: All right. "It is further agreed that the said John M. Phillips shall pursue his duties in consultation

*Joseph L. Sigretto for plaintiff recalled (redirect examination).*

with the said Joseph L. Sigretto Company, and it is agreed that if this contract is sold, sublet or an assignment made the said John M. Phillips is to participate in 50 per cent. of the profits, and the said John M. Phillips hereby agrees to the terms of this contract and will perform his duties in accordance with the full intent of these presents. Date April 27, 1917. Joseph L. Sigretto Co., Inc., by J. Sigretto, President. John M. Phillips.”

10

MR. COOK: Now, what is your question?

BY MR. GOUDRAULT:

Q.—Now, what have you to say? That is my question.

A.—What I got to say is this, you gentlemen can see plainly what I am going to say. If I know this clause was here,—

MR. HACKETT: Just a moment.

20

MR. GOUDRAULT: Mr. Commissioner, I wish the witness should be allowed to answer.

THE COMMISSIONER: I will allow the witness to answer, and you make your objection, Mr. Hackett.

MR. HACKETT: Shall I make my objection now?

THE COMMISSIONER: That is up to you. You can do it now, or after his answer.

30

MR. HACKETT: Well, I would like to make my objection now, Mr. Commissioner, for this reason: A document has been produced by the plaintiff, put in evidence by one witness and exhibited to one or two others. It is utterly incompetent for plaintiff to modify, vary or attack this document. This witness was brought here this morning for an avowed purpose.

MR. GOUDRAULT: For what?

40

MR. HACKETT: For an avowed purpose. We have strayed far from the declaration by counsel when the witness was brought back. But my objection is that it is not competent to vary the terms of this document by oral testimony.

MR. COOK: I join in that objection.

MR. GOUDRAULT: May I suggest, Mr. Commissioner, when the objection of Mr. Hackett is to be made, that it be made, naturally enough, before the witness does answer, but once the

*Joseph L. Sigretto for plaintiff recalled (redirect examination).*

witness has started to answer, what I claim to be a legal question, I think he should not be interrupted at the very moment he is going to tell what is in his opinion the truth. Furthermore, to the remarks of Mr. Hackett about us wanting to change the terms of any document whatever, I do protest, because it is not our intention.

10 My sole purpose at the very outset of this testimony of Mr. Sigretto was to have him identify his signature, and that of Mr. Phillips, and we have been brought into all this discussion through objections by the attorneys for the defendants.

And now, will you read my question?

(Question read by clerk.)

THE COMMISSIONER: Will you proceed, Mr. Witness?

20 THE WITNESS: (Answering) If I know this contract was represented as it is here now, as he read it, when I sold the contract to John Creem of Brooklyn, the contract was sold for \$30,000. I was entitled to \$15,000 and he was entitled to \$15,000, but he took the first \$25,000, and then he took \$2500 more on the balance of the 5 per cent. But if this was here on my contract, he never would have had that money, would he? That is my answer to the question, right there.

MR. GOUDRAULT: Is that all?

30 MR. COOK: That is all from me, Mr. Goudrault, thank you. I have finished.

MR. HACKETT: That is all. Thank you.

MR. GOUDRAULT: That is all, Mr. Sigretto.

*Harry S. Hart for plaintiff (direct examination).*

DEPOSITION OF HARRY S. HART

HARRY S. HART, age 58, of 150 Riverside Drive, New York City, New York County, a concrete pipe selling agent, 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 BY MR. GOUDRAULT:

Q.—What is your business, Mr. Hart? A.—Selling concrete pipe.

Q.—Are you in business for yourself? A.—A corporation, yes, sir.

Q.—What is the name of that company that is incorporated? A.—Harry S. Hart, Inc.

Q.—What pipe do you sell? A.—Well, core joint, at the present time.

Q.—Did you ever sell any other make of pipe? A.—Newark pipe.

Q.—Did you ever sell pipe from any other concern? A.—Here in New York?

Q.—Yes. A.—No. Only core joint.

Q.—In the vicinity of New York? A.—That is all.

Q.—Do you know a company by the name of the New York Concrete Pipe? A.—Yes, sir. We sell some for them up-State, or did. But not down here.

Q.—Did you sell for any other kind of pipe manufacturer or any other company in the neighborhood of New York? A.—We have sold New York Concrete Pipe up State, but that is too far away.

Q.—I see. What about the Warsaw Company? A.—That is outside of Buffalo.

Q.—But did you sell that kind of pipe in New York or around New York? A.—No, sir. The other side of Albany.

Q.—The pipes sold by you coming, manufactured from these companies that you have mentioned, are there joints? A.—Joints. Well, they have what they call a slip joint.

Q.—What do you mean by a slip joint? A.—It just slips together. No big bell on the end.

Q.—You mean to say that where they join there is a flair? A.—No, that is on the small pipe. The big pipes don't flare. That is an internal bell, so to speak.



*Harry S. Hart for plaintiff (direct examination).*

Q.—Did you ever hear the expression cement pipe? A.—Never. Only in the Queens specifications.

Q.—Do you know what cement pipe means? A.—I imagine concrete pipe.

Q.—What size of concrete pipe do you sell? A.—Now or at that time?

10 Q.—At the time? A.—Oh, we have sold up to 72s reinforced pipe.

Q.—And down how small? A.—Six inch.

Q.—Are the smaller sizes reinforced? A.—No, sir, from six to twenty-four are plain.

Q.—Have you ever sold any reinforced concrete pipe in Queens? A.—No, sir.

Q.—From 24 inches up? A.—You mean now, previous to this thing?

20 Q.—Have you ever sold any reinforced pipe? A.—We have last year. Not previous to that.

Q.—Not previous to that? A.—No, sir.

Q.—Between, say, 1917 and 1927, have you sold any reinforced concrete pipe in Queens from 24 inches up? A.—No, sir.

Q.—Did you ever sell in Queens any small concrete pipe from 24 inches down? A.—About \$50,000.

Q.—And what is the term in the trade that applies to pipe from 24 inches down? A.—Machine made concrete pipe; plain machine made concrete pipe.

30 Q.—Before that time, do you know of your own knowledge whether the specifications in Queens permitted the use of these small sized machine made concrete pipe? A.—Not to my knowledge.

MR. O'DONNELL: Objected to as not the best evidence.

Q.—Do you know Maurice E. Connolly? A.—I have seen him in his office on two or three occasions.

40 Q.—How long have you known him? A.—I have not seen the man out of his office, and that was three times, possibly three or four times, I saw him about putting concrete pipe in the specifications.

Q.—At the time you spoke to him about that, was it in the specifications? A.—No, it was not.

MR. O'DONNELL: Objected to as not being the best evidence.

Q.—Did you ever talk to anybody else besides Maurice E. Connolly with reference to small machine made pipe for use in

*Harry S. Hart for plaintiff (direct examination).*

Queens Borough? A.—To different engineers in the Engineer's office.

Q.—That is what I mean, any official in the Borough of Queens? A.—In their office I spoke to different engineers, but I can't tell you the names of them now.

MR. HACKETT: Several engineers?

10 THE WITNESS: Yes, different ones. I have forgotten their names. They were working in the Department, in the offices downstairs.

Q.—Did you ever talk to any of the Queens Borough engineers with reference to using your machine made small size pipe, getting it into Queens? A.—Yes, sir, I did.

Q.—Who was that? A.—I think his name was Moore.

20 Q.—Did you know what his position was? A.—No. I knew he was chief engineer, and we had the samples over there in his office, of pipe.

Q.—Was that in the Borough of Queens? A.—That was in the Borough of Queens, yes, sir.

Q.—Did you ever talk to Mr. Moore about the subject? A.—Yes, sir. But I was referred to the Borough President, if I remember rightly.

Q.—Can you make it as approximate as possible, the date of your interview with Mr. Moore on this subject? A.—I couldn't say.

30 Q.—The year? A.—It was I would say a year, possibly, before it went in the specifications, whatever year that was.

Q.—Was Mr. Moore alone at the time when you met him? A.—No. There was his chief in there. The man at the other desk, whatever his name was.

Q.—After you talked to Mr. Moore, did you see Mr. Connolly again? A.—Yes, I did.

Q.—At that time, had you ever met Mr. Connolly before? A.—Never. Well, I was introduced to Mr. Connolly.

40 Q.—By whom? A.—I think it was Mr. Philip Donohue, the treasurer of Tammany Hall.

MR. HACKETT: Are you sure?

THE WITNESS: I am very positive.

MR. HACKETT: Very positive?

THE WITNESS: Yes.

*Harry S. Hart for plaintiff (direct examination).*

Q.—Where did you see Mr. Connolly on that occasion?

A.—At his office at the Borough Hall.

Q.—Then did you have a conversation with Mr. Connolly?

A.—As regarding concrete pipe, yes, sir.

10 Q.—Tell us what happened then on that occasion? A.—Oh, it's too far back. I couldn't tell you exactly the words. I showed him specifications, as I remember it, of up-State and Manhattan, and the Borough of Richmond where the plain concrete pipe was accepted in competition with clay, and I was simply trying to get them to put it in the Queens specifications the same as it was in Richmond and Manhattan. And it was finally told me that if I would send a load of pipe over to their laboratory and the tests showed all right, that it would entered in the specifications. That pipe was sent from the manufacturers to the laboratory and tested.

I was not there and never saw the tests.

20 MR. COOK: And was it put in the specifications?

THE WITNESS: It was put in the specifications after that some time.

Q.—When you had that interview with Mr. Connolly, was he alone? A.—Never alone.

Q.—Who was there with him at that first interview? A.—A secretary he had was always in the office.

30 Q.—Anybody else that you recollect? A.—Yes, there was another engineer, the man that had trouble with him, the man that is on the Island now,—Seely.

Q.—Was it at that interview that you were asked to send a sample? A.—I think so, yes.

Q.—Did you send the sample? A.—My factory did.

Q.—Your factory did? A.—Yes, sir.

Q.—After that, did you see Mr. Connolly again? A.—I don't think I ever saw Mr. Connolly but the three times in all my going over there.

40 Q.—I know, but I gathered from your evidence that you were telling us what happened the first time. Is that right or not? A.—I wouldn't like to say it was my first time. It was one of the three times. It is so far back that it has gotten out of my mind.

MR. HACKETT: You don't remember very well?

THE WITNESS: No, I don't, just the incident of it.

*Harry S. Hart for plaintiff (direct examination).*

Q.—Do you know anything about the tests that were made?

A.—No.

Q.—Did you receive any copy of the tests? A.—I think we did, I think it is in the evidence, but I am not positive of that either.

Q.—After you had the tests, did you see Mr. Connolly again?

10

MR. HACKETT: I would suggest that my friend cease propounding leading and suggestive questions.

MR. GOUDRAULT: I am just asking him if he saw Mr. Connolly.

MR. HACKETT: I know. That is just what I am objecting to.

MR. GOUDRAULT: I want my question to stay there.

20

THE COMMISSIONER: You may answer, subject to counsel's objection.

THE WITNESS: What was the question?

(Question read by clerk.)

THE WITNESS (answering): I wouldn't like to answer that positive. I thank so, but I am not positive. It is so far back.

30

Q.—Well, now, look at this letter and state if that refreshes your recollection?

(Witness examines letter.)

A.—Now, what was the question, please?

(Question read by clerk.)

Q. (continuing).—As to dates. A.—I am not positive. I think I have never seen him after this letter.

40

BY MR. HACKETT:

Q.—The letter in question is one written by Perrine? A.—Perrine, yes, sir.

Q.—The chief engineer, to your company? A.—Yes, sir.

Q.—Enclosing a specification of your pipe which would be embodied in the Borough specification? A.—Well, it isn't of our pipe.

Q.—Of a pipe. A.—Any pipe; any plain pipe.

*Harry S. Hart for plaintiff (direct examination).*

Q.—Which included your manufacture? A.—A. S. T. M. specification, yes.

MR. GOUDRAULT: All right, Mr. Hart.

BY MR. GOUDRAULT:

10 Q.—Will you now tell us if it was before receiving this letter or after that you saw Mr. Connolly? A.—Before.

Q.—Did you see him after the letter, did you see Mr. Connolly after this letter? A.—I don't remember. I don't remember seeing him. To my mind, we considered that was finished. It was in the specification, but it was a long time after before we heard of it, and the first we heard of it it was in the City Record. I think that was testified to the other day. I have forgotten that now.

20 Q.—You told us that your plans and specifications or your pipe finally went in the specifications of the Borough of Queens, didn't they? A.—All the pipe of the A. S. T. M. specification pipe.

Q.—A. S. T. M.? A.—That means that it meets the American Society for Testing Materials specification, the same as all pipe.

Q.—And that was the pipe you were selling? A.—Yes.

Q.—Well, do you remember how long after that letter from Perrine to yourself, that your pipe went in the specification of the Borough of Queens? A.—Do you want me to guess? About a year, I would say. It was a good many months.

30 BY MR. HACKETT:

Q.—I suppose it had to have the approval of the City authorities as well as the Borough authorities? A.—I understand it had to go through the New York borough hall.

Q.—Yes. All the specifications had to? A.—Yes.

BY MR. GOUDRAULT:

40 Q.—Now, you told us that you had three or four visits at the Borough President's office, and you don't recollect the dates? A.—No, I do not.

Q.—I understand that. Well, now, did you state that you did go to the Borough President's office after receiving the tests? A.—I believe I did.

Q.—Who was there? A.—There were always two or three people in his office. I never saw him alone.

Q.—I am not speaking of always alone. Just state on that visit, when you state you went to the Borough President's office

*Harry S. Hart for plaintiff (direct examination).*

after receiving the tests, on that special occasion? A.—I couldn't positively say.

Q.—But there was somebody there? A.—Yes, sir, there was somebody there.

Q.—Mr. Connolly was there? A.—Mr. Connolly was there, and somebody else. I couldn't say now who it was.

Q.—You don't remember? A.—No, I don't.

10 Q.—Secretary, or what? A.—Well, I don't know who they were. It might have been Seely. I am not positive.

BY MR. HACKETT:

Q.—It was an engineering problem you went to see him on? A.—It was an engineering problem, and he was one of the engineers. I believe I met Mr. Perrine once, and I met Mr. Seely twice.

BY MR. GOUDRAULT:

20 Q.—Where? A.—At the Borough President's office, when they were called for to see the specifications.

MR. HACKETT: It seemed a proper thing for the engineers to be there?

THE WITNESS: Well, I imagine so, at the time. It has always been so in many other cities where we got the pipe in.

BY MR. GOUDRAULT:

30 Q.—Could you state the time when this interview took place, that you did see Connolly after receiving the tests? A.—No, I could not. It is so far back it has gone out of my mind now. I couldn't answer, I suppose, from my testimony. It was in my mind then. It is not now.

Q.—Could you approximate how long it was after you got your test report before you went back to see Mr. Connolly again? A.—No, I couldn't.

Q.—No approximate time? A.—Unless I could see that (witness refers to previous testimony). I could not possibly.

40 Q.—Could you make an effort? Was it a year, or a month? A.—I might by going through my office. I guess you have got everything pertaining to that here. I couldn't tell you unless I could see that book. (indicating)

Q.—Anyway, when you went there you said you had received the tests. Where were the tests? A.—They were in the

*Harry S. Hart for plaintiff (direct examination).*

laboratory. I didn't see them. The pipe was sent down there by the manufacturer.

Q.—At any time when you went to the Borough President's office, was the report on tests there?

MR. HACKETT: I object to the question as leading and suggestive.

10 MR. GOUDRAULT: We will take our time then.

MR. HACKETT: You are.

MR. GOUDRAULT: Well, we will take some more.

20 MR. COOK: I object to this evidence as entirely irrelevant and as having no bearing whatever on the issues in this case. I assume that Mr. Hart was doing business as many others were but what possible interest this evidence has to our case, I cannot understand. I would ask my friend to hasten on to the meat of the evidence.

MR. GOUDRAULT: I will do that.

MR. COOK: He has had this gentleman in the witness chair now for about half an hour.

THE COMMISSIONER: Will you proceed, Mr. Goudrault.

MR. COOK: Please hurry, Mr. Goudrault.

30 MR. GOUDRAULT: I do wish to hurry, but as you see for yourself, these things happened sometime ago, and the witness does not remember. He tries to recollect, and that takes time.

BY MR. GOUDRAULT:

Q.—Well, now, we will go back to that visit where you did go to see Connolly again, and you saw him. Is that right, Mr. Hart? A.—Oh, I saw him three or four times.

40 Q.—I know that. You have said that already. Read him his answer.

(Answer read by clerk.)

MR. GOUDRAULT: If I ask a question, you will say it is suggestive. You can put the question, and I will not object. You know what I want to know.

*Harry S. Hart for plaintiff (direct examination).*

MR. HACKETT: I would rather that you put it, Mr. Goudrault, and put it legally, please.

MR. GOUDRAULT: All right.

BY MR. GOUDRAULT:

10 Q.—I understand tests were made? A.—Yes, sir.  
Q.—Were reports sent of the tests? A.—I never saw them.  
Q.—Nowhere? A.—No, sir. To my knowledge I have never seen them.

Q.—Well, now, were your pipe finally put in the plans and specifications? A.—Plain concrete pipe was put in the specifications, yes, sir.

Q.—The kind you were selling? A.—Yes, sir.

Q.—Do you know when they finally got in? A.—No, I do not.

20 Q.—Mr. Hart, will you now look at this letter dated January 13, 1926, which I offer in evidence as Plaintiff's Exhibit C-127, and will you kindly tell us if you received same? A.—Yes.

MR. HACKETT: The letter has attached to it a memorandum of specifications.

MR. GOUDRAULT: Yes.

(The said letter was thereupon received in evidence and marked Plaintiff's Exhibit C-127, of this date.)

30 Q.—Now, will you look at the specifications that are attached to this letter? A.—Yes, sir.

Q.—And state what they are, in a word? A.—Specifications for concrete pipe.

Q.—What kind of concrete pipe? A.—Plain concrete pipe.

Q.—The ones that you were selling? A.—Yes, sir.

Q.—Did you know John M. Phillips in his lifetime? A.—I met him two or three times. At the racetrack.

40 Q.—Can you recall when you first met him? A.—Not exactly. It was at a racetrack. But in the testimony on the stand I was mistaken. I said Jamaica Racetrack, but it was another racetrack.

Q.—Who introduced you to him? A.—Mr. Thomas Cassidy.

Q.—Had you known Mr. Cassidy before that? A.—Oh, I had known him some 30 years.

Q.—Would you tell us in substance what conversation, if any, you had with Mr. Phillips on that occasion?



*Harry S. Hart for plaintiff (direct examination).*

MR. COOK: Defendants object to all evidence with regard to conversations with the late Mr. Phillips.

MR. HACKETT: So do I.

MR. O'DONNELL: And conversations of Mr. Cassidy are not binding on the defendant.

10 A.—I could not remember.

Q.—I am just asking you the substance of it, Mr. Hart?

A.—Miss Ryan could remember. Miss Ryan, she was there. The only time I ever spoke to him about pipe was at the office, after my meeting at the racetrack. At the racetrack there was nothing said about pipe. That was the first time I ever saw the man.

Q.—When did you speak to Phillips? A.—Well, I met him at the track first. It was after that, when he came to my office.

Q.—Yes. Tell us what happened?

20 MR. HACKETT: I object to testimony of conversations with Phillips.

MR. COOK: I object also.

A.—It was something about plain pipe. I would be guessing at it.

Q.—Don't be guessing. Just tell us. A.—I don't remember it.

Q.—Now, you said that Miss Ryan could remember it?

30 A.—Yes.

Q.—She could remember what? A.—She could remember what we talked about.

Q.—How many times did you meet Mr. Phillips? A.—Not over three or four at the most.

Q.—Did you ever speak to Mr. Phillips about pipe? A.—Oh, the conversation was about plain pipe, possibly, but I have forgotten just what it was. It was nothing that amounted to anything.

40 Q.—I mean of your own pipe, did you ever speak to Mr. Phillips about it? A.—I don't know what you mean by our own pipe.

Q.—That you were selling? A.—The machine made pipe, plain pipe?

Q.—Yes. A.—Well, I said I had been trying to get it in the specifications, and he said he understood it was in, something like that. And that was all that was said about it.

Q.—And was it in the specifications?

*Harry S. Hart for plaintiff (direct examination).*

MR. O'DONNELL: Objected to as not the best evidence of the specifications.

A.—I think it was, but I am not positive. I think so. The first we heard of it was in the City Record. There was some letting there. That was the way we heard of it.

10 BY MR. HACKETT:

Q.—The first you heard of the introduction of your pipe in the Borough of Queens specifications was the advertisement—  
A.—In the City Record.

MR. HACKETT: Yes.

BY MR. GOUDRAULT:

20 Q.—And they came in the City Record after you endeavored to get them in the specifications? A.—But understand I was not the only one trying to promote plain pipe in the specifications. The Portland Cement Association had their representatives over there, and also the Pipe Association of Chicago, Mr. Lovering, he does work here in Kings County.

Q.—But we are only speaking of your own pipe, the one you were interested in selling. Don't forget that. We are only interested in the one that you spoke of and described at first.  
A.—Yes, sir.

BY MR. HACKETT:

30 Q.—How long had the specification been in when Phillips told you that it was in, do you know? That was on the occasion of your first talk with Phillips on pipe? A.—I would say it was within a month. I have forgotten exactly, it is so far back.

Q.—But the first time you talked to him, he told you that he was under the impression it was already in. And it was about a month later that you saw it, is that it? A.—I don't think the first time I met him, at the racetrack, there was a word said about it. I just met him in a casual way, and we were talking about  
40 horses.

Q.—And it was about a month later he dropped in your office, and that was the time he told you it was in the specification? A.—Yes. And then a few weeks later Miss Ryan came in and said "Look in the City Record. It is in the City Record." And that was the first we knew about it. We had practically given it up.

*Harry S. Hart for plaintiff (direct examination).*

BY MR. GOUDRAULT:

Q.—And you were pleased? A.—We were pleased, but there were too many competitors around.

BY MR. HACKETT:

10 Q.—Everybody was trying to get it? A.—Everybody was trying to get it.

Q.—Your business is pretty competitive anyway, isn't it? A.—Oh God, yes, worse and worse. We have a headache these days. This last year has been terrible.

BY MR. GOUDRAULT:

20 Q.—Will you now look at Plaintiff's Exhibit C-99, which is a contract between the City of New York and Muccini & Decker for the construction of a sewer on Ditmars Avenue, and state if the specifications appearing at page 61, on annexed sheet on page 61, are the specifications for the pipe that you were selling. (Witness examines exhibit.) A.—I am afraid I would have to be an engineer. That is the proposition, I couldn't answer that. Hasn't this got the fire pipe here? That is not our pipe.

Q.—Cement concrete pipe, that forms part of the specifications. That is the kind of pipe that you sell and know of. Will you read that? (Witness reads.) A.—Yes, but it does not conform to that, because that does not say about having to be built on the job.

30 Q.—Anyway, is that for the use of your concrete pipe, the pipe that you were selling, these specifications? A.—Yes, sir.

Q.—Do you remember receiving,—you did state that you received this letter from Mr. Perrine? A.—Yes.

Q.—Together with annexed document? A.—Yes, sir.

Q.—Did you receive it the way it is now? Will you look at it very carefully? A.—Yes, sir.

Q.—And that is the way you received it? A.—Yes, sir.

Q.—When you received that letter, were the words "if required",— A.—Just as you have got it in your hand.

40 Q.—Well, will you look at the contract between the City of New York, and Joseph H. Johnson for the contraction of sewer on Polk Avenue?

MR. COOK: Is this a new one?

MR. GOUDRAULT: Yes. We will have it produced by Mr. Tully. It is a new one, Mr. Cook.

*Harry S. Hart for plaintiff (direct examination).*

Q.—And will you there read on annexed sheet of paper which is glued on page 61, and state if the specification as regards the cement concrete pipe sewer corresponds to the plans and specifications that were sent to you by Mr. Perrine together with this letter of January 13, 1926? A.—That's the part I don't know. Is it the same thing?

10 Q.—I want you to say. Mr. Cook does not want me to give any evidence. A.—As far as I can see, it is the same thing. Not being an engineer, there may be some technicality there that I don't understand.

Q.—You note here the words "if required" are also added in pen? A.—Yes.

Q.—Your answer to that is that you see the words there added in pen writing, Mr. Hart, do you? A.—It looks like it to me. But I certainly didn't write it.

20 Q.—I know. A.—We would never see one of these specifications. The contractor receives them. We don't see those. I never saw one in my life until I saw it at the investigation.

Q.—Did you have any other conversation with Mr. Phillips after the time you say your specifications had gone in? A.—Not that I remember.

Q.—Did you have any talk with Mr. Phillips on June 27? A.—Not that I remember.

Q.—Did vitrified pipe have to be made on the job, Mr. Hart? A.—It could not.

30 Q.—It could not? A.—No. There is no clay this side of Ohio to make vitrified pipe.

Q.—In this, now be very definite, I will just put the question; "You know the plans and specifications for the merchandise you sell quite well. Read here "Cement concrete pipe sewer", please read me the first line of that? A.—"Cement concrete pipe shall be made close enough to the site of the work in which it is being installed to permit a ready and easy inspection." That is in Exhibit C-99. Now, look at this contract, this Polk Avenue contract, and state,— A.—It states here "If required".

40 Q.—Now, do you know how that came? A.—No, sir. We never saw or heard of it, unless the factory did. We didn't.

Q.—Could your company build cement pipe, the one that you introduced in Queens and which appears in the specification here, could it be made close enough to the site of the work? A.—If you built a \$200,000 plant there, you could.

Q.—Otherwise you could not? A.—No.

Q.—So the specifications as shown here are changed? A.—It has been changed.

*Harry S. Hart for plaintiff (direct examination).*

Q.—I see. Which is the more satisfactory specification from our viewpoint?

MR. O'DONNELL: Objected to as entirely irrelevant.

Q.—The ones here or,— A.—Not having a plant in Queens, naturally it would have to be built outside of Queens.

10 Q.—Answer my question, will you, Mr. Hart?

MR. O'DONNELL: He did.

Q.—Here is a specification, your own specification, and plans and specifications for the sale of your pipe that is in the contract, A.—Yes.

Q.—Here is another one. Quite clear. A.—Yes.

Q.—But there is a slight change, the words "If required". Which plans and specifications are the most advantageous to you?

20 (Witness indicates.)

Q.—Which one? A.—"If required",—if required, we could not sell it.

MR. GOUDRAULT: No more questions. I have finished.

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30 (Whereupon at 1 o'clock, p. m., an adjournment was taken to 2 o'clock, p. m.)

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*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 please look at this and state what it is? A.—Contract No. 83771 between Petracca and Peterson for sewer in 130th Street, Queens. Date of award April 30, 1927. Date of contract May 16, 1927. This is an original contract.

MR. GOUDRAULT: I offer in evidence this contract as Plaintiff's Exhibit C-128.

20

MR. O'DONNELL: I object to that as incompetent and irrelevant and as not being the best evidence of the signatures of the parties thereto.

MR. HACKETT: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-128, of this date).

30

Q.—Mr. Tully, will you now describe this contract which I now hand you? A.—This is contract No. 84415 between James Gallo and The City of New York for a sewer in 37th Street, known as Polk Avenue, Borough of Queens, date of award June 20, 1927. Date of contract July 12, 1927. This is the original contract.

MR. GOUDRAULT: I offer in evidence this contract as Plaintiff's Exhibit C-129.

MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

40

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-129, of this date).

Q.—Mr. Tully, will you now describe this contract which I now hand you? A.—This is contract No. 84844 between Joseph H. Johnson and The City of New York for a sewer in Second Street from Polk Avenue to Broadway, etc. Date of award 7-19-27. Date of contract 8-3-27. This is an original contract.

*Eugene J. Tully for plaintiff recalled (direct examination).*

MR. GOUDRAULT: I offer in evidence this contract as Plaintiff's Exhibit C-130.

MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

10 (The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-130 of this date).

Q.—Mr. Tully, will you now describe this contract which I now hand you? A.—This is contract No. 72443 between Kennedy & Smith Incorporated and the City of New York for a sewer in Saull Street, etc. Awarded November 3, 1924. Contract dated November 15, 1924. This is an original contract.

MR. GOUDRAULT: I offer in evidence this contract as Plaintiff's Exhibit C-131.

20 MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-131 of this date.)

30 Q.—Mr. Tully, will you now describe this contract which I now hand you? A.—This is contract No. 73676 between Kennedy & Smith Incorporated and the City of New York for a sewer in Laburnum Avenue. Date of award January 26, 1925. Date of contract February 4, 1925. This is an original contract.

MR. GOUDRAULT: I offer in evidence this contract as Plaintiff's Exhibit C-132.

MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-132 of this date).

40 Q.—Mr. Tully will you now describe this contract which I now hand you? A.—This is contract No. 77385 between Kennedy & Smith Incorporated and the City of New York for the construction of a sewer on Woodside Avenue. Date of award November 13, 1925. Date of contract December 5, 1925. This is an original contract.

*Eugene J. Tully for plaintiff recalled (direct examination).*

MR. GOUDRAULT: I offer in evidence this contract as Plaintiff's Exhibit C-133.

MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

(The said contract was thereupon received in evidence and  
10 marked Plaintiff's Exhibit C-133 of this date).

Q.—Mr. Tully, will you now describe this contract which I now hand you? A.—This is contract No. 79216 between Kennedy and Smith Incorporated and the City of New York for a sewer in Hazen Street. Date of award April 26, 1926. Date of contract May 7, 1926. This is an original contract.

MR. GOUDRAULT: I offer in evidence this contract as Plaintiff's Exhibit C-134.

20 MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-134 of this date).

Q.—Mr. Tully, will you now describe this contract which I now hand you? A.—This is contract No. 79218 between Kennedy & Smith Incorporated and The City of New York for a sewer in Polk Avenue. Date of award April 27, 1926. Date of contract  
30 May 17, 1926. This is an original contract.

MR. GOUDRAULT: I offer in evidence this contract as Plaintiff's Exhibit C-135.

MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-135 of this date).

40 Q.—Mr. Tully, will you now describe this contract which I now hand you? A.—This is contract No. 83751 between Kennedy & Smith Incorporated and The City of New York for the construction of a sewer in 40th Road. Date of award 4/30/27. Date of contract 5/16/27. This is an original contract.

MR. GOUDRAULT: I offer in evidence this contract as Plaintiff's Exhibit C-136.



*Eugene J. Tully for plaintiff recalled (direct examination).*

MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-136 of this date).

10 Q.—Mr. Tully, will you now describe this contract which I now hand you? A.—This is contract No. 75939 between The Oxford Engineering Corporation and The City of New York for the construction of a sewer in 150th Street, etc. Date of award July 20, 1925. Date of contract July 18, 1925. This is an original contract.

MR. GOUDRAULT: I offer in evidence this contract as Plaintiff's Exhibit C-137.

MR. O'DONNELL: Same objection.

20 MR. HACKETT: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-137 of this date).

Q.—Mr. Tully, will you now describe this contract which I now hand you? A.—This is contract No. 81799 between Welsh Brothers Contracting Company and The City of New York for the construction of a sewer in Monroe Street, etc. Date of contract January 6, 1927. This is an original contract.

30 MR. GOUDRAULT: I offer in evidence this contract as Plaintiff's Exhibit C-138.

MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-138 of this date).

40 Q.—Mr. Tully, will you now describe this contract which I now hand you? A.—This is contract No. 80450 between the Welsh Brothers Contracting Company and The City of New York for the construction of a sewer in 20th Avenue, etc. Date of award 7-26-26. Date of contract 8-17-26. This is an original contract.

MR. GOUDRAULT: I offer in evidence this contract as Plaintiff's Exhibit C-139.

*Eugene J. Tully for plaintiff recalled (direct examination).*

MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-139 of this date).

10 Q.—Mr. Tully, will you now describe this contract which I now hand you? A.—This is contract No. 78018 between Kennedy & Smith Incorporated and The City of New York for the construction of a sewer in North Conduit Avenue, etc. Date of award January 7, 1926. Date of contract January 19, 1926. This is an original contract.

MR. GOUDRAULT: I offer in evidence this contract as Plaintiff's Exhibit C-140.

MR. O'DONNELL: Same objection.

20 MR. HACKETT: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-140, of this date).

30 Q.—Mr. Tully, will you now describe this contract which I now hand you? A.—This is contract No. 81790 between George A. Everett and The City of New York for a contract in 88th Street to build a sewer etc. Date of award December 21, 1926. Date of contract December 31, 1926. This is an original contract.

MR. GOUDRAULT: I offer in evidence this contract as Plaintiff's Exhibit C-141.

MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-141 of this date).

40 Q.—Mr. Tully, will you now describe this contract which I now hand you? A.—This is contract No. 84893 between George A. Everett and The City of New York for the construction of a sewer on 45th Avenue etc. Date of award July 21, 1927. Date of contract August 11, 1927. This is an original contract.

MR. GOUDRAULT: I offer in evidence this contract as Plaintiff's Exhibit C-142.

*Eugene J. Tully for plaintiff recalled (direct examination).*

MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-142 of this date).

10 Q.—Mr. Tully, will you now describe this contract which I now hand you? A.—This is contract No. 75653 between Welsh Brothers Contracting Company and The City of New York for a sewer in 20th Avenue, etc. Date of award June 25, 1925. Date of contract July 22, 1925. This is an original contract.

MR. GOUDRAULT: I offer in evidence this contract as Plaintiff's Exhibit C-143.

MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

20

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-143 of this date).

MR. HACKETT: Mr. Goudreault, would it not be possible to have the different pages constituting a document securely fastened together to obviate the possibility of embarrassment.

MR. GOUDRAULT: Yes. And I have another suggestion. I think it would be well to put each one of the City contracts in a box, a cardboard box or something like that.

30

MR. COOK: As far as the defendants are concerned we assume no responsibility for the exhibits at all—you understand that.

MR. GOUDRAULT: We do, and the Commissioner does.

40 Q.—Mr. Tully, will you now describe this paper which I now hand you? A.—This is an agreement made on the fifth day of June 1925, between Welsh Brothers Contracting Company and the Sanitation Corporation. This agreement is signed by Welsh Brothers Contracting Company.

MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

(The said agreement was thereupon received in evidence and marked Plaintiff's Exhibit C-144 of this date).

*Harry S. Hart for plaintiff recalled (direct examination).*

Q.—Mr. Tully, will you now describe this paper which I now hand you? A.—This is an assignment, No. 62946 between the Welsh Brothers Contracting Corporation and the Awixa Corporation of Islip, Long Island. The date is the 6th day of July 1925. It is signed by the Welsh Brothers Contracting Company Inc.

10 MR. GOUDRAULT: I offer in evidence this assignment as Plaintiff's Exhibit C-145.

MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

(The said assignment was thereupon received in evidence and marked Plaintiff's Exhibit C-145 of this date).

MR. HACKETT: I am ready to cross examine Mr. Hart  
20 now.

MR. GOUDRAULT: I should like to ask him just one more question with the permission of the opposing counsel.

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DEPOSITION OF HARRY S. HART  
(recalled).

30 HARRY S. HART was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposes and saith as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT:  
(Cont.):

Q.—Mr. Hart, this morning you said that you didn't recollect the dates of various interviews that you had with different people and also you did not recollect the date of the inclusion of plans and specifications for the manufacture of your pipe in  
40 the specification for the Borough of Queens? A.—Yes, sir.

Q.—Will you look at Plaintiff's Exhibit C-138 which is a contract for the construction of a sewer in Queen's County dated May 16, 1927, in which there appears on page 31 that your pipe was not being used? A.—Was not being used?

Q.—Had not been included in the specifications. A.—That is vitrified pipe.

*Harry S. Hart for plaintiff recalled (cross-examination).*

Q.—The very next contract is dated May 28, 1927, for the construction of a sewer on Rockaway Boulevard, awarded June 10, 1927 — Plaintiff's Exhibit C-98. Will you state if plans and specification for the use of your pipe are included? A.—Yes, sir.

Q.—Does that refresh your recollection as to the dates? A.—Yes, sir.

10 MR. O'DONNELL: The defendants object to the statement of fact made by the Plaintiff's Counsel, as the documents speak for themselves.

Q.—Do I understand that after the date that I have just given you on the last contract, which is June 10, 1927, that the pipes were included in the specifications?

MR. O'DONNELL: Objected to as not being the best evidence.

20 A.—Yes, sir.

Q.—Then they were included for some time? A.—I do not know that they have ever been taken out, to my knowledge.

Q.—You have been selling that pipe according to those plans and specifications? A.—Yes, sir.

MR. GOUDRAULT: That is all.

CROSS EXAMINATION BY MR. HACKETT:

30 Q.—Your efforts as a salesman didn't stop with the inclusion of your wares in the specification of the Queens Bureau of Sewers, did they? A.—May I ask you to repeat that, I didn't quite understand it.

Q.—You have been advancing the sale of your pipe continuously and are doing so yet? A.—Yes, sir.

Q.—And are doing so yet. A.—Yes, sir.

Q.—And have succeeded in having it written into specifications of other cities and towns since 1927? A.—Yes, all over the State.

40 Q.—So that it is fair to say that this machine—made concrete pipes is more widely used today than it was some years ago? A.—Absolutely, yes.

Q.—It is a relatively recent type of pipe, isn't it? A.—I have been selling it for 10 years.

Q.—Yes, but to your knowledge there was a time when the old clay pipe was used almost exclusively where pipe was used? A.—Absolutely.

*Harry S. Hart for plaintiff recalled (cross-examination).*

Q.—And this cement product of yours came in as a rival and has been gradually pushing the clay pipe out of the market?  
A.—Right.

Q.—You as a salesman have been gradually gaining territory? A.—Yes, sir.

Q.—And you have got the specification for your pipe into specifications of different cities and municipalities? A.—Yes, sir.

Q.—And the Borough of Queens was not the last City in which you had your specifications accepted? A.—No.

Q.—It is also to your knowledge that the pipe sewers have been gradually ousting the old, so-called, monolithic type, haven't they? A.—Yes.

Q.—They are considered an improvement and the vendors of pipe have succeeded in introducing their wares where formerly the old monolithic type prevailed? A.—Yes, that is true.

Q.—And to do that took time, and prejudice had to be overcome and engineers had to be enlightened? A.—True.

Q.—That all took time? A.—Yes, sir.

Q.—That was the reason for your pilgrimages to the Borough of Queens and your interview with the President of the Borough of Queens and his engineers? A.—Certainly.

Q.—When you got your pipe into the Queens specification you began to sell your wares? A.—Yes.

Q.—And have been selling them ever since? A.—Within the year we have, yes sir.

Q.—Your interests are not restricted to the selling of pipe—you go to the races sometimes? A.—I have not in the last year—business was too poor. Previous to that I have been there.

Q.—When you could follow your natural inclination you did go occasionally? A.—Yes, I did.

Q.—And at the race track you knew a turf man by the name of Thomas Cassidy? A.—Yes, sir.

Q.—Who is Cassidy? A.—All I know is that he is a Long Island fellow but he lived with me in the Hotel Astor about 18 years ago.

Q.—He is a very keen turf man, is he not? A.—The keenest in the United States, I guess.

Q.—The keenest in this part of the world? A.—Yes.

Q.—It was as the races that you met Phillips? A.—Yes, sir.

*Harry S. Hart for plaintiff recalled (cross-examination).*

Q.—And you had some conversation with him and came to the conclusion undoubtedly that he was keen on horses too? A.—I will say so.

Q.—As a matter of fact you know that he did play the ponies or bet on them in rather a large way? A.—I will say so.

10 Q.—One of the biggest betters on horses within the circle of your acquaintance at that time, was he not? A.—I only know of one day and I almost had heart failure that time.

Q.—Tell us what you mean by that, Mr. Hart?

MR. GOUDRAULT: Mr. Commissioner, I wish to put a formal objection to all of this line of examination as it does not—

MR. HACKETT: Of course it does.

20 MR. GOUDRAULT: Well, far fetched perhaps. I understood the witness to say he met Phillips at the races. I wish to put in a formal objection.

Q.—What gave you heart failure? A.—He bet \$155,000 on one horse, but that was only hearsay.

BY MR. GOUDRAULT:

Q.—But that was not in your presence? A.—Yes, sir, that is right.

30 BY MR. HACKETT:

Q.—That was the reputation he had? A.—Yes.

Q.—You also knew that unlike some of us he didn't always bet in vain. That is to say he did not always lose. A.—I don't know much about that.

BY MR. GOUDRAULT:

40 Q.—As regards the racing disbursements of Mr. Phillips that is all hearsay? A.—I never saw him make a bet of \$5.00 even. That is all hearsay.

BY MR. HACKETT:

Q.—This specification in Queens, used by the Borough of Queens, did not give your Company the core joint? A.—The core joint people didn't make plain pipe—they only made the big reinforced pipe.

*Harry S. Hart for plaintiff recalled (cross-examination).*

Q.—But this specification didn't favor your Company in particular, did it? A.—Certainly not.

Q.—It specified a new type of pipe that was common on the market— A.—Had been on the market for 10 years.

Q.—Had been on the market for 10 years? A.—Yes, sir.

Q.—But it had not won its way into all the municipalities, as you have told us? A.—No, sir.

10 Q.—In fact there were other boroughs of the City of New York in which it had not at that time been accepted? A.—Only one, I think.

Q.—It was to your knowledge that another company, the Lock Joint Company had erected a plant in Queens? A.—It was not to my knowledge.

Q.—It was not? A.—No, sir.

Q.—Any company could make this pipe that you were offering for sale? A.—Dozens of them were making it.

Q.—Dozens of them were making it? A.—Yes, sir.

20 Q.—And today I suppose scores of them are making it? A.—Yes, sir.

Q.—In your relations as a pipe seller I believe you have told us that you know that the specifications for these various pipes have to have the approval of the engineering departments both of the City of New York and of the Borough in which the work is to be done? A.—Yes, sir.

Q.—That is your knowledge? A.—To my knowledge, it is, yes sir.

30 MR. HACKETT: That is all.

MR. COOK: No cross-examination.

BY MR. GOUDRAULT:

Q.—Mr. Hart, you stated a few minutes ago that the specifications call for the cement concrete pipe to be put in—

MR. HACKETT: There was no question in cross-examination on this point.

40 MR. GOUDRAULT: May I put this question in?

Q.—As a matter of fact, did you intall a plant in the Borough of Queens for the sale of cement pipe? A.—Never seriously.

MR. O'DONNELL: I object.



*Covert F. Smith for plaintiff (direct examination).*

Q.—So the pipe continued to be made where it was before.  
A.—Unless you had a half a million dollars worth of business you couldn't afford to build a plant.

Q.—It was never built and the pipe continued to be made elsewhere? A.—Yes, sir.

MR. GOUDRAULT: That is all.

10

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DEPOSITION OF COVERT F. SMITH

COVERT F. SMITH, age 40; residence, 11 Beverley Road, Great Neck Long Island, Nassau County; occupation, general 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:

20

DIRECT EXAMINATION BY MR. GOUDRAULT:

MR. COOK: On behalf of the defendants, I agree that Mr. Covert F. Smith be examined in place of his brother, Harry L. Smith, deceased. I have no objection to Mr. Smith's being examined now.

THE COMMISSIONER: Mr. Hackett, do you have any objection?

30

MR. HACKETT: I have no objection.

Q.—Do you know a firm by the name of Kennedy & Smith, Inc. A.—I do.

Q.—Was that the company with which your brother Harry L. Smith was connected? A.—Yes.

Q.—Was he one of the officials? A.—Yes.

Q.—At the time? A.—Yes.

Q.—Are you one of the officers now? A.—Yes.

Q.—What is your position? A.—I am the president.

40

Q.—Were you an official of the company, or connected with it in 1924? A.—Yes.

Q.—In 1925? A.—Yes.

Q.—In 1926? A.—Yes.

Q.—In 1927? A.—Yes.

Q.—I have now here seven contracts bearing numbers as having been produced in evidence as Plaintiff's Exhibits C-131, C-132, C-133, C-134, C-135, C-136, and C-140, which are contracts

*Covert F. Smith for plaintiff (direct examination).*

which the City of New York awarded to Kennedy & Smith, Inc., for the construction of sewers.

MR. COOK: I object to any evidence in regard to these contracts as irrelevant.

MR. HACKETT: I avail myself of the same objection.

10 Q.—State if your company did the work? A.—Yes.

Q.—Was your company paid by the City of New York for the execution of these seven contracts? A.—Yes.

Q.—Where did you get your pipe, because I understand that this is a sanitary sewer? A.—From John M. Phillips.

MR. O'DONNELL: Objected to as irrelevant.

20 Q.—Do you know the quantities, sizes and price of the pipe that you bought from and paid John M. Phillips for the construction of the sewers on these seven contracts? A.—I have a record.

Q.—Have you that record with you? A.—Yes.

Q.—Will you show it to us, please. A.—Yes.

Q.—Do I understand that this is a complete record of the seven of them? A.—There are more than seven on the sheet, but those seven are there.

30 MR. O'DONNELL: I object to that as not being the best evidence of the amount purchased and the prices paid for the said pipe.

Q.—The seven are all included? A.—Yes.

Q.—Are these figures corresponding to some entries in your books? A.—To the best of my knowledge and belief they are the sums paid Phillips on the various contracts.

Q.—And also that statement includes the prices and the number of feet of pipe used in each contract? A.—In some cases it is a lump sum for a stipulated quantity of pipe.

40 Q.—That you paid Phillips? A.—Yes. You notice that we have the unit prices there, but those were prices which we arbitrarily selected as being proper.

Q.—You have a personal knowledge of the facts you are testifying to? A.—Absolutely.

Q.—I refer to the last seven named contracts on that statement of yours. Will you tell us then what quantity of pipe went into the Saull Street contract, together with the prices?

*Covert F. Smith for plaintiff (direct examination).*

MR. HACKETT: But don't you see, Mr. Goudrault, that is useless. This man can only testify according to a memorandum that had been given to him. You might as well let the memorandum go.

MR. GOUDRAULT: But he may testify differently, as regards the prices.

10 MR. HACKETT: We can all read that memorandum.

Q.—Did you check from your books this statement as regards sizes and prices? A.—Yes. This is correct. It is in accordance with the contracts which we had with Phillips.

MR. O'DONNELL: Objected to as being irrelevant and illegal, and further that it is not the best evidence of any contracts with Phillips.

20 Q.—You say that you checked it with the entries in your ledgers and bills. A.—Yes.

Q.—That statement is correct? A.—Yes.

Q.—Was it prepared under your instructions? A.—Yes.

Q.—And checked and controlled by you? A.—Yes.

30 MR. GOUDRAULT: Plaintiffs offer this statement containing the number of feet of pipe used by the firm of Kennedy & Smith, Inc., for the construction of seven sewers in the Borough of Queens, which are the seven last named, and excluded from that statement the four first contracts, as Plaintiff's Exhibit C-146.

MR. O'DONNELL: The defendants object to the production of this document and any other evidence in connection therewith.

(Marked Exhibit C-146, of this date, in evidence.)

40 MR. O'DONNELL: Objected to as not being the best evidence of any purchases of pipe or the amounts paid therefor, and further, it is entirely irrelevant and illegal.

MR. HACKETT: I also avail myself of that objection.

MR. GOUDRAULT: The plaintiffs include in their evidence the particulars mentioned on the back of the exhibit.

Q.—You told us that you paid Phillips for the pipe. Will you look at the series of 17 checks and state what they are.

*Covert F. Smith for plaintiff (direct examination).*

MR. O'DONNELL: I object to the production of the documents as being entirely irrelevant and illegal, and as not being the best evidence of any such purchases for which they purport to be payment.

MR. HACKETT: I avail myself of the same objection.  
A.—You want me to tell you what they are?

10

Q.—Yes.

MR. HACKETT: We can read them.

Q.—Are they checks in payment of your pipe? A.—I presume they are.

MR. COOK: You presume they are?

THE WITNESS: I have not seen them all yet, and I can not tell you.

20

BY MR. GOUDRAULT:

Q.—Take your time, then. A.—There might be some in here that I don't know about.

Q.—Well, take them out if there are. A.—Those are the checks which we gave Phillips in payment of pipe.

MR. GOUDRAULT: The plaintiffs offer in evidence as Exhibit C-147, 17 checks.

30

(The said checks were thereupon received in evidence and marked Plaintiff's Exhibit C-147 (17 pieces), of this date).

MR. COOK: The defendants object to the production of these checks for reasons already stated.

Q.—I notice that these 17 checks are all payable to John M. Phillips? A.—Yes.

Q.—Are they in payment of pipe? A.—Yes.

40 MR. O'DONNELL: Objected to as not being the best evidence.

Q.—That was furnished in the contracts appearing on this statement, Plaintiff's Exhibit C-146? A.—Yes.

Q.—Your signature appears there on every one of them? A.—Yes.

MR. O'DONNELL: I object to any verbal evidence as to purchases and payments for the reasons stated.

*Covert F. Smith for plaintiff (direct examination).*

Q.—I notice here another series of checks, five checks.

A.—Yes.

Q.—Which are made payable to other parties and some to John M. Phillips and another party and all endorsed by John M. Phillips. Will you state what they are? A.—In payment of pipe.

10 MR. O'DONNELL: Same objection.

MR. GOUDRAULT: Plaintiffs offer in evidence as Plaintiff's Exhibit C-148 a series of five checks.

(The said checks were thereupon received in evidence and marked Plaintiff's Exhibit C-148 (five pieces) of this date.)

MR. O'DONNELL: Same objection; and further, that it is not the best evidence, of any endorsement by Phillips.

20 MR. HACKETT: Mr. Goudrault, surely you don't suggest that this man has not paid for the pipe?

MR. GOUDRAULT: If you will admit it we will not prove it.

MR. HACKETT: It has been up to you for 20 minutes and you have not asked a question.

MR. GOUDRAULT: We have been producing exhibits.

30 Q.—Will you now look at another check to the Elmhurst Lock Joint Pipe Company for \$39,664.40. Was that also in payment of pipe as appears on that memorandum?

MR. O'DONNELL: Objected to as irrelevant and illegal.

MR. COOK: Is that going to be C-149?

MR. GOUDRAULT: Yes.

A.—I presume it was, but it does not seem to tell. Yes, that was made for pipe.

40 Q.—For pipe appearing on the statement? A.—It does not tally with any amount I have here, but it was undoubtedly an error.

MR. GOUDRAULT: The plaintiffs tender in evidence as Plaintiff's Exhibit C-149, this check.

MR. O'DONNELL: Same objections.

*Covert F. Smith for plaintiff (cross-examination).*

(The said check was thereupon received in evidence and marked Plaintiff's Exhibit C-149, of this date.)

THE WITNESS: Some of these bills were discounted and the discount goes into the discount account, and they may not exactly tally with this sheet on this exhibit.

10 Q.—Are you in a position to swear if all the pipe that appears on C-146 has been paid for to Phillips by your company?  
A.—Yes.

MR. O'DONNELL: I object, as not being the best evidence.

Q.—You didn't owe Phillips any money after the execution of these contracts? A.—No.

20 Q.—This series of checks which has been produced by you is in payment of pipe to Phillips, which pipe appears on this statement C-146?

MR. DONNELL: Same objection.

A.—Yes.

Q.—Your company had been paid by the City of New York? A.—Yes.

MR. O'DONNELL: Objected to as irrelevant and as not being the best evidence.

30 MR. COOK: I also object.

Q.—Full payment? A.—Yes.

MR. GOUDRAULT: That is all.

CROSS EXAMINATION BY MR. HACKETT:

Q.—Mr. Smith, the total amount of these seven contracts is between \$1,250,000 and \$1,500,000? A.—I don't know; I never totalled it.

40 Q.—The total amount paid for the pipe is over \$300,000?  
A.—Yes, I imagine it is.

Q.—You have told us that this document you have been speaking from is one prepared by somebody in your office? A.—By my bookkeeper.

Q.—He handed it to you and you believe it is correct, but that is all you can say about it, isn't it? A.—I checked it up more or less.

*Covert F. Smith for plaintiff (cross-examination).*

Q.—More or less? A.—Yes.

Q.—But you are not the bookkeeper? A.—No.

BY MR GOUDRAULT:

Q.—How much did you check it up? A.—I checked it up  
with the contracts of Phillips.

10 Q.—Did they correspond? A.—Yes, they corresponded.

MR. O'DONNELL: Objected to as illegal and irrelevant,  
and not the best evidence of any contract with Phillips.

Mr. COOK: I have no cross-examination.

MR. HACKETT: That is all, Mr. Smith.

20 MR. GOUDRAULT: Mr. Commissioner, this is an im-  
portant matter for the plaintiffs. Here we have a witness who  
came here voluntarily. There are payments totalling \$300,000.  
to Phillips. I wish that the witness who did not know exactly  
to what extent he would be called upon to testify could make  
an examination of his books and come back and make a state-  
ment Monday; in a minute or two he can tell us whether it is  
all right, or not.

MR. HACKETT: We have been all over that in cross-  
examination.

30 MR. GOUDRAULT: I do not think the interests of justice  
will suffer by that, Mr. Hackett.

MR. HACKETT: It is a great injustice to me.

•THE WITNESS: That would settle it though, wouldn't  
it?

MR. O'DONNELL: He said he checked them, didn't he?

MR. COOK: Mr. Commissioner, I object to the reopening  
of the examination in this way.

40 MR. GOUDRAULT: It is not reopening, Mr. Commis-  
sioner. We want the facts to go in for the sake of truth and  
justice. We don't want to hide anything here. This man pro-  
duces a series of checks for \$300,000—

MR. HACKETT: Don't pile all that on to the record now.

*Covert F. Smith for plaintiff (cross-examination).*

MR. GOUDRAULT: I know a good part of that is yours. That is my request, Mr. Commissioner. The man should be allowed to look into his books and come here and state—

MR. O'DONNELL: He did look into his books.

MR. GOUDRAULT: To what contract and to what pay-  
10 ment these checks apply.

MR. COOK: Mr. Goudrault declares his examination closed. He waits until we have cross-examined the witness and then he reopens the entire question again. It is over and over again the same thing and I object because we will never get through this Commission in the world unless we proceed with more regularity.

MR. GOUDRAULT: If you will admit that this company  
20 have paid for the pipe, as it is so well known, we will be satisfied.

MR. COOK: I do not know anything about it.

MR. O'DONNELL: You examine him and declare you are finished, and then you reopen. You do it every time.

MR. GOUDRAULT: It is only in the interest of justice—

30 THE COMMISSIONER: This witness is here on a stipulation, Mr. Goudrault, agreed to by defendant's counsel. He is not before me by virtue of the Commission, but by virtue of a stipulation of the parties for examination. I must say I feel that the witness should not be called here again without the consent of counsel; on the other hand, if he has any evidence to give and he has given part of it he should give it all. I will allow the witness to refresh his recollection and examine his books subject to the counsel's objections and reservations and exceptions. You understand that his examination is subject to the disposition that the Superior Court at Montreal may make.



*George A. Everett for plaintiff (direct examination).*

DEPOSITION OF GEORGE A. EVERETT

10 GEORGE A. EVERETT, age 47; residence, 8706; 168th Street, Jamaica; Queens County; occupation, Superintendent of construction; 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.—Did you ever hear of the Oxford Engineering Corporation? A.—Yes, sir.

Q.—Were you an official of that corporation? A.—I was Vice President, yes, sir.

Q.—Did your company ever do any sewer work? A.—Oxford?

20 Q.—Oxford. A.—Yes, sir.

Q.—How many? A.—One job.

Q.—What was that job? A.—150th Street or 150th Avenue. 150th Street, I think it was.

Q.—Will you now look at this Exhibit C-137, awarded to the Oxford Engineering Corporation, and state if that is the job your company did for the Borough of Queens? A.—Yes.

Q.—Had there been any previous advertisement in this case? A.—I believe there was.

30 MR. O'DONNELL: Objected to as not being the best evidence and as being irrelevant.

Q.—Did you know you had been low bidder on that job the first time?

MR. HACKETT: I object.

MR. COOK: What has this to do with the case? I hope this gentleman got the contract and bought the pipe and paid for the pipe and that is all Mr. Goudrault is going to prove.

40 MR. GOUDRAULT: By this man? A little more.

MR. COOK: Don't go into what is irrelevant.

MR. GOUDRAULT: It is relevant.

MR. HACKETT: Where are the original documents that might help us? Are they filed?

*George A. Everett for plaintiff (direct examination).*

MR. GOUDRAULT: Yes.

MR. HACKETT: If they are not, don't ask this man about it.

Q.—Did you know John M. Phillips in his lifetime? A.—Yes.

10 150th Street job? A.—1925.

Q.—Did you talk to Mr. Phillips before you put in your bid?

MR. O'DONNELL: I object to conversation between the witness and Phillips, deceased.

A.—I asked him for the price of pipe.

BY MR. HACKETT:

20 Q.—You purchased pipe? A.—Yes, sir.

Q.—You paid him for it? A.—Yes, sir.

BY MR. GOUDRAULT:

Q.—Did you speak to Mr. Phillips—

MR. HACKETT: Objected to as leading.

MR. GOUDRAULT: Question withdrawn. We are going to put in each fact and document.

30 Q.—When you bought your pipe from Phillips for the construction of the 150th Street sewer, did you have a written contract? A.—Not that I know of. That was not my end to look after any written contract. I was to supervise the work on the outside. Mr. Deegan looked after that.

Q.—Had your company bid on the first letting of that job? A.—No, sir.

MR. O'DONNELL: Objected to as irrelevant.

40 Q.—Was it then awarded to your company? A.—Yes, sir, we were the low bidder.

MR. O'DONNELL: I object.

Q.—You were the low bidder? A.—Yes, sir.

MR. O'DONNELL: Objected to as not being the best evidence.

*George A. Everett for plaintiff (direct examination).*

Q.—Did Phillips give you a price for his pipe? A.—Yes.

MR. O'DONNELL: Same objection.

Q.—What did he give you? A.—What price?

Q.—Yes. A.—\$117,000.

MR. O'DONNELL: Same objection.

10

Q.—Did you accept it? A.—Mr. Deegan and I got the price and Mr. Deegan turned it over to the rest of the members of the corporation and they accepted it.

Q.—You say the Oxford Engineering Company did not build any other sewers? A.—No.

Q.—They did not? A.—No.

Q.—Did you organize another company? A.—Yes, sir.

Q.—With whom? A.—With the same members except Manning. Charles Blitman, Samuel Steinfield, James Deagan, and myself, George A. Everett.

20

Q.—What was the name of that company? A.—The Everett Construction Company, Inc.

Q.—All the same except the one man Manning? A.—Yes, sir.

Q.—Did the Everett Construction Company build any sewers in Queens? A.—Yes, sir.

Q.—Which? A.—Brinkerhoff Avenue.

Q.—What pipe did you use in that sewer? A.—I don't remember whether it was 36-inch or 42-inch—I don't remember.

30

Q.—How long was that after the other sewer had been built—how long after was it that the Everett Company was awarded the Brinkerhoff sewer— A.—We were not awarded the contract.

Q.—You just bid? A.—We didn't bid—we received it on assignment.

Q.—From whom? A.—From the Riverdale Contracting Company.

Q.—You got it by transfer. Was the 150th Street job completed then? A.—Not quite.

40

Q.—In the Brinkerhoff sewer for the 42-inch pipe and the 36-inch pipe— A.—I don't remember the size.

Q.—You don't remember? A.—It is so long ago.

MR. O'DONNELL: Objected to as not being the best evidence.

MR. COOK: What does it matter?

*George A. Everett for plaintiff (direct examination).*

Q.—What price did you pay Phillips on the Brinkerhoff job—the Everett Construction Company? A.—\$190,000.

MR. O'DONNELL: Objected to as not being the best evidence, and as being irrelevant.

10 Q.—Do you remember how many feet? A.—About 6,000 feet—I do not remember.

Q.—One or two contracts in Brinkerhoff Avenue. A.—One contract. It is five years back now. I can't remember offhand.

BY MR. O'DONNELL:

Q.—That was a lump sum price too? A.—Yes, sir, they were under contract and we had to take it over.

BY MR. GOUDRAULT:

20 Q.—And Mr. Everett, you told us that you paid a lump sum for the pipe to Phillips, for the pipe used in the 150th Street sewer? A.—Yes, sir.

Q.—And you gave us a lump sum paid by the Everett Company to Phillips on the Brinkerhoff Avenue job? A.—Yes, sir.

Q.—Could you give us the average price paid on each job?

MR. O'DONNELL: Objected to as irrelevant.

A.—No, because I don't remember the exact number of feet. It is so long ago I can't remember.

30 Q.—After the Oxford Company was awarded the 150th Street job that you had your price from Phillips for, did you have any other conversation with Phillips?

MR. HACKETT: I object to any conversation with the deceased Phillips.

THE COMMISSIONER: You may answer subject to the objections and reservations of counsel.

A.—As regards the pipe?

40 Q.—When? A.—After we got the contract.

Q.—After you bid? A.—Yes, sir.

Q.—What was said? A.—He spoke to Mr. Deagan and told him—

MR. O'DONNELL: That is hearsay; I object.

MR. HACKETT: I avail myself of the same objection.

*George A. Everett for plaintiff (direct examination).*

Q.—Did he speak to you? A.—I don't remember whether I was there or not.

MR. COOK: I object to all this evidence.

Q.—Did he ask you who your company was?

10 MR. HACKETT: Objected to as leading and suggestive.

Q.—You spoke to Phillips, you said, about pipe. A.—I will settle this—the only conversation was when I asked him for a price, and he gave me a price of \$117,000.

Q.—For the 150th Street job? A.—Yes, and he said he guaranteed the price to be watertight, provided I made the joints watertight. He guaranteed delivery of the pipe close to the trench.

Q.—Did he fix the price? A.—\$117,000.

20 Q.—To you? A.—Yes, Mr. Deagan and myself.

Q.—You were there? A.—Yes.

Q.—This time? A.—Yes.

Q.—How long had you known Mr. Phillips at that time?

A.—About five years—four or five years.

Q.—Did you know him well? A.—I wouldn't say that—I knew he was Phillips.

Q.—Did you know him as Jack? A.—Everybody knew him as Jack.

Q.—Did he call you George? A.—Sure.

30 Q.—Did you have any conversation with Phillips as regards payment? A.—I can't say whether I did. I can only tell what happened to the concern. He wanted \$25,000. in cash.

MR. O'DONNELL: Objected to.

THE COMMISSIONER: You may answer, subject to the objection of counsel.

40 Q.—Did he say it to you? A.—I don't remember whether I was there. It is five years back. I can not remember that far back now.

Q.—Do you remember when you began work on this job? A.—In August, I believe.

A.—It was awarded on July 20, 1925? A.—I don't know. The record speaks for itself.

Q.—I am speaking of the work—in August, 1925? A.—I think so, yes, sir.

*George A. Everett for plaintiff (direct examination).*

Q.—Did you finish that job in the time provided in the original contract? A.—I don't remember now.

Q.—Will you now look at final certificate for the 150th Avenue job which was a job executed by the Oxford Engineering Corporation—your corporation. This certificate is dated April 22, 1927. We will have Mr. Tully testify as to its being original. It states under allowances, "Net time consumed, 311 days. Time within which the contractor agreed to complete the work, 175 days." Does that help your memory at all? Are you now able to answer my question whether or not your company did the job within the stipulated time? A.—I don't remember myself.

Q.—You said that; but does that help you? A.—No. I was on the outside. I had nothing to do with those things.

Q.—Mr. Blitman— A.—He or Mr. Deagan.

Q.—That does not help your memory? A.—No, sir.

Q.—You were some couple of hundred days late—175 days late. Was it long after that that the new company that you organized secured the Brinkerhoff Avenue job by assignment from the Riverdale Corporation? A.—Some time after. This job was not completed as yet.

Q.—Is Mr. Deagan still with your company? A.—There has been no Oxford or Everett Company since 1926.

Q.—Both in liquidation? A.—Yes, sir.

Q.—Where is Mr. Deagan? A.—No, sir, I do not know—I didn't even know where Mr. Deagan lived when he was with us, half the time. If you find him, let me know. I would like to see him.

Q.—Was the Oxford Engineering Company paid for the 150th Avenue job by the City of New York? A.—It was.

Q.—In full? A.—I believe no. There was \$5,000 deducted from us, which we waited nine months for the final certificate.

Q.—Did you get the final payment on the job? A.—Yes, eight or nine months after it was completed.

Q.—You remember the amount your company received?

MR. O'DONNELL: Objected to as not being the best evidence.

A.—Over \$550,000. I don't remember exactly.

Q.—On Plaintiff's Exhibit C-137, I see \$556,272. A.—If it is there, it is correct.

Q.—You were paid that amount in full by the City of New York? A.—Blitman signed the voucher. What did he sign for? There is the final voucher. That gives the total claim.

*Eugene J. Tully for plaintiff recalled (direct examination).*

MR. HACKETT: I object to the document as not having been produced in evidence.

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DEPOSITION OF EUGENE J. TULLY  
(recalled).

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EUGENE J. TULLY 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):

20 Q.—Mr. Tully, will you kindly file this as Plaintiff's Exhibit C-150—this file of documents, stating precisely what it is.  
A.—This is the final certificate on Contract No. 75,939, payable to the Oxford Engineering Corporation in the sum of \$100,956.65. This was paid on May 23, 1927. This contract is for a sewer in 150th Street, etc. This is an original document.

MR. O'DONNELL: Objected to as not being the best evidence of any such payments.

30 (The file of documents (six pieces) was received in evidence and thereupon marked Plaintiff's Exhibit C-150, of this date).

MR. COOK: The plaintiffs object to the production of this document as irrelevant.

MR. O'DONNELL: Also as illegal.

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*George A. Everett for plaintiff recalled (direct examination).*

DEPOSITION OF GEORGE A. EVERETT  
(recalled).

GEORGE A. EVERETT, resumed:

BY MR. GOUDRAULT:

10 Q.—Will you now look at this document which has been  
legally filed as Exhibit C-150, and state if this tells how much  
your company was paid for its contract.

MR. O'DONNELL: Objected to as not being the best evi-  
dence.

A.—Here is the total.

Q.—What is it? A.—\$556,272.

20 Q.—Did you pay for your pipe to Phillips? A.—We paid  
the money to Phillips.

Q.—Have you any checks? A.—I haven't any checks.

Q.—You paid for it? A.—The Oxford Engineering Com-  
pany did.

Q.—You don't know where the checks are? A.—In the Ac-  
countants' office.

Q.—Who are the accountants? A.—Daniel Levy & Com-  
pany, on West 42nd Street. I don't know whether he has all the  
checks, or not.

Q.—Is he a received? A.—No, sir, he is an accountant.

30 Q.—What is the address? A.—He is on West 42nd Street,  
between 5th and 6th Avenues.

Q.—Will you then kindly produce this check of the Oxford  
Engineering Company—any checks which would show payment  
of the pipe bought by your company from Phillips for the con-  
struction of the 150th Street sewer.

MR. O'DONNELL: Objected to as not being the best evi-  
dence of any such purchases and payments.

40 A.—I will produce all the checks he has. I believe they  
didn't receive all the checks back from some previous investiga-  
tion.

MR. COOK: This gentleman has testified quite clearly as  
to what he paid for the pipe and I can't see what possible use—

MR. GOUDRAULT: They would be the best evidence of  
the payment.



*George A. Everett for plaintiff recalled (direct examination).*

THE WITNESS: If we didn't pay for the pipe we would never had had another contract.

Q.—But that was the only contract you had. A.—Yes.

Q.—But then you didn't care if you paid for it or not?

A.—Oh, yes; the same people were in the new company. The financiers were Blitman and Steinfield. You have the checks  
10 there. Those are some of the checks we never got back.

Q.—Will you look at three checks payable to the order of John M. Phillips, signed by the Oxford Engineering Company—

A.—Yes.

Q.—...state if you know anything about these checks?

A.—Yes, sir. This is one of the checks signed by Blitman and Steinfield. I recognize their handwriting; so is that one; so is this one here (indicating).

MR. GOUDRAULT: We offer in evidence these three  
20 checks as Exhibit C-151.

(The checks (three pieces) were thereupon received in evidence and marked Plaintiff's Exhibit C-151, of this date).

MR. O'DONNELL: Objected to as irrelevant and illegal, and because no identification of Phillips' signature was made, and as not being the best evidence that the signature of John M. Phillips is correct, and as not being the best evidence of any purchases which may have been made.

MR. HACKETT: I also avail myself of the same objection.  
30

Q.—These three checks total \$55,000, and they are all payable to the order of Phillips. A.—Every one we paid was to his order.

BY MR. HACKETT:

Q.—He was the one from whom you bought the pipe? A.—Yes, sir.

BY MR. GOUDRAULT:

Q.—Did you pay the balance? A.—We paid \$117,000. for  
40 pipe. We paid \$17,000. before we received any pipe.

MR. O'DONNELL: I object.

Q.—Will you go over to the Brinkerhoff job now. A.—Yes.

Q.—That was the Everett Construction Company? A.—  
Yes, sir.

Q.—Did you pay for your pipe to Phillips?

*George A. Everett for plaintiff recalled (direct examination).*

MR. O'DONNELL: Same objection.

A.—Phillips received \$190,000. for the pipe.

MR. O'DONNELL: Objected to as not being the best evidence.

Q.—You were an officer of the Everett Company, were you? A.—President.

10 Q.—You were the president? A.—Yes, sir, the president.

Q.—Will you now look at these two checks payable to Phillips, and one to cash, and state if they were given by your company in payment for the pipe used in the Brinkerhoff job.

MR. O'DONNELL: Objected to as not the best evidence of purchases or payments.

A.—Yes, sir, those are the checks.

Q.—You identify them as being from your company? A.—Yes.

20 MR. GOUDRAULT: I offer these three checks in evidence as Plaintiff's Exhibit C-152.

(The checks (three pieces) were thereupon received in evidence and marked Plaintiff's Exhibit C-152, of this date.)

Q.—There is a check here in this Exhibit C-152, which is made to the order of cash, apparently endorsed also by your company for yourself. A.—Yes, sir.

Q.—How do you explain that one? Was that paid to Phillips for pipe also? A.—Yes, sir, it states here "For pipe, 1,000 feet on the Brinkerhoff contract".

30 Q.—It was payable to cash? A.—Yes, sir.

MR. O'DONNELL: Objected to.

Q.—There are payments totalling \$117,000 for the pipe on Brinkerhoff Avenue? A.—The accountants stated there are a number of checks missing that we never received back after the investigation.

Q.—Did you keep the Everett Construction Company checks—A.—Yes, sir.

40 Q.—Was the Everett Construction Company paid in full by the City of New York? A.—Yes, sir.

Q.—Are you positive? A.—I believe so, yes.

MR. O'DONNELL: Objected to as not being the best evidence.

MR. HACKETT: I have no cross-examination.

MR. COOK: I have no cross-examination.

(Adjourned at 4 p. m. to Monday, Feb. 9, 1931, at 11 a. m.)

10 Depositions of witnesses, sworn and examined on the ninth day of February 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:

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DEPOSITION OF COVERT F. SMITH  
(recalled).

COVERT F. SMITH was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposed and saith as follows:

REDIRECT EXAMINATION BY MR. GOUDRAULT:

30 Q.—Mr. Smith, you were asked to verify the checks that were produced with the statement that was also produced? A.—Yes.

Q.—Have you verified those checks? A.—Yes, all of these checks were made in payment of pipe. But they were not all these checks in payment of pipe on these particular seven contracts. And neither are all of the checks for the seven contracts here.

Q.—You mean some checks are missing? A.—Some checks are missing.

40 Q.—Have you looked for them? A.—We have not. They subpoenaed them. I have a receipt from Buckner's outfit for 38 checks. There are only 23 of them here.

Q.—Now, have you verified some of those checks? A.—I have verified them all.

Q.—And what checks applied to the seven particular jobs that are mentioned in the declaration? A.—These checks here, and I have enumerated them here (indicating). I can say that

*Covert F. Smith for plaintiff recalled (redirect examination).*

all of these checks were in payment of pipe, but they were not all applicable to these contracts. These are not on these seven contracts. Some are missing.

Q.—All these checks were paid to Phillips by your company? A.—They were either paid to Phillips for the Elmhurst Lock Joint Pipe Company, which is the same thing; and there were several amounts paid in cash.

10 Q.—To whom? A.—To John M. Phillips.

MR. COOK: Mr. Commissioner, I would like to object to all this evidence as irrelevant and illegal, and as not being the best evidence of payment to Phillips. And I would ask my friend to have it understood that this objection applies to all evidence of this character, in order that it may not be repeated again and again, as we have been doing in the past.

20 MR. HACKETT: I would like, Mr. Commissioner, to avail myself of the same objection, for the same reason; and moreover, because of the irrelevancy of the testimony.

MR. COOK: I object on the ground of irrelevancy as well.

MR. GOUDRAULT: I agree that all evidence be taken subject to the objections of Mr. Cook and Mr. Hackett, as regards this particular witness.

30 Q.—Mr. Smith, will you follow on that sheet of paper or memorandum which you have there, or statement,—we will describe it now. You remember producing as an exhibit before the Commissioner, a statement similar to the one that you now have? A.—Yes.

Q.—That was produced as Plaintiff's Exhibit C-146.

MR. COOK: Refer him to Exhibit C-146, Mr. Goudrault.

MR. GOUDRAULT: All right.

MR. COOK: Don't refer him to a similar one. Refer him to the one that is in evidence.

40 MR. GOUDRAULT: You would not have it, would you?

MR. COOK: No.

MR. GOUDRAULT: It's missing.

THE WITNESS: This is the same thing. There are four contracts left out. (Indicating).

*Covert F. Smith for plaintiff recalled (redirect examination).*

Q.—Four contracts left out, which we are not interested in.

MR. GOUDRAULT: Plaintiff now offers in evidence this statement as Plaintiff's Exhibit C-153.

10 MR. O'DONNELL: Defendants object to the production of this statement, for the same reasons as those given to the production of Exhibit C-146.

(The said statement was thereupon received in evidence and marked Plaintiff's Exhibit C-153, of this date).

Q.—By looking at Exhibit C-153, as compared with Exhibit C-146, I understand that there are four contracts which did appear in Exhibit C-146, and which do not appear in this one? A.—That's right.

20 Q.—The contracts that we have asked you, Mr. Smith, to look into, as to the number of feet of pipe and payments, are the only contracts enumerated in Exhibit C-153? A.—Yes.

Q.—Do I understand that all the feet of pipe that are mentioned there, were used by your company in those particular contracts? A.—Yes.

Q.—And you paid Phillips for them? A.—Yes.

Q.—Now, in our Exhibits C-147 and C-148, which are a series of checks signed by your company and payable either to John M. Phillips, or third parties, are these checks in payment of pipe that do appear upon that statement, C-153? A.—Yes.

30 Q.—Did you make cash payments to Phillips? A.—Yes.

Q.—For the pipe? A.—Some cash payments.

Q.—Could you state any on that statement that you have produced as C-153? Would you state the figures; the name of the contract and the figures? A.—Yes. On Woodside Avenue we paid a cash payment of \$1600, and on the Hazen Avenue contract, we paid him a cash payment of \$6,000. That's all the cash that was paid.

40 Q.—I see by these checks that payments were made in the years 1924, 1925, 1926 and 1927. Were those contracts appearing on that statement C-153, executed by your company? A.—Yes.

Q.—During those years? A.—Yes.

Q.—Are you in a position to state which of these checks in C-147 appear on that statement of yours, C-153? A.—Which of them appear?

Q.—Yes. A.—They all appear except these two (indicating).

*Covert F. Smith for plaintiff recalled (redirect examination).*

Q.—Two of them do not? A.—There are two payments here that do not appear in this statement, and they were for payment of pipe on contracts.

Q.—Which of the two checks do not appear there, Mr. Smith? A.—One is for \$1255.90, and the other is for \$1174.25.

10 Q.—You haven't the checks for those? A.—The checks are here, but they do not appear on the statement.

Q.—I see. All the other checks, do they appear on that statement C-153, the checks that you have filed as C-147? A.—Yes, all the other checks appear on the statement except those.

Q.—Will you now look at C-148 and state whether or not these checks are mentioned and described in Exhibit C-153? A.—Yes; they appear.

20 Q.—How is it that some of these checks in C-147 and C-148 are made payable to other people than Phillips, or to a third party and Phillips jointly? A.—Well, that's the way he requested them to be made.

Q.—And that was also in payment of pipe? A.—That was in payment of pipe.

Q.—Now, you have told us already that your company had been paid by the City for all these seven contracts? A.—Yes.

Q.—Did you, Mr. Smith, prepare yourself the estimates in order to put your company's bids in? A.—Yes. My partner and I prepared the estimates at that time.

30 Q.—I see. Will you tell us how you proceeded, as briefly as possible, how you proceeded to give to them a figure for the producing of your bids with the Borough of Queens? A.—How we prepared an estimate, you mean?

Q.—Yes. A.—Well, we took all the expenses, figured what was incidental to the contract, such as bonds, cost of insurance, and various other incidental expenses; then we procured a price for pipe.

Q.—From whom? A.—From either the Elmhurst Lock Joint Pipe Company, or John M. Phillips. And then we estimated the labor costs, and combined it with the other costs, and arrived at a figure per unit.

40 MR. HACKETT: That is the usual way of figuring any job, isn't it?

THE WITNESS: Sure.

MR. GOUDRAULT: Your witness.

MR. COOK: No cross-examination, Mr. Smith, from me.

*James F. Richardson for plaintiff (direct examination).*

MR. HACKETT: I have no questions to ask Mr. Smith.

THE COMMISSIONER: Are you through with Mr. Smith now?

MR. GOUDRAULT: Yes. Thank you, Mr. Smith.

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DEPOSITION OF JAMES F. RICHARDSON

JAMES F. RICHARDSON, age 59; residence, Islip, Long Island, New York; Suffolk County; occupation, stock broker; 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:

20 DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—What connection have you with the Awixa Corporation, Mr. Richardson? A.—I have no connection at the present time; it is out of business.

Q.—It is out of business. But you had? A.—I did have.

Q.—What was your connection with it? A.—Vice President and Treasurer.

Q.—You were the Vice President and Treasurer of the company in 1926? A.—Yes, sir.

30 Q.—Who was Mr. Schlemmer? A.—He was the president.

Q.—What was his part of the business? A.—He was the engineer and construction man.

Q.—And you were the financial man? A.—That is correct.

Q.—Where was the office of the Awixa Corporation? A.—Islip, Long Island.

Q.—When was that office of yours there? A.—It was there from the time of the incorporation in 1920, up until 1928. I think.

40 Q.—In 1928 you had your office at 51 East 42nd Street, New York City? A.—That is right.

Q.—Do you recall that the Awixa Corporation took over the assignment of the Highway Improvement and Repair Company for a job? A.—Yes, sir.

MR. COOK: Defendants object to this evidence as not being the best evidence; and, in addition, as being illegal and irrelevant, and having no bearing on the issues in the case. And

*James F. Richardson for plaintiff (direct examination).*

they ask that the same objection apply to all evidence to be given by this witness.

MR. HACKETT: I avail myself of the same objection.

MR. GOUDRAULT: It is understood that all this evidence is taken subject to the objections.

10 BY MR. GOUDRAULT:

Q.—I now show you, Mr. Richardson, three checks, totaling \$26,910, which have been produced as Plaintiff's Exhibit C-94, made payable to your order. Do you know something about these checks? These are photostatic copies. A.—Yes, sir, I recall them.

Q.—You remember the facts concerning these checks? A.—I think I do, yes.

Q.—Now, has your company paid the Highway Improvement & Repair Company any money for the assignment of the contract you are referring to? A.—Did they pay, the Awixa Company?

Q.—Yes. A.—Yes, sir.

Q.—How much? A.—I am only giving you from memory now—

Q.—Yes, the best of your recollection? A.—Something like \$50,000.

Q.—And as a matter of fact, your company did do the job which was assigned to it by the Highway Improvement & Repair Company? A.—Yes, sir.

30 Q.—Will you now look at Plaintiff's Exhibit C-90, and state if you recognize the signature there of— A.—Mr. Schlemmer, yes.

Q.—Of Mr. Schlemmer? A.—I do.

Q.—Is that his signature? A.—Yes.

Q.—Where is Mr. Schlemmer at the present moment?

A.—As far as I know he is at Fredericksburg, Virginia.

Q.—And he has been there for how long? A.—Well, more or less all winter. And he goes to Tennessee occasionally on some project that he is interested in down there.

40 Q.—Has he been in New York since the 19th of January, this year? A.—Well, he was there at or about that time. It was some time before the 23rd, I think.

Q.—You can't remember the exact date? A.—No.

Q.—Now, it was the Foch Boulevard job that was assigned by the Highway Improvement & Repair Company to your company? A.—Yes, that's right.



*James F. Richardson for plaintiff (direct examination).*

Q.—Do you recall sending the Highway Improvement & Repair Company a check or checks to the amount of fifty thousand dollars odd, that you say your company paid for the assignment? A.—Do I recall?

Q.— (Continuing) Sending one or two checks, or three checks, or how many payments, in payment of that amount? A.— There were several checks; I could not tell you.

10 Q.—For the assignment? A.—Yes.

Q.—For that particular assignment to the Awixa Corporation, made to it by the Highway Improvement & Repair Company? A.—As my memory serves me at this time.

Q.—Did you handle that part of the transaction personally? A.—Yes, the financial part.

Q.—Did you call on Mr. Turner? A.—Yes.

Q.—You know who Mr. Turner was? A.—Yes.

Q.—The president of the Highway Improvement & Repair Company? A.—Yes.

20 Q.—Did you ask any favor of him on that occasion? A.—I don't recall any favor particularly.

Q.—As the financial man of your corporation? A.—I don't know what sort of a favor you mean.

Q.—Well, the financial man of the company always wishes to have sometimes a transaction or aid. You don't remember that? A.—I don't understand what you mean by that.

Q.—I will get to that. A.—We were very friendly.

Q.—I understand that. As a matter of fact, did you receive the original of these three checks? A.—Yes, sir.

30 Q.—Payable to your order? A.—Yes, sir.

Q.—Now, explain to us how it is that you did receive this amount of \$26,910, which appear on these three checks, Exhibit C-94? A.—As I can recall it at this time, Mr. Turner, of the Highway Improvement & Repair Company, and Mr. Schlemmer, negotiated the assignment of the contracts to the Awixa Corporation. Mr. Turner thought the job was worth a certain sum, and Mr. Schlemmer couldn't figure the job as being worth that such money. However, they came to terms, and I think it was on the basis of something in the neighborhood of \$75,000, provided that at the completion of the job, that it showed the percentage of profit that Mr. Turner indicated from his figuring it would. However, if it would not show or did not show that profit, then the amount was to be left at this amount that Mr. Turner had fixed. It so proved, when the work was completed, that Mr. Turner's estimate of profit was greater than it actually was.

40

*James F. Richardson for plaintiff (direct examination).*

The books at that time of the Awixa Corporation, were set up with the charge against the project of the amount which Mr. Turner said that he thought he should get for the job, and would have gotten, if the job had proved as profitable as he said.

Q.—Now you mentioned a minute ago that the arrangement was for fifty thousand dollars odd? A.—Oh, no. The arrangement was not.

10

MR. HACKETT: He said he paid it.

Q.—I see. A.—I said the amount actually paid was something in the neighborhood of \$50,000, I think. I would not swear to this as a positive fact, because the figures have gone out of my mind.

Q.—Are you sure of your figures? I mean to say approximately? A.—I am not positive, no.

Q.—Let me put it this way: You said that the amount was to be \$75,000? A.—I think that was the amount.

20

Q.—Explain to us how it is that your company or yourself did receive these three checks?

MR. HACKETT: Mr. Goudrault, Mr. Richardson said, if I understood him, that the amount was to be \$75,000, provided the percentage of profit was as high as the vendor, acting through Mr. Turner, had estimated. And if it were less, the percentage of profit less, the price was to be less.

THE WITNESS: That's correct.

30

Q.—What are these, Exhibit C-94? A.—That's different—

Q.—Put it in a plain phrase. A.—The difference between the amount estimated by Mr. Turner as to what we would pay for it, and the amount that the profit showed the job on the percentage basis. This was taken on a percentage basis.

Q.—I see. Well, now you say that is the difference between the amount of the profit estimated by Mr. Turner, is that right? A.—Yes.

Q.—Well, could it be the difference between the amount paid by your company to Mr. Turner and the refund that Mr. Turner or his company made to you? Do you get my question? A.—No, I don't get that, Mr. Goudrault.

40

Q.—I mean to say this: You said a minute ago that your company paid about \$50,000? A.—No.

MR. HACKETT: I don't think that you should lead the witness, Mr. Goudrault.

*James F. Richardson for plaintiff (direct examination).*

MR. GOUDRAULT: No, I won't lead him. We will get the facts.

Now, read this gentleman's evidence where he states it about \$50,000, and see if my statement is right or not.

(Question and answer read by Clerk).

10 Q.—Your books are all lost, aren't they? A.—Yes, sir.

Q.—That is a leading question. But can you explain to us where they are now? A.—No, I can't.

Q.—Well, you are going to explain in a minute the circumstances of the books disappearing and being lost.

MR. GOUDRAULT: Repeat the question and his answer as regards the \$50,000, where he said that.

(Question and answer read by Clerk).

20 Q.—Can you then tell us if these checks were received after a deduction was made?

MR. HACKETT: I object to the form of the question.

MR. GOUDRAULT: All right. I will withdraw the question.

30 Q.—Will you explain to me then, Mr. Richardson, the amount that your company was to receive? You were the financial man of that company? A.—Yes.

Q.—The amount that was actually paid to the Highway Improvement & Repair Company for the assignment of this contract,—it was you who paid it? A.—Yes.

A.—And that your company received in final settlement of this transaction, because it was you who received the money? A.—Yes, sir.

Q.—All right. Now, explain. A.—Well, to go about it the other way, there was actually paid to the Highway Improvement & Repair Company, I think, something like \$75,000, but—

40 Q.—Wait a minute now. So your statement a minute ago that \$50,000. was paid is not right? A.—Well, the difference was given back in these checks here. That is what made it somewhere around \$50,000, or a little under \$50,000.

Q.—I see. A.—(Continuing) That they actually kept as their own.

*James F. Richardson for plaintiff (direct examination).*

Q.—Did these entries appear in the books of your company, these payments? A.—Yes. It was checks drawn for this company.

Q.—In your ledgers? A.—I believe so, yes.

Q.—How many sets of books did you have at the time, you were the treasurer—of those entries? A.—How many sets of books?

10 Q.—Yes, for the entries. A.—I think three.

Q.—Was this entry put in your regular ledger? A.—I think so.

Q.—Try to recollect. A.—Well, I didn't put it in myself physically.

Q.—You didn't? A.—We had a bookkeeper to do that.

Q.—Were you familiar with the books? A.—Yes, sir.

Q.—You were familiar with the books? A.—Yes.

20 Q.—Three sets of books. Well, I suppose you could describe them? A.—Well, there was one general ledger and there was a payroll book, and the third book, I think was equipment, keeping track of equipment.

BY MR. HACKETT:

Q.—So it is not really three sets of books. A.—No.

Q.—It is three books? A.—Three books.

BY MR. GOUDRAULT:

30 Q.—Was this transaction of the Awixa Corporation and the Highway Improvement & Repaid Company put in your regular ledger? A.—I think so.

Q.—What kind of bookkeeping system did you have? A.—I couldn't tell you exactly what you might term it. It was a system of my own.

Q.—Did you keep the ledger? A.—The bookkeeper did.

Q.—In that system of your own, was there a book that you kept yourself? A.—Personally, myself?

Q.—Yes. Recollect. A.—Oh, no.

40 Q.—No book at all? A.—No personal book that I kept myself.

Q.—I see here that you have these three checks all made to your order, and endorsed one by yourself, Mr. Richardson, the other by Mr. Richardson and Mr. Schlemmer, and the other one endorsed by yourself, but to the order of Grover O'Neil? A.—Yes.

Q.—Could you tell us what was done with the proceeds of these checks, C-94? A.—This check (indicating) was turned over

*James F. Richardson for plaintiff (direct examination).*

to Mr. Grover O'Neil in payment of some securities that I purchased from him.

Q.—The other two? A.—This one (indicating) I can't recall. Apparently Mrs. Schlemmer received that. The endorsement is on there.

Q.—What is your answer as regards this check of \$6,910?  
10 A.—I say apparently Mrs. Schlemmer, the wife of the president of the corporation,—

Q.—Received the cash? A.—Yes, sir.

Q.—The other? A.—Apparently I received this, \$10,000.

Q.—\$10,000. Check bearing No. 2283. Do you remember calling on Mr. Turner at his New York Office on the occasion of this transaction? A.—I think I did.

Q.—You know on what street it was, or avenue? A.—Church Street, New York City.

Q.—Did you lose a book? A.—Did I lose a book?

20 Q.—Yes. A.—Personally?

Q.—Yes. A.—No.

Q.—The book in which some entries were made by you personally?

MR. HACKETT: I object to that as irrelevant, also leading.

Q.—Did you lose any books? A.—The Awixa Corporation lost a book, yes.

30 Q.—On what date? A.—In December, 1927.

Q.—Do you remember the particular day of the month?  
A.—I don't recall what part of December.

Q.—All your books and papers then disappeared? A.—Yes.

Q.—I mean the books of the Awixa Corporation? A.—Awixa Corporation, yes.

Q.—Did the company lose also its cancelled checks then?  
A.—Yes, sir.

Q.—What checks disappeared? A.—What checks disappeared?

40 Q.—Yes. A.—Why, the Awixa Corporation's cancelled checks and vouchers.

Q.—All of them? A.—All of them during a certain period that was in the cases. There were some old checks dating back to 1921, something like that, that were wrapped up in a back room.

Q.—What sort of checks were paid to Mr. Turner, of the Highway Improvement & Repair Company, for that assignment

*James F. Richardson for plaintiff (direct examination).*

of contract? I mean were they your corporation's checks? A.—  
Oh, yes.

Q.—Was this particular transaction with the Highway  
Improvement & Repair Company, was it entered in any other  
book but your general ledger? A.—I don't recall now.

Q.—Did you ever recall at any time? A.—Pardon?

10 Q.—Did you ever recall at any time? A.—I don't know  
whether I did recall at any time. I presume I knew all about  
the transaction at the time it was made, in detail. I can't re-  
member how just what was what. I know there were entries  
made. I am sure entries were made.

Q.—Entries were made? A.—Because there were checks  
drawn to cover these payments.

Q.—Mr. Richardson, how is it that the reimbursement or  
repayment of money, of the sum of \$26,910, came to be made in  
cashier's checks? A.—Cashier's checks by the Highway Improve-  
ment & Repair Company?

20 Q.—No. Cashier's checks could not be by the Highway  
Improvement & Repair Company. They had to be from some  
bank. Look at C-94. A.—I don't quite get your question. I don't  
know what you mean.

Q.—It is quite clear. C-94 are photostatic copies of three  
checks that are made payable to your order, totalling that amount,  
\$26,910.

30 MR. GOUDRAULT: Now, Mr. Schultz, will you read the  
question as regards that?

(Question read by Clerk).

THE WITNESS: (Answering) You mean those are cash-  
ier's checks of this trust company? Is that what you mean?

Q.—That is not what I mean. My question is quite plain.  
He will read it over to you again.

(Question read by clerk).

40 THE WITNESS: (Answering) I couldn't tell you.

Q.—No? A.—I can tell you why these checks were cashed  
by the people endorsing them, if that is what you mean.

Q.—No; you have told us that, and we don't want it again.  
You had some conversation with Mr. Turner? A.—Yes.

Q.—Regarding the refunding of a certain amount? A.—  
Yes.

*James F. Richardson for plaintiff (direct examination).*

Q.—(Continuing) On that particular transaction? A.—  
Yes.

Q.—You have told us that it was at his office at Church Avenue, New York City, is that right? A.—Church Street.

Q.—Church Street? A.—Yes, sir.

Q.—Then was it your suggestion, or Mr. Turner's, that  
10 this reimbursement should be made in cashier's checks? A.—  
There was no mention, as I recall it, of cashier's checks, or any particular kind of checks, only the reimbursement be made. No particular kind of check was mentioned, to my knowledge.

MR. HACKETT: One kind was as good as another to you?

THE WITNESS: Yes.

Q.—Did you have a book of your own in which this particular transaction was entered?

20 MR. HACKETT: I object to the form of the question. It is leading and suggestive, and I don't think it is relevant.

MR. GOUDRAULT: I think it is very relevant.

MR. COOK: I further object, on the ground that the witness has already said that he had not any such book, and consequently we are merely wasting time by repeating the same question again and again.

30 MR. GOUDRAULT: I am trying to refresh his recollection.

THE COMMISSIONER: You may answer, subject to counsel's objection.

THE WITNESS: What is the question, whether I had a personal book, is that the question? Any books that I had—

40 MR. GOUDRAULT: One minute. That is no answer. Read the question. First let him read and find out if it is an answer.

(Question and answer read by Clerk).

THE WITNESS: Any books that kept any records in for the Awixa Corporation, were the property of the Awixa Corporation.

*James F. Richardson for plaintiff (direct examination).*

MR. GOUDRAULT: Will you read again that question of mine, Mr. Schultz?

(Question read by Clerk).

Q.—(Continuing) In your own handwriting? A.—I don't recall.

10 Q.—Do you remember the number of feet of pipe that were used by your company in that contract, the Foch Boulevard contract? A.—The number of feet?

Q.—Yes. A.—I have no idea. I had nothing to do with construction work at all.

Q.—Do you remember the price per foot that your company paid for the pipe? A.—I believe it was \$30. a foot.

Q.—Do you remember the size? A.—No, I do not.

20 Q.—Do you know about your company, the Awixa Corporation, making a sewer construction in the Borough of Queens on 25th Street? A.—Yes, sir.

MR. COOK: Is this a new one, Mr. Goudrault?

MR. GOUDRAULT: No; they are all in.

Q.—Do you remember your company building a sewer in the Borough of Queens in 1925, in Hortsman Avenue? A.—That was a sewage disposal plant.

30 Q.—Do you remember your company making a contract and constructing a public sewer at 158th Street, in 1925, in the Borough of Queens? A.—Yes, sir.

Q.—Do you remember your company makin a sewer on Foch Boulevard—that was the one we had a minute ago. You said you did remember that. That was in 1926. Now, do you remember your company making a sewer on Jamaica Avenue in 1924, in the Borough of Queens? A.—I think it was 1927.

Q.—From whom did your company buy the pipe for those sewers? A.—John M. Phillips.

Q.—Did your company pay John M. Phillips for the pipe that was used on those five contracts? A.—It did.

40 Q.—Your company paid Phillips in full for the pipe? A.—It did, yes, sir.

Q.—Was your company paid by the City of New York? A.—It was.

Q.—From the Comptroller's department, the warrants or checks came in to your company for payment of the five contracts that I have mentioned to you? A.—Yes.



*James F. Richardson for plaintiff (direct examination).*

Q.—And which are mentioned in paragraph 20 of Plaintiff's declaration. Did you have anything to do with the preparation of the estimates for these five particular contracts, Mr. Richardson? A.—No.

Q.—Did you talk the matter over with Mr. Schlemmer? A.—I talked it over with Mr. Schlemmer. Mr. Schlemmer made the estimates, and he had me figure the items out with him, but not as far as fixing prices.

Q.—But being the financial man, you would take care that the job would be done at a profit for your corporation? A.—Yes.

Q.—Did you pay Phillips for his pipe with checks or with cash? A.—Checks.

Q.—Have you got those cancelled checks that your company paid to Phillips? A.—I have not.

Q.—Where are they? A.—I couldn't tell you where they are. They were stolen with the rest of the records. Our office was broken into, at Islip, at night time. On what date, I can't recall.

Q.—And they all disappeared? A.—All disappeared.

MR. GOUDRAULT: Your witness.

MR. HACKETT: I have no cross-examination of this witness.

MR. COOK: Have you finished, Mr. Goudrault?

MR. GOUDRAULT: Yes.

MR. COOK: I have no cross-examination, either.

MR. GOUDRAULT: Thank you, Mr. Richardson.

*George V. Slack for plaintiff (direct examination).*

DEPOSITION OF GEORGE V. SLACK

GEORGE V. SLACK, age 52, residence, 1628 Yates Avenue, The Bronx, New York, Bronx County; occupation, general contractor; a witness produced, sworn and examined on the part and behalf of the People of the State of New York, the Plaintiff,  
10 deposeth and saith as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—How long have you been a general contractor, Mr. Slack? A.—20 years.

Q.—Did you ever build any sewers? A.—Yes, sir.

Q.—One or more than one? A.—A good many.

Q.—Where? A.—Baltimore; New York.

Q.—What part of New York? A.—Bronx.

20 Q.—Did you ever use precast concrete re-enforced pipe?  
A.—Yes, sir.

Q.—Where? A.—Bronx.

Q.—What kind? A.—Core joint.

Q.—Was that re-enforced concrete sewer pipe the core joint? A.—Yes.

Q.—What mix? A.—I don't know that I can tell you.  
1-2-4, though, I imagine.

MR. HACKETT: You didn't assist in its manufacture?

30 THE WITNESS: No, sir.

Q.—Do you remember what you paid for the core joint pipe?

MR. COOK: One moment. The defendants object to this evidence as illegal and irrelevant, and as having no bearing on the issues in the case.

40 MR. HACKETT: I avail myself, Mr. Commissioner, of the same objection.

MR. GOUDRAULT: I consent that one formal objection be made to the evidence of this witness. What is the question?

(Question read by Clerk).

Q.—(Continuing) That you used in the construction of sewers? A.—I don't remember.

*George V. Slack for plaintiff (direct examination).*

Q.—Where did you buy your core joint pipe from? A.—From a Baltimore concern.

Q.—What was the name? A.—Core Joint Concrete Pipe.

Q.—Mr. Slack, did you ever meet John M. Phillips in his lifetime? A.—Yes, sir.

Q.—How many times? A.—Once or twice.

10 Q.—Do you remember the year? A.—1924, I think it was.

Q.—Do you remember where? A.—At his office in Queens.

Q.—Did you go there alone, or with anybody else? A.—I went there with Tom Byrne, of the Metropolitan Sewer Pipe Company.

Q.—Did you have any conversation with Mr. Phillips on that occasion? A.—Yes, sir.

MR. COOK: The defendants object to any evidence with regard to conversations with Mr. Phillips, who is dead, or with Mr. Byrne, as not being binding on the defendants.

20

MR. HACKETT: I avail myself of the same objection.

THE COMMISSIONER: The answer will be taken, subject to counsel's objections, exceptions and reservations. Will you proceed?

A.—I did have a conversation.

30 Q.—What did you tell him? A.—I asked him if he wanted me to bid in Queens, and he told me No. And then he asked me if we knew— Mr. Byrne spoke that he knew Mr. Sullivan—I don't know what his first name was—a Commissioner in the Department, and he said that if we would get a card from him, why, he would give us a price.

Q.—A price for what? A.—Pipe. So we got an endorsement from Mr. Sullivan, and we got a price of \$8. a foot.

Q.—Was that on that particular occasion? A.—Yes.

Q.—Were you bidding on a job then? A.—Yes, sir.

Q.—Do you remember the size of pipe involved? A.—30-inch I think.

40 Q.—Did you get from him any statement as regards the price of pipe? A.—He first told me \$8. a foot, and then after we got the endorsement of Mr. Sullivan, Commissioner Sullivan, he told me \$4. a foot. But then he wrote me a letter stating \$8.

Q.—Will you look at this letter and state if that is the letter you are referring to?

MR. COOK: Let me see it, please.

*George V. Slack for plaintiff (direct examination).*

(Defendants' counsel examine letter).

A.—This is it, yes, sir.

MR. GOUDRAULT: I offer in evidence as Plaintiff's Exhibit C-154, this letter.

10 MR. HACKETT: It is not quite accurate to call it a letter, is it?

MR. GOUDRAULT: No. This document, whatever it is. It appears quite clear.

(The said paper was thereupon received in evidence and marked Plaintiff's Exhibit C-154, of this date.)

20 MR. HACKETT: I object to the production of this document as being addressed to nobody, and being signed by nobody; and as being irrelevant and without bearing upon the issues.

MR. COOK: I join in that objection.

MR. O'DONNELL: The defendants object to the document as irrelevant and illegal, and object to any verbal evidence in connection with the said document.

BY MR. GOUDRAULT:

30 Q.—Was anything else said on that particular occasion by Mr. Phillips, that you recollect, Mr. Slack? A.—No, sir.

Q.—How long after your conversation with Mr. Phillips, did you receive this letter? A.—Why, probably the next morning; the second morning after.

Q.—Did you ever see Mr. Phillips again? A.—I don't remember that I did.

Q.—Did you ever call him on the telephone? A.—No, sir.

Q.—Did you ever ask any explanation of Mr. Phillips why the price went up to \$8? A.—No, sir.

40 Q.—Did you bid on that job that you were talking about? A.—No, sir.

Q.—Did you ever bid any more in Queens since then? A.—I did here last year.

Q.—Did you bid in Queens for the construction of sewers between the 27th of October, 1924, and the 1st of January, 1927?

A.—No, sir.

MR. GOUDRAULT: Your witness.

*George V. Slack for plaintiff (cross-examination).*

CROSS EXAMINATION BY MR HACKETT:

Q.—Mr. Slack, it was some time ago that you had this relationship with Mr. Phillips? A.—Yes, sir.

Q.—I suppose it was a matter of rather secondary importance to you? A.—It was quite important that I get the prices.

10 Q.—Are you quite sure that Phillips told you that he didn't want you to bid over there? A.—I am, yes, sir.

Q.—Do you remember testifying about this matter in the month of October, 1928? A.—I do.

20 Q.—At page 638 of your testimony you said "Maybe you don't want me to bid over here", and then at page 639 you were questioned again, and the question was put to you like this: "What did he say when you said 'maybe you don't want me to bid over here,'" and you answered "He asked me what was the matter with The Bronx, there was plenty of work there. So during the conversation he told me that he didn't object, that he would sell me pipe for \$4. a foot."

Now, which is correct, the version which you gave three years ago when you testified solemnly that Mr. Phillips told you that he didn't object to your bidding in Queens, or your testimony which you gave this morning when you said that he told you he did object? A.—Well, I imagine the three years ago testimony.

Q.—Because it has been quite a long time since these things transpired? A.—Yes, sir, that is right.

30 Q.—And you are a busy man and have no reason to recall any of this subject matter. A.—Yes, sir.

Q.—And you only saw him once, I think? A.—Yes.

MR. HACKETT: That is all.

CROSS EXAMINATION BY MR. COOK:

Q.—Mr. Slack, I understand that Mr. Phillips suggested that you should get Mr. Sullivan to endorse your application for a contract? A.—Yes.

40 Q.—And Mr. Sullivan did endorse it? A.—He gave us a card.

Q.—He gave you a card of approval that you should tender. And then Mr. Phillips told you in the first place that the cost of the precast pipe, of the size that was required, would be \$8. a foot. That was the first thing he told you? A.—Yes, sir.

Q.—Then he subsequently said to you that it would be \$4. a foot? A.—Yes.

Q.—Is that correct? A.—That is correct.

*George V. Slack for plaintiff (redirect examination).*

Q.—And then he sent you this document which has been produced as Exhibit C-154, quoting you \$8 a foot for the pipe?

A.—Yes, sir.

Q.—Which was the price he had originally mentioned to you? A.—Yes, sir.

Q.—That is correct? A.—Yes, sir.

10 Q.—Now, in view of that, it is possible that there might have been a mistake on your part in thinking that he intended to sell you the pipe at \$4. a foot. Is that not so? A.—I don't think so.

Q.—But there might have been a mistake? I only ask you if there might not have been a mistake. A.—I don't think there was a mistake.

Q.—You don't think there was? A.—No, sir.

Q.—But there might have been? A.—It's possible.

Q.—It's possible? A.—It's possible.

20 Q.—Just as you make a mistake, or might make a mistake, in what you testified today and what you said three years ago, so there might have been a mistake in your mind as to what Phillips said to you and what he did on this occasion? A.—Yes, sir.

**REDIRECT EXAMINATION BY MR. GOUDRAULT:**

Q.—Would you state quite plainly if you remember that Phillips told you that he didn't want you to bid in Queens?

30 **MR. COOK:** Mr. Goudrault, you can't go into that again. We have had all that in chief a dozen times, and you can't repeat your examination in chief. Be reasonable.

**MR. HACKETT:** You can't cross-examine your own witness.

**MR. GOUDRAULT:** I am not cross-examining him.

**MR. HACKETT:** And moreover, it is leading, suggestive and illegal.

40 **MR. GOUDRAULT:** Will you read the question?

(Question read by Clerk).

**THE WITNESS:** (Answering) Well, it seems to me that way now. But then I am not positive.

**MR. HACKETT:** You still think that the testimony you gave three years ago is more accurate than that of today?

*Fred H. Weaver for plaintiff (direct examination).*

THE WITNESS: Yes, sir.

BY MR. GOUDRAULT:

Q.—Do you remember Mr. Phillips quoting you \$4. for pipe?

10 MR. HACKETT: Just a moment. Mr. Commissioner, I must object to the re-examination of this witness after he has been cross-examined, on subject matter of the examination in chief.

THE COMMISSIONER: I will allow the question, subject to counsel's objection.

(Question read by Clerk).

20 THE WITNESS: (Answering) He did. He quoted me \$4. a foot.

MR. GOUDRAULT: All right, thank you.

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#### DEPOSITION OF FRED H. WEAVER

30 FRED H. WEAVER, age 56; residence, 3014 LaSalle Avenue, The Bronx, New York; Bronx County; occupation, superintendent of construction; 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.—You were connected with Lock Joint Pipe Company for a certain period of time, Mr. Weaver? A.—Yes.

Q.—From what year to what year? A.—1909 to 1914, I believe it was.

40 Q.—And with the Core Joint Pipe Company, from what year to what year? A.—1914 to 1920.

Q.—Were you also with the Federal Concrete Pipe Company? A.—Yes. I am the inventor of the Federal concrete pipe.

Q.—And were you an official of that company? A.—Vice-president.

Q.—Did you organize that corporation, the Federal Concrete Pipe Company? A.—Well, between Mr. Rogge and myself.

*Fred H. Weaver for plaintiff (direct examination).*

Q.—What year? A.—1921.

Q.—Until what year were you with the Federal Concrete Pipe Company? A.—That was from 1921 up till about a year ago.

Q.—Now, in what capacity were you with the Lock Joint Pipe Company? A.—Superintendent.

Q.—As such, did you attend to the manufacturing of the pipe? A.—Manufacturing of the pipe.

10 Q.—So your experience in pipe manufacturing dates as far back as 1909? A.—Up to date.

Q.—And continues up to date? A.—Yes, sir.

Q.—You told us a minute ago that you organized, with Mr. Rogge, the Federal Concrete Pipe Company. A.—Yes, sir.

Q.—Did you also organize the Core Joint Pipe? A.—Organized it.

Q.—Is the Core Joint Pipe Company still in existence? A.—They are.

20 Q.—Where is its principal office? A.—In New York.

Q.—Do you know the street? A.—It used to be 101 Park Avenue.

Q.—Now, I understand that during a certain period of time, say 1917 to 1927, Concrete Pipe was being used in the construction of sewers? A.—Yes.

Q.—In the City of New York, State of New York and elsewhere? A.—Yes, sir.

MR. HACKETT: Beginning to be used.

30 MR. GOUDRAULT: Yes, beginning to be used, from 1917 to 1927.

Q.—Would you name us the companies that you know of that were building or constructing such kind of sewer pipe? A.—Yes, there were several of them in this section of the country.

Q.—Would you name them? A.—The Core Joint Pipe Company, Federal Concrete Pipe Company, the Bartram Pipe Company.

40 Q.—The Lock Joint Pipe Company? A.—Lock Joint Pipe Company, the Core Joint Pipe Company, the Federal, the Bartram.

Q.—Do you know about the Newark? A.—And the Newark Pipe Company.

Q.—Where was the office of the Bartram Pipe Company? A.—In Rochester, I think, or Buffalo; one or the other.



*Fred H. Weaver for plaintiff (direct examination).*

Q.—Do you know if they did any business in the City of New York between 1917 and 1927? A.—Well, I am not confident whether they did or not.

Q.—Do you know about the other companies doing business in the City of New York? A.—Oh, lots of it.

10 MR. COOK: I object, Mr. Commissioner, to all evidence of this character as irrelevant and illegal, and having no bearing on the issues; and I ask that this objection apply to all the evidence of this witness.

MR. HACKETT: I associate myself with that objection, and I also ask that the questions to follow be less leading and less suggestive.

20 MR. GOUDRAULT: I agree that one formal objection be entered to the evidence of this witness; and in answer to Mr. Hackett's remark, I may state that the only purpose of being leading was to save time. These facts are all known throughout New York.

MR. HACKETT: You better get New York as a witness because nobody else knows them.

THE COMMISSIONER: Will you proceed, Mr. Goudrault.

BY MR. GOUDRAULT:

30 Q.—Now, Mr. Weaver, to make this quite plain, you told us that you were in the business of manufacturing precast concrete pipe for the construction of sewers, from 1909 on to practically a year ago; is that right? A.—That is right.

Q.—Furthermore, that you were the inventor of one or two of the makes of this pipe. Which are the ones that you are the inventor of? A.—The Federal, and I designed the Core.

Q.—You designed the Core? A.—I designed the Core Joint.

Q.—That is now being built by the Core Joint Company? A.—Yes.

40 Q.—Now I will ask you to kindly describe, without going into too many details, but as short as possible, the feature of each of these four kinds of pipe you have mentioned. Will you now look at Plaintiff's Exhibit C-121 and C-122, and state what that is? A.—That is Lock Joint.

Q.—That is a Lock Joint model? A.—Lock Joint Model.

Q.—Of precast pipe? A.—Yes. That is a model.

*Fred H. Weaver for plaintiff (direct examination).*

Q.—Will you now look at these two pieces of metal, and state what they are. A.—This is Core Joint.

Q.—A Core Joint model? A.—Core Joint model, yes.

MR. GOUDRAULT: Now plaintiffs offer in evidence, as exhibits C-155 and C-156, this model of Core Joint Pipe.

10 MR. O'DONNELL: Defendants object to the production of the said model as irrelevant and illegal, and object to any further evidence in connection therewith.

MR. HACKETT: Same objection.

(The said models were thereupon received in evidence and marked Plaintiff's Exhibits C-155 and C-156.)

Q.—Will you now look at this design, and tell us what that is? A.—That is Federal. My own name on.

20 Q.—A picture of Federal pipe, of which Mr. Frederick H. Weaver, that is yourself— A.—That's me.

Q.—...is the inventor? A.—Yes.

MR. GOUDRAULT: Plaintiffs offer in evidence, as Plaintiff's Exhibit C-157, this design.

MR. O'DONNELL: Same objection.

MR. HACKETT: Same objection.

30 (The said design was thereupon received in evidence and marked Plaintiff's Exhibit C-157, of this date.)

Q.—Will you now look at this paper, and state if that gives certain data on certain other kinds of pipe? A.—That is something similar to the Newark pipe.

MR. GOUDRAULT: Plaintiffs offer in evidence this sheet of paper, as Plaintiff's Exhibit C-158.

40 MR. O'DONNELL: Same objection; and furthermore, it is not, in any event, the best evidence.

MR. HACKETT: Same objection. This is a longitudinal section.

MR. GOUDRAULT: I understand that is not the design of the Newark pipe altogether. It is just a section?

*Eugene J. Tully for plaintiff recalled (direct examination).*

**THE WITNESS:** Just a section of ordinary pipe, similar to the Newark.

(The said paper was thereupon received in evidence and marked Plaintiff's Exhibit C-158, of this date.)

10 **Q.**—Does that Exhibit C-158 give you certain data showing how the joints are re-enforced in the Newark pipe? **A.**—Well, it is simply,—

**Q.**—I am not asking you that. Just answer yes or no.

**MR. HACKETT:** Don't put all leading questions, and let the witness answer some of the questions.

**THE WITNESS:** He don't have to. I know it.

(Recess from 1.00 to 2.00 p. m.)

20

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**AFTER RECESS** 2.00 p. m.

**DEPOSITION OF EUGENE J. TULLY**  
(recalled).

30 **EUGENE J. TULLY** was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposes and saith as follows:

**DIRECT EXAMINATION BY MR. GOUDRAULT:**

**Q.**—Mr. Tully, I hand you three files of original contracts. Will you please produce them and say what they are?

**MR. COOK:** On behalf of the defendants, I object to the production of these three contracts, on the ground that they are irrelevant and illegal, and have no bearing whatever upon the issues in the case.

40

**MR. HACKETT:** I avail myself of the same objection.

**MR. GOUDRAULT:** The plaintiffs will accept one formal objection being made to the production of these three contracts, and to evidence to be given thereon by the witness; the objection to avail as being made to every question.

*Eugene J. Tully for plaintiff recalled (direct examination).*

**THE WITNESS:** This is Contract No. 66597, between the Awixa Corporation and the City of New York, for the construction of a sewer in 25th Street, etc. The date of award is July 27th, 1923. The date of contract is August 16, 1923. This is an original contract.

(The said contract was thereupon received in evidence and  
10 marked Plaintiff's Exhibit C-159, of this date).

**THE WITNESS:** This Contract is No. 77420, between the Awixa Corporation and the City of New York, for the construction of a sewer in 158th Street, etc. The date of award is November 13, 1925. Date of contract is December 7th, 1925. This is an original contract.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-160, of this date).

20 **THE WITNESS:** This is Contract No. 75044, between Welch Brothers Contracting Company, Inc., and the City of New York, for the construction of a sewer in Horstman Avenue, etc. The date of award is May 13, 1925. The date of contract is June 1, 1925. This is an original contract.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-161.)

**BY MR. GOUDRAULT:**

30 **Q.**—Look at Exhibit C-145 which you have produced, and I understand this is the assignment of the last contract awarded to Welch Brothers, to the Awixa Corporation, is it not? **A.**—Yes, sir. This contract was subsequently assigned to Welch Bros. Contracting Co., Inc. to Awixa Corp., as per assignment C-145.

*Fred H. Weaver for plaintiff recalled (direct examination),*

DEPOSITION OF FRED H. WEAVER  
(recalled).

FRED. H. WEAVER 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.—Is there some indication on Exhibit C-158 as regards the joining of the joints in the Newark pipe? A.—Somewhat similar to the Newark pipe, with the exception that this is an addition in the shoulder.

Q.—You are in no position, then, to state if there is part of the plan or design of the Newark pipe? A.—It is a part, yes.

Q.—What kind of pipe? A.—Concrete pipe.

20

Q.—What make of pipe? A.—Oh, it is anybody's make. Anybody can make that without infringing.

Q.—Now, Mr. Weaver, you have given us some particulars of four kinds of pipes. Will you please look at Plaintiff's Exhibits C-121 and C-122, which have already been identified as being the Lock Joint Pipe, and tell us what are the two or three main features of said pipe? A.—There's only two.

Q.—Which are they? A.—One of them is the recess on the inside; and one is the interlapping of wire on which they carry a patent.

30

Q.—In which part of this pipe is the grout put in? A.—It is troweled in from the inside.

Q.—But before it is troweled? A.—We trowel this on the inside up to the spring line. Then we put a spring steel sealing form on the inside of this.

Q.—You spoke of a spring line. What is the spring line? A.—Up half way.

Q.—What do you call the lower part of the pipe? What is it named? A.—What do you mean, the lower part?

40

Q.—The lower half, what is its name, how is it named? The lower half of the pipe. A.—Oh, the lower half of the pipe. I see what you mean.

Q.—How is that named? A.—We call that the invert.

Q.—And the upper part? A.—The upper part or the crown.

Q.—What is the invert, the lower or the upper? A.—The invert is the lower.

Q.—And the upper part? A.—The upper part is the crown.

*Fred H. Weaver for plaintiff recalled (direct examination),*

Q.—Now, you spoke a minute ago of troweling being done. For what purpose? A.—To fill in this joint.

Q.—To fill in the joint of the Lock Joint Pipe? A.—Of the Lock Joint pipe.

Q.—Once that troweling is done, what is the next operation? A.—To put a spring steel sealing form in there.

10 Q.—Will you look at Exhibit C-123 and state if that is a fair representation of what you stated? A.—Oh, no.

Q.—What do you mean by grout? A.—Grout is a one part mixture of sand, one or two parts of cement, or one part of cement or one or two parts of sand, mixed with water. Mixed up like a run of molasses.

Q.—Now, will you look at Exhibit C-122 and state where the grout is poured in? A.—Poured in from the top.

Q.—Where I now indicate with the letter "A"? A.—Yes, poured right into there.

20 Q.—Once the pouring is done, I presume this is closed up? A.—That fills up.

Q.—Fills up. Is this hole built in the pipe, or broken in? A.—Well, sometimes they block it out and sometimes we break it out with a hammer. We used to block them out until it worked a hardship on the contractor. Nine times out of ten when we blocked it out, that thing would be on the side or down, or where it ought not to be.

30 Q.—Now, will you look at this model of Core Joint Pipe, Exhibits C-155 and C-156, and indicate by a red mark, the place where appears the core? A.—Right in here (indicating and marking).

MR. COOK: I object to any evidence regarding the manufacture or sale of the Core Joint Pipe, inasmuch as it is not covered by the pleadings and it is irrelevant.

MR. HACKETT: I avail myself of the same objection.

THE COMMISSIONER: I will allow the answer, subject to counsel's objections, exceptions and reservations.

40 BY MR. GOUDRAULT:

Q.—Where is the grout poured in in the Core Joint Pipe? A.—Right in that hole there (indicating).

Q.—On top of the pipe, isn't it? A.—Right on top, in the bell end.

Q.—Is that hole built in or broken in? A.—Sometimes we build it in, and sometimes we break it out.

*Fred H. Weaver for plaintiff recalled (direct examination),*

Q.—And once the grout is in, that is covered? A.—That is filled. We keep on pouring until it does fill.

Q.—Is this core for the purpose of joining? A.—That is the place to pour the grout in.

Q.—I know, but I mean this core is the joining feature of the Core Pipe, isn't it? A.—That is the joining feature, right there.

10 Q.—The same as the two cores are the joining feature of the Federal Pipe, isn't that right? A.—That's it, exactly.

Q.—Now, look at Plaintiff's Exhibit C-157, and indicate with this red pencil the cores that you refer to. (Witness indicates and marks.)

Q.—Is there any special feature or difference between the Core Concrete Precast Pipe and the Federal Pipe except that the Core Pipe has one core and the Federal has two cores?

20 MR. HACKETT: Objected to as leading and suggestive.

MR. GOUDRAULT: Question withdrawn.

Q.—Will you tell us the difference between the Core Joint Pipe and the Federal Pipe, in a few words? Just state the main differences. A.—The Core Joint has one core, and the Federal has two what we term as grooves.

Q.—That is, in the Federal, instead of calling them cores, you call them grooves? A.—Well, we had to, because they didn't want to have any trouble in calling them cores because the other  
30 fellow calls them cores.

Q.—Well, any other differences? A.—Only that it makes a tighter joint.

BY MR. COOK:

Q.—The Federal is better than the Core Joint? A.—If you could put four in, it would be better than that.

Q.—I mean, the Federal Pipe is a better pipe? A.—Not the pipe. The joint.

40 Q.—The Federal joint is a better joint? A.—Yes. We proved that through hydrostatic tests. And if you had room in there, if you had room for four, it would be better than that would. But you have not got the room.

BY MR. GOUDRAULT:

Q.—By core, you mean a hollow channel, is that right? A.—That is what it is.

*Fred H. Weaver for plaintiff recalled (direct examination),*

Q.—You told us that you were the vice president of the Core Joint Company. Is that right? A.—The Federal.

Q.—The Federal. Did you have any occasion to make quotations for the sale of your pipe? A.—Quite often.

Q.—Do you remember the years in which you made quotations for the Federal pipe? A.—In what year?

10 Q.—Yes. A.—I couldn't tell you a specific year. Within a range of three or four years.

Q.—I mean, you were with the company in 1922? A.—Oh, yes.

Q.—And you were with the company in 1925, up to 1927 and 1928? A.—Yes.

Q.—Do you recollect these quotations we are referring to that you made on behalf of the Federal Pipe Company? A.—I do.

Q.—Do you recollect as a matter of fact the various quotations that you made? A.—Not offhanded, no.

20 Q.—I now show you this paper and will you state if that refreshes your memory as to a quotation, if you made that particular quotation?

MR. HACKETT: I object to the production of this document as irrelevant.

MR. GOUDRAULT: I am not producing it.

MR. O'DONNELL: Then do not question him on it.

MR. COOK: Same objection.

30

BY MR. GOUDRAULT:

Q.—Does that refresh your recollection? A.—Yes. Mr. Rogge and I fixed these prices up, and we had Mr. Everett sign them, he being the president of the company.

Q.—State the quotation, and to whom, and where; the size of the pipe, and prices? A.—These quotations were made to Carlo Petrillo Company.

40 Q.—What date? A.—They were made November 29, 1922, Mount Vernon, New York. The prices were quoted on 30 inch precast pipe, \$3.50 per lineal foot delivered; 48 inch precast pipe was \$8. per lineal foot delivered.

Q.—What make of pipe did you quote them on that occasion? A.—Federal Pipe.

Q.—You said that your quotation was for pipe delivered. Delivered where? A.—Along the line of work, or as near as we could get to it.



*Fred H. Weaver for plaintiff recalled (direct examination),*

Q.—Did this quotation result in a sale? A.—We done the job.

Q.—You remember that? A.—Yes.

Q.—And I heard you say that you and Rogge prepared the specifications for this particular quotation? A.—Yes.

Q.—You remember that well? A.—Oh, yes, positively.

10 Q.—Now, do you remember any other quotations? A.—We done three or four jobs in Mount Vernon.

Q.—Have you done them elsewhere? A.—Oh, yes.

Q.—You can't remember any other? A.—Oh, yes. Pennsylvania Paving Company, Chester, Pennsylvania; Petrillo Brothers, J. B. LaMarsh.

Q.—Will you now look at this and state if that refreshes your recollection as to quotation, and state what that paper is? A.—Yes, sir, that was for Daly & Merritt, Port Chester.

20 Q.—The question is, does that refresh your recollection? A.—Oh, yes.

BY MR. HACKETT:

Q.—What is the document that you have been referring to? A.—What document?

Q.—The document you just had in your hand. A.—Oh, we quoted a price to the Peck Coal Corporation, in Port Chester, and they sold the pipe to the Daly & Merritt Company, contractors in Port Chester.

30 MR. HACKETT: I see. Well, I object to this, Mr. Commissioner. It is irrelevant and has no bearing on this case.

MR. O'DONNELL: And the witness should not be allowed to refresh his memory from it.

MR. COOK: I join in that objection.

THE COMMISSIONER: He has not offered it in evidence, as I understand it. He has only used it to refresh the witness' memory.

40 BY MR. GOUDRAULT:

Q.—Will you then state the quotations and prices, and state whether you had something to do with those quotations?

MR. COOK: I don't see, Mr. Commissioner, what possible advantage there is to go into the business relations between this witness as managing director or vice president of the Federal

*Fred H. Weaver for plaintiff recalled (direct examination),*

Pipe Company, with the Peck Coal Company, or how these transactions can have any possible relevancy to the charge which is now made against the estate of the late Mr. Phillips.

MR. GOUDRAULT: The evidence that the plaintiffs wish to put in,—

10 MR. HACKETT: Just a moment.

MR. GOUDRAULT: Are you finished?

MR. HACKETT: No, but I would rather that you do not state what you hope to prove. Let the witness tell us that.

MR. COOK: Don't tell the witness what to say, Mr. Goudrault, please.

BY MR. GOUDRAULT:

20 Q.—What were those quotations? A.—Quotations for 42 inch concrete pipe, \$5.75 per lineal foot.

Q.—To whom, and where, and when? A.—To the Daly-Merritt Company, in Port Chester, on October 10, 1924.

Q.—Where is Port Chester? A.—Port Chester is up the northern part of the State.

Q.—Do you know the distance between New York and Port Chester, New York State? A.—About 22 miles from New York City.

30 Q.—Is this a copy of the letter that you wrote yourself, Mr. Weaver? A.—There's "F. H. W." here. I dictated it, so that must be a copy of it.

Q.—Do you remember making any other quotations for the Federal Pipe, of which company you were the vice president?

MR. COOK: Are those produced, Mr. Goudrault?

MR. GOUDRAULT: I don't think I will produce them yet.

40 Q.—Do you recollect any other quotations that you might have made on behalf of the Federal Pipe Company? A.—Yes, we made several of them.

Q.—I don't say "we". You. A.—I did.

Q.—Then state some others. A.—J. B. LaMarsh.

Q.—Do you remember the number, and the figures, quotations and prices and sizes of pipe, to LaMarsh, the quotations that you made to LaMarsh? A.—Not offhanded.

*Fred H. Weaver for plaintiff recalled (direct examination),*

Q.—I now show you a paper, and will you state if that refreshes your recollection? A.—Yes, that's mine. That is my own handwriting.

Q.—Does it refresh your recollection? A.—Yes, sir.

Q.—With your recollection so refreshed, will you state the quotations, sizes of pipe and prices of pipe, that you did make to the said Mr. LaMarsh?

10

MR. HACKETT: I object to all this evidence as irrelevant and illegal; and futile.

MR. COOK: I object also.

THE COMMISSIONER: You may proceed with your answer, subject to counsel's objections.

THE WITNESS (answering): In the Winter of 1921 and the Spring of 1922 we sold LaMarsh, the Federal Pipe Company did, and also done the job.

20

Q.—Did you quote LaMarsh? A.—We did. I did.

Q.—What sizes? A.—66 inch, \$9.50 per lineal foot delivered; 60 inch, \$8. per lineal foot delivered.

Q.—When you say "delivered", what do you mean? A.—Alongside of the work.

Q.—Did you state that quotation to have been given and prepared by yourself? A.—I did.

Q.—And where was it delivered; where was the merchandise delivered? A.—On LaSalle Avenue.

30

Q.—Where is that? A.—In the Bronx.

Q.—City of New York? A.—City of New York.

Q.—Now, do you remember making any other quotations to Mr. LaMarsh or any other contractor? A.—Yes. We done another job on Gunnhill Road, in the Bronx.

Q.—Who did that job? A.—I done that myself.

Q.—Before making the job, do you remember the figures or the quotations? A.—Not without looking at this, (indicating).

Q.—I now show you this paper, and will you state if that refreshes your recollection? A.—It does.

40

Q.—State the quotations, prices and sizes of pipe you then made for that job? A.—51 inch, \$7.20 per lineal foot; 42 inch \$5.60 per lineal foot.

Q.—To whom? A.—J. B. LaMarsh.

Q.—Where? A.—Gunhill Road; Gunhill Road sewer.

Q.—Where is that? A.—In the Bronx, New York City.

*Fred H. Weaver for plaintiff recalled (direct examination),*

Q.—The date, or the year? A.—1921.

Q.—Was that quotation prepared by yourself? A.—Mr. Rogge and myself fixed that up.

Q.—Did that quotation result in a sale? A.—Why, yes. We done the job.

Q.—What do you mean you did the job? A.—We manufactured the pipe.

10 Q.—Now, do you remember any other quotations that you personally gave or prepared? A.—We done work for Brennan & Forshay in Port Chester, New York.

Q.—Can you remember the figures? A.—No, I don't.

Q.—Will you look at this paper and state if that refreshes your recollection? A.—Yes.

Q.—It does? A.—Yes.

Q.—Will you state the quotations you then made, to whom, sizes of pipe, prices, and the location, and the date? A.—For Brennan & Forshay?

20 Q.—Where are they located? A.—Port Chester, New York.

Q.—Sizes? A.—Sizes, 48 inch, \$6.50 per lineal foot; 36 inch, \$3.95 per lineal foot; 30 inch, \$2.95 per lineal foot.

Q.—Did that quotation result in a sale? A.—Yes. We done the job; manufactured the pipe.

Q.—Did you personally attend to this quotation? A.—I did, personally.

Q.—Will you state the year? A.—1926.

30 Q.—Do you remember any other quotations made by the Federal Pipe Company through you to contractors? A.—We done another one in Mount Vernon, for Jimmy Ciarcia.

Q.—Did you prepare yourself those quotations for Ciarcia? A.—Jimmy Ciarcia,—Mr. Rogge and I done that.

Q.—Did it result in a sale? A.—It did.

Q.—Do you remember the quotations? A.—No, I do not.

Q.—Will you look at this paper and see if that refreshes your recollection? A.—Yes, it does.

Q.—Can you state now the prices, and the sizes, of those quotations? A.—I don't remember them.

40 Q.—Does that paper refresh your recollection? A.—It does.

Q.—What quotations did you make as to that particular contract on that particular job? A.—It was in the year 1923. 54 inch, \$7 per lineal foot; delivered; 42 inch, \$4.60 per lineal foot delivered; 24 inch, \$2. per lineal foot delivered.

Q.—Did that quotation result in a sale? A.—It did. And we manufactured the pipe.

*Fred H. Weaver for plaintiff recalled (direct examination),*

Q.—Where was this job? A.—Mount Vernon, New York.

Q.—Where is that? A.—About the upper part of the Bronx. It joins on to the Bronx.

Q.—Next to New York City? A.—Right next to New York City.

Q.—What about the distance in miles, could you state?

10 A.—From where?

Q.—From Queens Borough? A.—From Queens Borough, about 12 miles.

Q.—Do you remember making any other quotations? A.—We done another one up there, just about the same time we done the Ciarcia job, for Petrillo Brothers.

Q.—Do you remember the quotations that you gave on that particular job? A.—I do not.

Q.—Will you look at this paper and state if that refreshes your recollection? A.—It does.

20 Q.—What quotation did you make?

MR. COOK: Who prepared that paper, Mr. Goudrault?

A.—That was in the Winter of 1922 and the Summer of 1923. That was Petrillo Brothers, Mount Vernon, New York. 72 inch \$13. per lineal foot delivered; 42 inch, \$4.25 per lineal foot delivered; 24 inch, \$2 per lineal foot delivered.

Q.—Did you prepare those quotations yourself? A.—I did.

Q.—Did these quotations result in a sale? A.—They did. And we manufactured the pipe.

30 Q.—Where was that? A.—Mount Vernon, New York.

Q.—Do you remember any other quotations that you yourself prepared and sent out to contractors? A.—We done another one for Joe Burnes, in the Bronx, who operates under the name of the Melrose Construction Company.

Q.—Did you prepare that one yourself? A.—I did.

Q.—Do you remember the quotations? A.—No, I do not.

Q.—Will you look at this paper and state if that refreshes your memory on that particular job? A.—Yes, it does.

40 Q.—Will you state the quotations,—did you make yourself the quotations for that particular job? A.—This job Rogge and I done that one.

Q.—Did you personally attend to the preparation of these quotations? A.—Sometimes I did, and sometimes we both did.

Q.—I am asking you for this particular job. A.—Oh, this particular job, Rogge and I done that together.

*Fred H. Weaver for plaintiff recalled (direct examination),*

Q.—Do you remember sending out the quotations? A.—  
Oh, yes.

Q.—When? A.—That was in the Summer of 1923.

Q.—Do you remember the quotations? A.—The 36 inch  
was \$4. per lineal foot; the 30 inch was \$3.05 per lineal foot; 24  
inch, \$2 per lineal foot, all delivered.

10 Q.—And by “all delivered” you mean? A.—Right along-  
side the work.

Q.—And did that quotation result in a sale? A.—It did,  
and we manufactured the pipe.

Q.—Where was it? A.—Rice Stadium, in the Bronx.

MR. HACKETT: Of course, all this is subject to our ob-  
jection, Mr. Commissioner.

20 Q.—A minute ago you spoke about quotations being pre-  
pared and given by you to J. Ciarcia. Do you remember another  
quotation that you might have prepared for that same contractor?  
A.—I don't remember the quotation, but I remember the job.

Q.—Where was that job? A.—In Mount Vernon, New  
York.

Q.—Do you remember the year? A.—It must have been  
about 1923. They were all there along about the same year.

Q.—Will you look at this paper and state if that refreshes  
your recollection?

30 MR. COOK: Is that the same paper that he has been look-  
ing at right along?

MR. GOUDRAULT: Yes.

MR. COOK: Let me see it, please.

(Mr. Cook examines paper referred to.)

40 MR. COOK: I renew, Mr. Commissioner, my objection to  
all evidence of this character. On behalf of the defendants, we  
cannot see what possible connection there is between the prices  
obtained by the Federal Pipe Company for the delivery of its  
own pipe in Mount Vernon, New York, or anywhere else. And  
we object to all this evidence as being a waste of time.

THE COMMISSIONER: I will allow the answer, subject  
to counsel's objections, exceptions and reservations. You may  
proceed, Mr. Goudrault.

*Fred H. Weaver for plaintiff recalled (direct examination),*

MR. GOUDRAULT: Will you read the question?

(Question read by clerk.)

THE WITNESS: (answering) It does.

BY MR. GOUDRAULT:

10 Q.—Did you yourself make any quotations to that contractor J. Ciarcia, for that particular job? A.—I did this one myself, yes, sir.

Q.—Do you remember the quotations, and the prices that you gave the contractor for that particular job, and the date? A.—That was for Jimmy Ciarcia, 221 Franklin Avenue, Mount Vernon, New York. That was in May, 1925. The prices we quoted on that was 36 inch, \$4. per lineal foot; 30 inch, \$3.04 per lineal foot, both delivered along the line of work.

20 Q.—Did these quotations result in a sale? A.—They did and we manufactured the pipe.

Q.—Do you remember any other jobs on which you personally attended to the quotations on behalf of your company, the Federal Concrete Pipe Company, Inc.? A.—We have done so many of them it is pretty hard to remember them.

Q.—I am speaking of you personally.

MR. COOK: I suppose lots of other contractors did a great many too.

30 Q.—Will you look at this paper and state if this refreshes your recollection as to another job where you personally prepared and gave the quotations? A.—Yes. That was Fred Carideo.

Q.—Do you remember preparing those quotations yourself? A.—I did.

Q.—What were the prices? A.—Fred Carideo, Mount Vernon. That was in March, 1925. That was 42 inch precast pipe, at \$5.10 per lineal foot; 24 inch, \$2.15 per lineal foot. They were delivered along the line of work.

40 Q.—Did these quotations result in a sale? A.—They did. And we manufactured the pipe.

Q.—Do you remember, Mr. Weaver, quoting prices for the Federal Pipe in the Borough of Queens, for public sanitary sewers between 1921 and 1927? Just state in a general way if you recollect. A.—Yes. We quoted prices to Angelo Paino on one job there.

Q.—Did you make the pipe in that particular instance? A.—No, we didn't.

*Fred H. Weaver for plaintiff recalled (cross-examination).*

Q.—Any other jobs? A.—No. That was the only one.

Q.—Will you look at Plaintiff's Exhibit C-9. And I will now read to you a specification annexed to page 66 of that exhibit. "All joints to be made of 1-2 Portland Cement mortar. The mortar shall be thoroughly troweled 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 specially designed for the purpose shall be placed over and around the entire joint and the mortar for sealing the arched portion grouted or poured through an opening in the crown of the pipe. Joints must be watertight." Do you know of these specifications? A.—Yes. I have seen them before.

Q.—What kind of pipe do you know of in which this process could be done? A.—Lock Joint only, as I know.

Q.—Why? A.—On account of the recess, for one thing, and on account of a specially designed sealing form, in the other.

20 MR. GOUDRAULT: Your witness.

CROSS EXAMINATION BY MR. HACKETT:

Q.—Did you tell us that the core type was your design?

A.—It was.

Q.—You originated it? A.—I did.

Q.—In what year was that? A.—1914.

Q.—You thought that was a pretty good pipe? A.—I did.

Q.—And you worked for the manufacturers of that pipe for six or seven years? A.—Not quite that long.

Q.—Until 1920, I think you said? A.—Its about six years.

Q.—And then you came to the conclusion that a pipe better than the core pipe could be made? A.—I did.

Q.—And you evolved and designed the Federal pipe? A.—I did.

Q.—And that was a vast improvement on the concrete pipe? A.—Positively.

Q.—You felt that after the Federal pipe came into existence anybody who had wits enough to understand the elementary principles of sewer construction would admit the superiority of the Federal pipe? A.—Not necessarily.

Q.—Why? A.—We had to prove it through tests first, before you could use the word "wits".

Q.—In your experience in the manufacturing and selling of pipe you have found that elements other than the intrinsic merit of a commodity have to be considered when introducing it? A.—Well, not necessarily.

40



*Fred H. Weaver for plaintiff recalled (cross-examination).*

Q.—Well, everybody won't use the best thing merely because it is the best thing, will they? A.—Oh, no.

Q.—You have to educate people to understand the merits of the best things before you can have it used? A.—You do, and prove it to them through tests that it does.

10 Q.—Before you invented the core pipe, sewers were generally constructed in what is called here the monolithic type, or made out of brick or concrete blocks? A.—That's right.

Q.—Or some other material which resulted in one solid piece of construction in a trench? A.—That's right.

Q.—And that type of sewer went out of style and the pipe sewer replaced the monolithic type? A.—It did.

Q.—And with this change in the fashion in sewer construction your first invention, the core pipe, came into existence? A.—It did.

20 Q.—And found favor with a certain number of sewer builders? A.—Not a certain amount of them.

Q.—A certain number? A.—Yes.

Q.—But it took time to introduce that pipe? A.—We had to prove it to them that it would stand up.

Q.—And while people were still being educated in the merits of the core pipe, you evolved the Federal Pipe? A.—I did.

Q.—Which was an improvement on the core pipe? A.—That's right.

30 Q.—And if I understood you well, you organized a company that engaged in the development of this type of pipe and in its manufacture? A.—It did.

Q.—And you and Mr. Rogge were in that company? A.—Yes, we were.

Q.—And you went into competition with the manufacturers of other types of sewer pipes? A.—We did.

Q.—Including the core pipe? A.—We did.

Q.—And the use of pipe as a type of structure, as distinct from the monolithic type, was slowly gaining ground? A.—Yes, sir, it was.

Q.—So you got some business? A.—We did.

40 Q.—You got some business away from the monolithic type, and you got business, I suppose, away from the core type? A.—Yes.

Q.—And I believe you said that after some years experience you came to the conclusion that if there were four grooves instead of two grooves, as appeared in the design of the Federal pipe, it would make a better job? A.—It would.

*Fred H. Weaver for plaintiff recalled (cross-examination).*

Q.—And consequently a better pipe? A.—A better pipe.

Q.—And that would be an improvement on the first form that you gave to Federal pipe? A.—Yes. But you can't put them in. The space isn't there.

Q.—I understand, but if somebody can evolve a method of putting in the four grooves, you would concede it would be an improvement, just as your Federal pipe was an improvement on the core pipe? A.—If they did, you would have to change the specifications.

Q.—But it would be an improvement? A.—It would be an improvement.

Q.—Now, did I understand you to say that the Federal pipe was manufactured by yourself and Mr. Rogge? A.—No, we had a company.

Q.—What was the name of the company? A.—Federal Concrete Pipe Company.

Q.—Did you tell us that that company went into bankruptcy? A.—No, sir, I did not.

Q.—Well, did it go into bankruptcy? A.—No, sir.

Q.—You are no longer with it? A.—No, sir.

Q.—Whom are you with now? A.—I am with the L. B. Harrison Company, Greenpoint.

Q.—What do they do? A.—Manufacturers of all precast articles, artificial stone, street building, sewers, waterworks; in fact, general contracting.

Q.—But the Federal Pipe Company was reorganized, wasn't it? A.—Not as I know of.

Q.—Well, wasn't there some change in policy in the Federal Pipe Company, in 1928 or 1927? A.—Only the man at the head of it got 4 to 8 years at Sing Sing, for bribery, and that is when I shook him.

Q.—Well, I understand that there was some modification in the personnel of the Federal Company. A.—I couldn't tell you that, because I haven't seen him over a year, probably a year and a half.

Q.—You have nothing to do with the Federal Company now? A.—No, sir.

Q.—And it had a pretty close shave financially, didn't it? A.—Not necessarily.

Q.—Well, not necessarily, but it did in fact, did it not? A.—I don't know.

Q.—Now, Mr. Weaver, do you wish the Commissioner to understand that you do not know anything of the financial for-

*Fred H. Weaver for plaintiff recalled (cross-examination).*

tunes of a company which you organized, nursed through infancy and left a year ago? A.—Over a year ago.

Q.—Yes, a little over a year ago. A.—Yes.

Q.—Well, I put it to you frankly, that the Federal Pipe Company,—and if I haven't given you the accurate name, you know what I mean, do you not? A.—Yes.

10 Q.—Went through rather a severe financial crisis? A.—  
When was this?

Q.—I don't want you to hedge or dodge, Mr. Weaver. I want you to tell me if it is to your knowledge that the Federal Concrete Pipe Company organized by you and Mr. Rogge, went through a severe financial crisis? A.—Well, I don't know what you mean by a severe financial crisis.

20 Q.—You don't. Very well. Well, I was going to put it to you in this way: That if you had charged \$10 or \$15 more a foot for your pipe, you would have had more money in reserve to meet that crisis when it came? A.—Well, I don't know.

Q.—No, I didn't expect you would, Mr. Weaver. A.—No.

Q.—But I wanted you to tell the Commissioner that you didn't. It sometimes helps. But while you were making the concrete pipe, which was good pipe, and the Federal pipe, which was a better pipe, there was in existence a pipe, about which we have heard a great deal here and which several witnesses have testified was a better pipe than yours, known as the Lock Joint pipe. You know of its existence? A.—Oh, yes.

30 Q.—You know it is a prosperous concern, do you not?  
A.—I don't know. I never kept their books.

Q.—You know that it has never had any financial crisis?  
A.—It has.

Q.—It has? A.—Yes, sir.

Q.—I thought you told us a minute ago you did not know?  
A.—Lock Joint, I said—

Q.—I thought you said you didn't know about their affairs? A.—Back in the first part in 1909 or 1910, they certainly did.

40 Q.—Isn't it remarkable how much more you know about  
Lock Joint Pipe than you do about your own pipe, the Federal pipe? A.—That's 20 years ago.

Q.—I see. You know more about the Lock Joint affairs 20 years ago than you do about your own company's affairs 15 months ago. That is your testimony, isn't it? A.—Yes, sir.

Q.—I thought so. Will you explain how it happens that all your private records are in the hands of the attorneys for

*Fred H. Weaver for plaintiff recalled (cross-examination).*

the prosecution? A.—We presented them on the Connolly trial, and I never got them back.

Q.—I see. You were one of those who took a hand in the Connolly trial; you were one of those who went to see Mr. Buckner? A.—I didn't go to see Mr. Buckner. He sent for me.

Q.—He sent for you. And you went. You had a lot of spare time that day and that week, didn't you? A.—Oh, yes.

10 Q.—Are the contracts which you have told us of here, the only contracts that your company had during the ten years of its existence? A.—Oh, no.

Q.—Are you willing to pledge your oath that your company had no contracts at higher prices than those you have related here? A.—That is I didn't have anything to do with it.

Q.—I suppose that when you were weeding out your contracts for Buckner, you took the contracts in which your company had sold at higher prices and weeded them out with great care, having a view to the high prices? A.—No, because I never had  
20 access to all of those,—to the papers.

Q.—You didn't have access to the papers of your own company? A.—No, sir; not even the books.

Q.—I see. So you mean to say that you filched away the documents that are now in their hands? Why couldn't you get them? A.—Because Paino hid them.

Q.—That is not quite clear. You have told us that you had no access to the books of your own company. A.—That's  
30 right.

Q.—And yet you were able to get them to take them to Buckner, and I ask you if you stole them away from your company? A.—I told you that I didn't have all of them.

Q.—No, you did not tell us that. A.—I did. I said I didn't have access to all of them, only a few of them.

Q.—And you took all you had to Buckner? A.—That wasn't many.

Q.—You were the vice president of the Federal Company? A.—I was.

Q.—Who was the president? A.—Paino, Angelo Paino.

40 Q.—Where is he? A.—God knows.

Q.—Apparently you quarreled with Mr. Paino? A.—I quarreled with him?

Q.—Yes. A.—Oh, yes. We had that quite often. Nobody could get along with him.

Q.—You are a little lamb yourself that is easy to get on with? A.—No, I am no lamb.

*Fred H. Weaver for plaintiff recalled (cross-examination).*

Q.—No lamb? A.—No, sir.

Q.—Are you a lion? A.—No, sir, no.

MR. GOUDRAULT: Just a man, like Mr. Hackett and myself?

THE WITNESS: A guy with a weather-beaten face.

10

BY MR. HACKETT:

Q.—I suppose that when a man is introducing a pipe, he sometimes has to offer it at a very low price in order to induce a doubting contractor or owner to use it? A.—You do, when you first get started.

MR. HACKETT: Yes. That is all.

CROSS EXAMINATION BY MR. COOK:

20

Q.—You spoke of a gentleman that was sent to Sing Sing for some years. Who was he? A.—Angelo Paino.

Q.—Oh, Mr. Paino is in Sing Sing? A.—I didn't say he was in Sing Sing. He got four to eight years in Sing Sing and appealed, and it was thrown out of court. He was convicted.

Q.—He was your president? A.—He was president.

Q.—You were closely connected with him, weren't you? A.—Not at that time.

Q.—But for a good many years? A.—Previous to that.

30

Q.—For some years before he went to Sing Sing, you were connected with him? A.—Oh, yes.

Q.—Is he in Sing Sing now? A.—No.

Q.—Why didn't he go if he was convicted, Mr. Weaver? A.—It was thrown out of court on a technicality.

MR. GOUDRAULT: I object to that line of evidence. Mr. Paino is not before this Commissioner, and this has nothing to do with the case.

40 MR. COOK: Mr. Paino's name was introduced by Mr. Weaver as the president of his company, and he said it was on account of Mr. Paino's conduct that he left the company.

Q.—Is that so, Mr. Weaver? A.—That's right. That's the reason I shook him.

Q.—Is your company in process of liquidation at the moment? A.—I don't know anything about the company.

*Fred H. Weaver for plaintiff recalled (redirect examination).*

Q.—What did you do with the stock? Had you any shares in it? A.—How many shares had you in the company? A.—We turned that over to Paino.

Q.—On account of his having gone to Sing Sing? Was that a reward for him?

10 MR. GOUDRAULT: He did not go to Sing Sing, Mr. Cook.

THE WITNESS: He did not go to Sing Sing.

MR. HACKETT: You think he should, though?

THE WITNESS: I don't know.

MR. GOUDRAULT: I object to that.

THE WITNESS: I wouldn't say that about anybody.

20 BY MR. COOK:

Q.—Were these transactions for which Mr. Paino was accused of bribery, carried on by him while you were with the company?

MR. GOUDRAULT: I object to the form of the question, Mr. Commissioner. This is certainly irrelevant, incompetent, improper, unfair, and Mr. Cook knows it.

30 THE COMMISSIONER: I will allow the answer, subject to counsel's objection. Will you proceed?

(Question read by Clerk.)

THE WITNESS (Answering) Yes, that was when I was with the company.

MR. COOK: Your witness, Mr. Goudrault.

REDIRECT EXAMINATION BY MR. GOUDRAULT:

40 Q.—I understand Mr. Hackett asked you, and you stated, that you went to Mr. Buckner. Were you subpoenaed to go to the trial? A.—Positively.

Q.—Were you subpoenaed with your documents and papers? A.—Yes.

*Fred H. Weaver for plaintiff recalled (recross-examination).*

BY MR. HACKETT:

Q.—But you went before you were subpoenaed, did you not? A.—No, sir.

Q.—Did you not go to see Mr. Buckner or his representative before you were subpoenaed? I will put that to you. A.—Not to my recollection.

10 Q.—Now, recollect well. Is it not a fact that you went to see Mr. Buckner without a subpoena, before you were subpoenaed? A.—Well, wait a minute; I can give you that answer. No, sir.

Q.—You are positive? A.—Positive.

Q.—You are as positive that you did not go to see Mr. Buckner at his request, without a subpoena, as you are of everything else you have said here? A.—I am, yes, because I was subpoenaed, — the process server, I was standing ten feet away  
20 when he handed Rogge his summons, and he asked “Where could I find the fellow Weaver?” Of course, I didn’t want to say it, and when I went home, the next day I was subpoenaed.

BY MR. GOUDRAULT:

Q.—Now, you told us you were with the Core Joint Pipe Company and the Federal Pipe Company, that runs, I think, for a period of time from 1924 to 1927, and more. During that period of time, did either of these two companies sell pipe in the Borough of Queens?

30 MR. HACKETT: That is certainly not a matter to go into after we have cross-examined the witness.

THE COMMISSIONER: I will allow the answer subject to counsel’s objection.

Q.—What is your answer? A.—Not that I know of.

MR. COOK: Mr. Goudrault, will you let me ask a question?

40 MR. GOUDRAULT: Yes, Mr. Cook.

RECCROSS EXAMINATION BY MR. COOK:

Q.—Mr. Weaver, in regard to the Federal Core Pipe Company, were you a shareholder of that? A.—Oh, yes. I put my patents up against the stock.

Q.—You got stock for your patents? A.—Yes.

*Fred H. Weaver for plaintiff recalled (recross-examination).*

Q.—And do you remember how many shares you had?  
A.—49.

Q.—49 shares. Did the company pay dividends? A.—No.  
We put all the money we made, we put it back into plant.

Q.—Put it back into plant? A.—Yes.

Q.—Well, what was the book value of your shares at the  
10 time you severed connection with the company, have you any  
idea? A.—What was what?

Q.—What was the book value of your shares? A.—We  
had an agreement with him at that time, that anybody who  
wanted to buy the stock, or anybody who cared to step out of the  
company, to pay him 50 per cent. of the stock value.

Q.—Of the book value? A.—Of the stock value.

Q.—Now can you tell me what the stock value was? A.—  
\$100. a share.

Q.—Do you mean to say that your interest in the company  
20 was only \$4800? A.—\$4900.

Q.—\$4900. And you had to surrender that, at any time,  
if you wished to retire, for a payment of \$2450? A.—\$2450, yes,  
sir.

Q.—When you retired from the company, did Paino pay  
you the \$2450? A.—No, he did not.

Q.—He did not? A.—No.

Q.—You didn't object, did you? A.—No. He wanted to  
give the stock back.

Q.—He wanted to give you the stock back. So that the  
30 company had not been a great success up to that time, had it?  
A.—Well, they got that in plant.

Q.—What was the total amount of stock issued? A.—  
\$20,000.

MR. GOUDRAULT: Is that material, Mr. Cook?

THE WITNESS: I am sorry that came out, because we  
were doing a \$100,000. business on \$20,000 capital.

MR. GOUDRAULT: That is possible.

40 THE WITNESS: But we were not paying taxes.

BY MR. COOK:

Q.—Why weren't you paying taxes? A.—Crooked Paino.

Q.—Not Crooked Weaver? A.—No, sir; I was not presid-  
ent of the company.

Q.—You were vice president? A.—Yes.



*Fred H. Weaver for plaintiff recalled (recross-examination).*

Q.—And the vice president has no responsibility in the State of New York? A.—He has responsibility if he has access to those things which is necessary.

Q.—That is why you say you never had the records? A.—That's it.

MR. COOK: That's a good man. Thank you. That is all.  
10 Your witness, Mr. Goudrault.

THE WITNESS: You don't know with a man of that type where you stand on books, when he keeps two sets of books.

REDIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—You mean whom? A.—Paino.

Q.—Now, Mr. Weaver, Mr. Hackett asked you a question regarding the introduction of new merchandise such as the Core or the Federal Pipe on the market. I understand that at the  
20 period of introduction you stated that you do offer your merchandise for less money to a certain extent than when the merchandise is in the market? A.—Yes.

MR. HACKETT: I object to the form of the question as leading and suggestive.

Q.—Now, I understand you did offer some pipes for sale and made quotations on them in 1922, 1923, 1924 and 1925, according to your own evidence, Mr. Weaver. And the prices, what  
30 kind of prices, were they the market value prices at the time? A.—About the same as everybody else quoted. I will take Mount Vernon, for instance. Our prices were the same as the Core Joint, But we had a little political influence, through the Mayor up there, and they gave us the job at the same price.

RECROSS EXAMINATION BY MR. HACKETT:

Q.—Now; Mr. Weaver, I wish to ask you a few more questions. You have told the Commissioner that your friend and  
40 partner, Mr. Paino, as the directing influence in the Federal Company, — what was the name of the company, again? A.—Federal Concrete Pipe Company.

Q.—Paino was the majority shareholder? A.—52 shares.

Q.—52 shares. Out of 100? A.—Out of 100. It was \$20,000.

Q.—He was the dominating influence there? A.—Positively.

*Fred H. Weaver for plaintiff recalled (recross-examination).*

Q.—Paino had another business besides the pipe business?

A.—The contracting business.

Q.—And you told us Paino devoted some time to the contracting business? A.—Most of it.

Q.—And you devoted all your time to the pipe business?

A.—To the outside construction.

10 Q.—Who was in charge of the office? A.—Mr. Rogge, most of the time.

Q.—Mr. Rogge. Rogge was your partner and the man who original the Federal Pipe with you? A.—Yes.

Q.—And you and Rogge were always good friends? A.—Very good.

Q.—And are still? A.—Yes, sir.

Q.—Now, when did you find out that Paino was keeping two sets of books for the Federal Company? A.—Not for the Federal Company.

20 Q.—Oh, but you told us he was. A.—I said, — I didn't say — no, sir, I beg your pardon. You asked me why he left me, and I said I shook him when I found out he was keeping two sets of books.

Q.—That is not what you said. What you said was, the Federal Company didn't pay taxes because it kept two sets of books. A.—I did not.

Q.—Well, we will have to leave that to the record. When did you find out that Mr. Paino was keeping two sets of books for the Federal Company? A.—About two years ago.

30 Q.—Whereupon, you rose in your righteousness and quit him? A.—No, I did not. They shut the job down, on account of some—

Q.—And the company went bust? A.—No, they didn't. The company hasn't gone bust, because right at that time they were doing more business than they were doing before.

Q.—And they are doing no business now? A.—I guess not. I don't know.

Q.—You know that they are not? A.—I don't know. I wouldn't swear to it.

40 Q.—Well, if you were not being cross-examined, and you met some fellow on the street and he said to you "What's the Federal Company doing", you would have no hesitancy in saying "Nothing"? A.—I wouldn't say "Nothing", because I don't know.

Q.—Mr. Paino, the gentleman who didn't go to Sing Sing, despite what you think of his merits, is the Angelo Paino apparently who had many jobs in Queens? A.—Many of them.

*Fred H. Weaver for plaintiff recalled (recross-examination).*

Q.—I note in referring to Exhibit C-1, that Angelo Paino had a job in which the work was completed on the 7th of February, 1919; and he had jobs which were completed on the 4th of October, 1923, and the 17th of October, 1923, and the 29th of August, 1925, and the 13th of August, 1925, and the 29th of October, 1926. He appears to have had a good deal of work over there. A.—A good deal, yes.

10 Q.—And Paino was the man who looked after placing your pipe, to a large extent, did he not? A.—Not much of the time.

Q.—I want to know who it was that brought the political influence to bear on the Mayor when your pipe was accepted in lieu of the Core Pipe, the prices being the same? A.—Where was this?

20 Q.—Well, you told us that the Core Pipe Company in one instance had quoted the same price that your company had quoted, but that you exercised a little political influence and got the job, and I wanted to know whether it was you that exercised the political influence? A.—Where was this?

Q.—Well, you know where it was. You spoke of it a few minutes ago. You have not forgotten it, have you? A.—No. Where is this job you are speaking of?

Q.—I want you to tell me where it was? A.—There were several cases.

Q.—Several cases in which you exercised political influence? A.—Yes.

30 Q.—Now, just name several of the cases in which you exercised political influence to get jobs. A.—In the Bronx.

Q.—The Bronx, yes. Where else? A.—Mount Vernon.

Q.—Where else? A.—Portchester.

Q.—Well, how much did it cost you in The Bronx? A.—Nothing.

Q.—How much did it cost you in Portchester? A.—Nothing.

Q.—How much did it cost you in Mount Vernon? A.—I refuse to answer that question.

40 Q.—Well, I am going to ask the Commissioner to tell you to answer, unless you think better of it now. What do you say? A.—No, sir, I will not answer it.

Q.—Well, what was the name of the official whom you corrupted in Mount Vernon? A.—I refuse to answer that.

Q.—Well, I understood that it was the President of the Board of Aldermen. Will you contradict that? A.—I refuse to answer that. I don't tell tales out of school.

*Daniel Rogge for plaintiff (direct examination).*

Q.—I understand. But you won't go so far as to say that that was the only time you corrupted a municipal official, will you? A.—No, I can't say that that is.

MR. HACKETT: No. Thank you.

MR. GOUDRAULT: All right, Mr. Weaver.

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DEPOSITION OF DANIEL ROGGE.

DANIEL ROGGE, age 44; residence, 3044 Valentine Avenue, The Bronx, New York; Bronx 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:

20

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—Mr. Rogge, are you still a contractor? A.—Yes, sir.

Q.—Were you connected with any manufacturing concern or firm manufacturing precast sewer pipe? A.—I was.

Q.—What company, Mr. Rogge? A.—The Federal Concrete Pipe Company, Inc.

Q.—From what time to what time? A.—From about 1921 to about 1924.

30 Q.—What was your official position in the company? A.—I was treasurer of the Federal Concrete Pipe Company.

Q.—Did you have anything else to do? A.—Not at that time.

Q.—Later on with the company, the Federal Concrete Pipe Company? A.—I don't quite get that question.

Q.—Perhaps I should put it a little bit clearer. You told us you were treasurer of the Federal Concrete Pipe Company. Naturally, then, you must have looked after the financial part of the business? A.—Well, in a way I did while I was treasurer.

40 Paino put up all the money for this company.

Q.—Do you remember making quotations for that company to prospective contractors? A.—I do.

Q.—Do you remember any quotations that you made? A.—Well, during that period we sold to several jobs. We didn't do a whole lot of work.

*Daniel Rogge for plaintiff (direct examination).*

MR. COOK: The defendants objects to all evidence in regard to these matters as irrelevant and illegal, and as not having any bearing on the issues of the case.

MR. HACKETT: I associate myself with that objection.

MR. GOUDRAULT: The attorney for the plaintiff consents that one formal objection be made to the evidence of this witness and all documents, and that that objection shall avail as if made to each question propounded to the witness.

Q.—Now, could you tell us quotations that you made, and the size of the pipe, and the prices of your quotations, Mr. Rogge?  
A.—Well, I can remember, I think, one quotation; and that was to a party by the name of John Ciarcia. That was for a job in Westchester County. I think it was 30-inch pipe, and I think the price was \$3.50 per lineal foot.

Q.—Do you know if that quotation resulted in a sale?  
A.—Pardon me?

Q.—Did that quotation result in a sale? A.—It did; we got the contract for that work.

Q.—Where was delivery to be made, according to your contract? A.—Along the line of the trench, as close as we could get with the truck. I also quoted Michael Del Balso. We also quoted another job to LaMarsh, and I think we sold that job.

Q.—Can you tell us your quotations, — did you make the quotations yourself to Del Balso? A.—I believe I did, yes, sir.

Q.—Can you tell us the number of feet of pipe and the size of pipe, and the prices of your quotations? A.—Not unless you would let me have my letter, to refresh my memory on this.

Q.—Will you now look at this letter dated October 21, 1922, and state if that is the letter you refer to. Will you look at this letter and state if that refreshes your recollection as to those quotations for that particular job? A.—Yes, sir, it does; that is my signature, and that is the quotation; 791 feet of 51-inch pipe, at \$7.20 a linear foot; 502 feet of 42-inch pipe, at \$5.60 per linear foot.

Q.—The date? A.—October 21, 1922.

Q.—The place? A.—Laconia Avenue and Burke Avenue, in The Bronx.

Q.—New York City? A.—New York City.

Q.—And did this quotation result in a sale? A.—It did.

Q.—Delivered alongside the trench? A.—Delivered alongside the trench, yes, sir.

*Daniel Rogge for plaintiff (direct examination).*

Q.—Do you recollect any other? A.—I think we sold a job to LaMarsh in The Bronx, on a piece of the Laconia Avenue job.

Q.—I only want the facts that you yourself know. Don't say "we". I mean, did you personally make the quotations to LaMarsh on that job? A.—I personally did.

10 Q.—And do you remember the sizes and the prices? A.—I think that was a 54-inch job. What the prices was, I don't remember.

Q.—Does this paper refresh your memory? A.—Yes, sir. 791 feet of 51-inch, \$7.20; 502 feet of 42-inch, at \$5.60.

Q.—Did you state the location? A.—Yes, sir; Laconia Avenue, in The Bronx.

Q.—New York City? A.—Laconia Avenue and Gunn Hill Road, in The Bronx.

Q.—Were these quotations prepared by you? A.—Yes, sir. The prices were prepared by myself.

20 Q.—Did these quotations result in a sale in that particular case? A.—Yes, sir.

Q.—Could you give me the date? A.—Not unless I refresh my memory. January 12, 1923.

Q.—Was the pipe there delivered along the trench? A.—Along the line of the trench, yes, sir.

Q.—Do you remember any other quotations that you prepared on behalf of the Federal Pipe Company? A.—Pietrello, in Mount Vernon, I think we sold that job. We sold Frank Nardone a few feet of pipe.

30 Q.—Did you prepare those quotations alone? A.—Yes, sir, I believe I did.

Q.—Do you remember any other quotations? Frank Nardone, do you remember the size of the pipe there? A.—I think it was around 36 or 42-inch, and it was for about 170 feet.

Q.—36-inch, you say? A.—I don't remember the size.

Q.—Do you remember the price? A.—No, I don't.

Q.—Will you look at this and state if that refreshes your recollection? A.—Yes, sir.

40 Q.—That is signed by you? A.—Yes, sir, that is my signature.

Q.—Is that the original? A.—That is the original, signed by myself.

Q.—What is the size of the pipe that you quoted to this gentleman? A.—36-inch pipe, 171 linear feet, at \$5.00 per linear foot.

Q.—The date? A.—June 11th, 1923.

*Daniel Rogge for plaintiff (direct examination).*

Q.—Did these quotations result in a sale by your company? A.—They did, yes, sir.

Q.—Where was the pipe delivered, according to your quotation? A.—In Mount Vernon.

Q.—Where is that as regards New York? A.—In Westchester County, just north of the Bronx line.

10 Q.—About how far from the limits of the City of New York?

MR. HACKETT: It is contiguous.

A.—Let's see. This would be about a mile from the Bronx limit, I guess, where this was delivered.

Q.—Do you remember any other quotations that you prepared? A.—I prepared many quotations, but I don't remember the various ones.

20 Q.—Will you look at this and state if that refreshes your recollection? A.—Yes, sir. This is for a quotation on 48-inch reinforced concrete pipe, at \$5.95 per linear foot; 635 feet; on April 13, 1922, to P. A. Bankson.

Q.—Where? A.—Department of Public Works, New Rochelle.

Q.—What distance is that from New York? A.—Well, that's, from the Bronx line, it is possibly 2 miles or 3 miles.

30 Q.—Did these quotations result in a sale? A.—No, that was just a quotation. They were preparing some work, and the engineer, or whatever this man's position in the City was there, wanted to know about what the price would cost.

Q.—Were your quotations there, in that last particular job, for delivery on the job alongside the job, as usual? A.—No. That one was not alongside. That was just a price so that they could fix a value for it.

40 Q.—All right; then we will disregard that. Now, will you look at this paper and state if that refreshes your recollection as regards any other quotations you might have prepared? A.—Yes, sir. This is a quotation to J. V. Timoney Company, and the Pelham Parkway and Bronxwood Avenue work. This was evidently for a letting, and we quoted various people on this letting, for 803 4-foot 3-inch, 51-inch, at \$7.25 per linear foot; 580 —4-foot, —48-inch at \$7.05 per linear foot; 24 feet of 42-inch, at \$5.60 per linear foot; 719 feet of 36-inch, at \$4.15 per linear foot.

Q.—The date? A.—February 3, 1923.

Q.—Did that result in a sale? A.—I don't believe so.

*Daniel Rogge for plaintiff (direct examination).*

Q.—Delivery to be made where? A.—Along the trench, where accessible by trucks.

Q.—What place? A.—In the Borough of The Bronx.

Q.—New York City? A.—Yes.

Q.—You just stated a minute ago that for that same letting you prepared quotations on these same sizes of pipe for various contractors? A.—Various contractors.

10 Q.—Would you know the names of those contractors? A.—I would.

Q.—Do you recollect, without looking at these papers? A.—No, I would not.

Q.—Will you look at these papers and state if those are the contractors you are referring to and the jobs you are referring to? A.—Yes, sir.

Q.—Just state the names of the contractors. A.—Mr. Marino Paino was one; Michael Del Balso; Gregorio & Gabriele and Anita Construction Company.

20 Q.—I understand that was for the same letting and the same sizes? A.—Yes, sir.

Q.—Same prices and same quotations? A.—Same quotations.

Q.—All right. Do you remember any other quotations that you prepared on behalf of your company? A.—No, I do not.

Q.—Does this refresh your recollection? A.—At Rye, N. Y.

Q.—Wait a minute. Does that refresh your recollection? A.—Yes.

30 Q.—Could you state the quotations that you then made? A.—460 feet of 36-inch pipe, at \$6.00 per foot, at Rye, New York, April 7th, 1923.

Q.—What place, did you say? A.—Rye, New York.

Q.—Is that far from New York City? A.—It would be, from the Bronx line, about 14 miles, I would say.

Q.—Did you give the date? A.—Yes. April 7th, 1923.

Q.—Do you remember any other quotations prepared by yourself on behalf of the Federal Concrete Pipe Company? A.—No, not unless I can refresh my recollection.

40 Q.—Will you look at this letter, and state if that refreshes your recollection? A.—This refreshes my recollection.

Q.—Is this a copy of a letter that you wrote, Mr. Rogge? A.—It is, yes, sir. I remember quoting the Standard.

Q.—What price, what size? A.—24-inch, \$1.95; and 30-inch, \$2.95, F. O. B. cars, New York.

Q.—Did that result in a sale? A.—Not that I remember.



*Daniel Rogge for plaintiff (direct examination).*

Q.—That was not delivered along the line, these quotations? A.—No, sir, it was not.

Q.—Now, do you remember any other quotations? A.—I quoted Timoney, I couldn't remember at this time.

Q.—Will you look at this and state if that refreshes your recollection? A.—Yes, sir.

10 June 11, 1923. Q.—Is that an original letter signed by you? A.—Yes, sir.

Q.—That refreshes your recollection? A.—It does, yes, sir.

Q.—Whom did you make quotations on that particular job? A.—Michael Del Balso.

Q.—At what place? A.—This is in The Bronx. Rice Stadium, Pelham Bay Park, New York. 1862 feet of 36-inch pipe, \$4.30 per linear foot; 300 feet of 30-inch pipe, \$3.25 per linear foot; 500 feet of 24-inch pipe, \$2.15 per linear foot.

Q.—Do you remember the date? A.—June 11, 1923.

20 Q.—Were these quotations prepared by yourself? A.—Yes.

Q.—Did that result in a sale? A.—That one we sold to Burnes, Melrose Construction Company, not Del Balso.

Q.—Do you remember any other? A.—No.

Q.—Will you look at this (indicating), and state if that refreshes your recollection? A.—Yes.

Q.—Did you prepare those quotations? A.—Yes, sir, I quoted Melrose Construction Company, 48-inch pipe, \$8.00 per linear foot, on June 30, 1923. We did not get this job.

30 Q.—Where was that? A.—That was in the Borough of Manhattan.

Q.—New York City? A.—Yes.

Q.—And do you remember any other? A.—Not unless you permit me to refresh my recollection.

Q.—Will you look at this (indicating), purporting to be a letter signed by yourself, and state if that refreshes your recollection as to further quotations? A.—This is not a price on pipe.

Q.—Do you remember any other quotations? A.—No, I do not.

40 Q.—Will you look at this paper, and state if that refreshes your recollection as regards any other quotations you might have made on behalf of the Federal Concrete Pipe Company? A.—Yes, sir. 57-inch pipe, \$13; 42-inch, \$7.75; 36-inch, \$6.00; and 30-inch, \$4.90.

Q.—To whom did you make that quotation? A.—Michael Del Balso.

*Daniel Rogge for plaintiff (direct examination).*

Q.—The date? A.—December 18th.

Q.—The year? A.—1923.

Q.—To whom? A.—Michael Del Balso.

Q.—Was that to be delivered alongside the line of the work? A.—Alongside the work.

Q.—Did that result in a sale? A.—I believe it did.

10 A.—I did, yes, sir.

Q.—In New York City? A.—Yes, sir.

Q.—Do you remember any other? A.—No, I do not, off-hand.

Q.—Do you remember of any other letting and sending quotations to various contractors for another letting? A.—I have sent many of them out. You will have to refresh my recollection.

Q.—I see. Will you look at this (indicating), and state if that refreshes your recollection? A.—Yes, sir. On March 7th, 1924.

20 Q.—Wait a minute. It does refresh your recollection? A.—Yes, sir, it does.

Q.—Were these quotations prepared by you? A.—Yes, sir. This was prepared by myself.

Q.—Do you remember the quotations you just mentioned? A.—2136 feet of 57-inch pipe, at \$12.23 per linear foot; 212 feet of 54-inch pipe, at \$11.62 per linear foot; 240 feet of 51-inch pipe, at \$9.94 per linear foot. Delivery to be as close to line of work as auto trucking will permit. And I see in here "Should you care to make your own delivery from our plant on Gun Hill Road";—

30 Q.—We don't want that. That was for one special job? A.—Yes, sir.

Q.—Do you recollect making quotations to various contractors? A.—Yes. I remember that we quoted on any job that we saw advertised, no matter where it was advertised, if it was in the Borough of The Bronx.

Q.—I am speaking of that particular job. A.—Yes, sir.

Q.—Is this (indicating) a copy of your letter? A.—Yes, sir, that is a copy of my letter.

40 Q.—Now, did you quote the same prices to other contractors for the same letting? A.—All contractors had the same prices.

Q.—Do you remember the names of the other contractors? A.—No, I do not.

*Daniel Rogge for plaintiff (direct examination).*

Q.—By looking at this sheet, would you state—you did quote the same prices to how many contractors? A.—Four or five.

Q.—Did you state where the pipe was to be delivered? A.—Along the line of the work in the Borough of The Bronx.

Q.—City of New York? A.—City of New York.

10 THE COMMISSIONER: We will now suspend until tomorrow morning at eleven o'clock.

MR. GOUDRAULT: We have completed our examination.

MR. HACKETT: Of everybody?

MR. GOUDRAULT: No. Of this gentleman.

MR. HACKETT: You have entirely finished with Mr. Rogge?

20 MR. GOUDRAULT: Yes, I have.

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(Whereupon, at 4.10 p. m. the hearing was adjourned to tomorrow, Tuesday, Feb. 10, 1931, at 11 a. m.)

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10 Depositions of witnesses, sworn and examined on the 10th day of February 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 case 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 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:

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DEPOSITION OF DANIEL ROGGE.

DANIEL ROGGE, was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposeseth and saith as follows:

CROSS EXAMINATION BY MR. HACKETT:

30 Q.—You have been associated with Mr. Weaver for some years? A.—Yes, sir.

Q.—Had you anything to do with the design of the pipe known as the Federal pipe? A.—Not with the joint of the Federal pipe.

Q.—You know something of this pipe? A.—Yes, sir.

Q.—And something of the peculiarities or characteristics that distinguish it from other pipe? A.—I believe I do.

40 Q.—There is an opening in the top of the pipe at the joints into which grout is poured for the purpose of locking the joints, is there not? A.—No. The pipe is not manufactured that way. The pipe is manufactured entire. After the pipe is placed in the ditch a hole is knocked in the top of the bell and the pipe is grouted through that hole in the bell.

Q.—The hole is on the crest of the crown, is it not? A.—It is, yes, sir.

Q.—And the grout flows into the hole and goes down either side of the pipe? A.—Yes, sir.

*Daniel Rogge for plaintiff (cross-examination).*

MR. GOUDRAULT: Just a minute, Mr. Hackett. I wish to put in a formal objection, and solely for that purpose, that this examination of the witness does not arise from his direct examination.

BY MR. HACKETT:

10 Q.—Users of the pipe have experienced a little difficulty, have they not in that the grout going down either side of the pipe was held back by the air in the pipe? A.—Not if the joint was properly poured.

Q.—Well, it was so easy to pour the joint improperly that it was found out that there were air holes or voids in the joints. At least, that was one of the criticisms that was made of the pipe, was it not? A.—Exactly.

20 A.—And naturally in your business, as in other lines of endeavor, opponents avail themselves of any weakness, real or imaginary, to gain an advantage? A.—Why, I never heard any objection such as that when we were selling the pipe.

Q.—But you know very well that it had been urged against the pipe? A.—I knew that might possibly be the case.

Q.—Were you the inventor of the pipe, or was Weaver? A.—Weaver had the patents on the pipe.

Q.—In your somewhat lengthy relations with Weaver, what was the division of labor between you? A.—Weaver tended to the outside construction; that was the manufacturing of the pipe.

30 Q.—Did he gave a good deal to do with determining the prices of the pipe? A.—I wouldn't say so.

Q.—You were the inside man? A.—I was. I was both inside and outside.

Q.—And Weaver was outside, and inside? A.—Exactly.

Q.—We had a very interesting discussion with Mr. Weaver yesterday, and he left us under the impression that the Federal Pipe Company—is that the proper name? A.—Federal Concrete Pipe Company, Incorporated, yes, sir.

40 Q. (continuing).—While an interesting venture, from a scientific point of view, had not been altogether successful from a financial point of view. You did not make any money out of it, did you? A.—No, sir.

Q.—You owned how many shares of stock? A.—One-fourth of the stock I think I had 49 shares.

Q.—49 shares; Mr. Weaver had 49 shares; and Mr. Angelo Paino had 104 shares, was it? A.—102, I think.

Q.—102 shares. A.—He had the control.

*Daniel Rogge for plaintiff (cross-examination).*

Q.—He had the control. Did you pay for your shares ?

A.—I did not.

Q.—You never got any dividends ? A.—No, sir.

Q.—Do you own the stock now ? A.—I do not.

Q.—When you disposed of it, did you receive anything for it ? A.—I did.

Q.—How much ? A.—A thousand dollars, of which \$100  
10 went to Weaver.

MR. COOK: Did Weaver get anything for his ?

THE WITNESS: That I don't know.

BY MR. HACKETT:

Q.—Do you know just what the company is doing now ?

A.—I have no idea what they are doing.

Q.—I can understand that technically a man will testify  
20 that he does not know if he had not been actually on the spot and  
been through the books, but from a workaday point of view you  
know they are doing nothing, don't you ? A.—Well, they might  
be out of business for all I know.

Q.—You would have a pretty shrewd idea, whether or not  
they have gone through the formality of bankruptcy, that they  
are at least in a state of suspended animation ? A.—I honestly  
cannot say.

MR. GOUDRAULT: Just a minute. Plaintiffs wish to  
30 object to this cross-examination along this line, of Mr. Rogge, be-  
cause it is irregular, illegal and not arising from the direct exam-  
ination.

THE COMMISSIONER: I will allow the answer, subject  
to counsel's objection.

MR. GOUDRAULT: Furthermore, it is not the best evi-  
dence.

BY MR. HACKETT:

Q.—I said to you that although you were not quite sure  
40 that the company was dead, you did know that it was in a state  
of suspended animation? A.—Well, to tell you the truth, I don't  
exactly know what the company is doing. I never followed it up;  
after I once stepped away, I didn't care what happened.

*Daniel Rogge for plaintiff (cross-examination).*

MR. GOUDRAULT: How long is that that you stepped away?

THE WITNESS: I think I stepped away around 1924.

BY MR. HACKETT:

10 Q.—But Mr. Rogge, if you and I were not meeting under the conditions in which we are now, you being the witness and I being the counsel who is cross-examining, but supposing we met in a tramcar and I said, “Rogge, how about your company, The Federal Pipe Company? What’s it doing?” You would not have any hesitancy in saying to me, “Nothing”, would you? A.—I would tell I didn’t know.

Q.—I see. You are in what business at the present time?

A.—Contracting.

Q.—What type of contracting? A.—Sewer work, grading, building bridges; anything that we can get.

20 Q.—You are building some sewers? A.—No. At the present time we are taking down the Burnside Aqueduct Arch Bridge and installing an inverted syphon.

Q.—You will require some pipe in that work? A.—Not in that particular work.

Q.—But in your work as contractor you require pipe? A.—I just finished a job where we used all three pipes.

30 Q.—And the abiding affection you must have for that child of yours, would cause you to use the Federal pipe if it were available? A.—If they were quoting.

Q.—They have not worried you with quotations recently, have they? A.—No, sir.

Q.—Just between ourselves, you know that the Federal Pipe Company is not doing business? A.—I wouldn’t say that. I don’t know.

40 Q.—I understand how scrupulous you are, but you, being in the contracting business and in touch with all sources of supply, and in these days of keen competition, have not been worried by agents or salesmen of the Federal Pipe Company? A.—Absolutely not.

A.—And you don’t know anybody who has been? A.—I do not.

MR. GOUDRAULT: Wait a minute.

BY MR. HACKETT:

Q.—And you don’t know,—

*Daniel Rogge for plaintiff (cross-examination).*

MR. GOUDRAULT: Wait a minute. I wish to object to this line of examination.

MR. HACKETT: Of course you do, my friend.

10 MR. GOUDRAULT (continuing): For the reason that it is absolutely illegal and does not arise from the examination in chief. He has left this company six years ago.

MR. HACKETT: Of course he has. And he gave us fourteen pages of testimony to show why that company could not live financially. It sold its goods for less than they cost and failed financially as all companies do that follow that practice.

MR. GOUDRAULT: That is absolutely not so.

MR. COOK: Mr. Goudrault, you are not testifying now.

20 MR. GOUDRAULT: I don't think Mr. Hackett has the right to put questions of that sort. They are not questions; they are statements.

MR. O'DONNELL: He is cross-examining.

THE COMMISSIONER: I will allow the answer subject to counsel's objection. Will you answer, please, Mr. Witness?

(Question read by clerk.)

30 THE WITNESS (answering): No, that is not so.

BY MR. HACKETT:

Q.—The company because of its vast success in the manufacture of the best pipe that was ever put on the market has ceased operations without paying its shareholders anything. That is your testimony? A.—That is the fact.

Q.—I thought so. Mr. Rogge, Weaver and you have been pals as well as business associates for how many years? A.—I have known Weaver for about ten years, I guess.

40 Q.—Mr. Weaver referred to himself yesterday as the "guy with the weather beaten face". Do you know him as such? A.—He is liable to say anything. I don't know myself.

Q.—I thought so. And he told us that he dropped a man by the name of Paino, would have nothing more to do with him, because he had attempted to bribe a municipal official. I wanted to know if you had dropped Paino for the same reason. A.—No, sir, I did not.



*Daniel Rogge for plaintiff (cross-examination).*

Q.—You got out of this company; you saw what was coming? A.—I certainly did.

Q.—You saw that the Federal Company was not going to be a success, and like a good business man you went into something else? A.—Well, the Federal Company would have been a success if Paino had continued as he said he would. But he didn't.

10

MR. COOK: Because honesty is the best policy, is that what you mean?

THE WITNESS: It always is.

BY MR. HACKETT:

Q.—Was the bribing of officials by Paino and by Weaver perpetrated in your time? A.—Not that I know of.

Q.—But whatever are the reasons, and I suppose the court will appraise them, you in your wisdom left the Federal Company about six years ago? A.—I did.

20

Q.—And it was six years ago that you got a thousand dollars for your 49 shares? A.—No, sir. It was about three years ago.

Q.—About three years ago? A.—Yes, sir.

Q.—Who gave you the thousand dollars? A.—I don't know. Some lawyer's office sent me a check, and I know the check was good.

30

Q.—All checks that emanate from all lawyer's offices, are good. A.—I am glad to know that.

Q.—But there are a few people who have occasion to learn the fact, because the checks generally go the other way. Of course, you know that Mr. Weaver had not the good fortune to dispose of his stock quite so early, and he got nothing for his, which I understand was its exact value. Do you know that? A.—No, I don't know that.

Q.—You don't know how much Mr. Weaver got for his stock? A.—I don't know what he did with his stock.

40

MR. COOK: Have you finished?

MR. HACKETT: Yes.

CROSS EXAMINATION BY MR. COOK:

Q.—Mr. Rogge, can you tell me when the Federal Concrete Pipe Company was incorporated? A.—I think in 1921.

*Daniel Rogge for plaintiff (cross-examination).*

A.—1921. And when did you become associated with its activities? A.—Immediately.

Q.—Immediately. So you were with the company from its incorporation in 1921 until 1924? A.—Yes, about that.

Q.—When you left, for reasons best known to yourself. That is correct, is it? A.—Yes, sir.

10 Q.—And you were occupied, while connected with the company, with the inside work and the outside work; Mr. Weaver being chiefly occupied with the outside work?

MR. HACKETT: And the inside.

Q.—And Weaver being occupied as you were? A.—Well, Weaver was not so much on the inside. He was mostly on the outside, manufacturing pipe.

Q.—Mostly on the outside, but you were occupied with both the inside and the outside? A.—I was.

20 Q.—You were the treasurer of the company? A.—I was the treasurer of the company.

Q.—In charge of its finances? A.—No. I was treasurer in this way: I was permitted to sign the checks. Paino had the control of the corporation.

Q.—Mr. Paino was the president? A.—He was the president.

Q.—He was the president of the corporation? A.—Yes, sir.

30 Q.—During all the time that you were there, Mr. Paino was the president of the corporation? A.—No. I think towards the end Paino owed Everett a thousand dollars, and I think Everett came in as president, or some officer anyway.

Q.—Do you remember when? A.—No, I don't.

Q.—After you left? A.—I think it was just previous to my leaving.

Q.—Previous to your leaving. And do you remember the exact date that you left? A.—No, I don't, exactly. I know I sort of tailed off with the Federal Concrete Pipe Company and gradually worked into the contracting business. Just when it happened, I don't know.

40 MR. HACKETT: You have fixed the date as 1924.

THE WITNESS: Well, possibly sometime in 1924.

BY MR. COOK:

Q.—Did you know anything about the trouble that Paino got into? A.—Over in Queens, I have read it in the papers, and so on.

*Daniel Rogge for plaintiff (cross-examination).*

MR. GOUDRAULT: Mr. Cook, may I put one formal objection to this line of cross-examination as being illegal and not arising from the examination in chief.

BY MR. COOK:

10 Q.—Mr. Paino controlled the company? A.—He did, yes, sir.

Q.—He owned all the stock? A.—He owned all the stock and put up all the money.

Q.—And he is the Paino that got so many contracts in Queens for sewers? A.—That is the same Angelo Paino, yes, sir.

Q.—Angelo Paino got a great number of contracts for sweers? A.—Yes, sir.

Q.—Are you aware that he was convicted for bribery of officials, and sentenced to Sing Sing? A.—I read that in the papers.

20 Q.—You knew that? A.—Yes, sir.

Q.—Common report had it that he was sentenced to Sing Sing? A.—Also that he beat the case on appeal.

Q.—Also that he beat the case on a technicality, as was explained yesterday by Mr. Weaver.

30 MR. GOUDRAULT: I object to that cross-examination in as much as it does not arise from the examination in chief; and furthermore, because I do not think that Mr. Weaver told us that Mr. Paino beat the case on a technicality. I suggest that Mr. Cook produce the Court of Appeals record in the case of the People v. Paino. That would be better evidence than this.

MR. HACKETT: No. We were just trying out the accuracy of the memory of your witness, who rather slumped.

THE COMMISSIONER: I will allow the answer, subject to counsel's objection.

BY MR. COOK:

40 Q.—Is he still at large? A.—He is, as far as I know.

Q.—You have nothing to do with him now? A.—I have not seen him in some years.

Q.—Now, was the company, the Federal Concrete Pipe Company, manufacturing the core joint pipes when you were there? A.—Well, there is a pipe called the core joint pipe, with a single ring.

Q.—Yes. A.—We were not manufacturing that. We were manufacturing the pipe with the double ring.

*Daniel Rogge for plaintiff (redirect examination).*

Q.—With the double ring. That was the second type of pipe mentioned by Mr. Weaver. A.—That is the Federal Pipe. That is the pipe that Weaver held the patents on.

Q.—Your duties as treasurer of the company appear to have been somewhat light? A.—They were.

Q.—Did you have directors meetings from time to time? A.—Well, we had meetings when Paino, Weaver and I would get together in the office.

Q.—The three of you? A.—The three of us.

Q.—Those were the three directors? A.—Yes, sir.

Q.—You knew nothing, I understand, of the matters for which Mr. Paino had the misfortune to be sentenced to Sing Sing? A.—I knew nothing about them, no, sir.

Q.—Do you know anything of the bribing of officials in Mount Vernon? A.—No, sir.

Q.—That may have occurred after you left the company? A.—Perhaps.

REDIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—Mr. Rogge, there was a question put to you by Mr. Hackett and you stated that your work as treasurer was mostly to sign checks. A.—Well, no. I was permitted to sign the checks. I would put it that way.

Q.—Who did the financial part? A.—Paino put up all the money.

Q.—Well, now, as regards quotations, would you consider that an inside or an outside job? A.—That was an inside job.

Q.—Who made quotations for your firm? A.—I made the quotations.

Q.—For the Federal Concrete Pipe? A.—For the Federal pipe, yes, sir.

Q.—Anybody else make any quotations? A.—Nobody else made any quotations.

Q.—Was Mr. Weaver in the company longer than you were? A.—I believe he dallied on after I got out. Just what was going on then, I don't know.

MR. HACKETT: He told us yesterday that he stayed until about fifteen months ago.

THE WITNESS: Oh, he did?

MR. HACKETT: Yes.

THE WITNESS: That I don't know.

*Earl L. Peterson for plaintiff (direct examination).*

BY MR. GOUDRAULT:

Q.—Do you know if he did the quotations for the company after you left? A.—Possibly he did.

Q.—Do you remember the year you left? You said about 1924? A.—In 1924, I think.

Q.—You don't know the month? .—No, I do not.

10 Q.—Did you ever discuss the quotations with your partners, Mr. Rogge? A.—Oh, yes. They knew when the prices went out what we were quoting, Paino and Weaver.

MR. GOUDRAULT: That is all.

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DEPOSITION OF EARL L. PETERSON.

20 EARL L. PETERSON, age 50, of 103-13 Springfield Boulevard, Queens Village, in the County of Queens, Factory Manager of the Atlantic Cement Products, Inc., 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 BY MR. GOUDRAULT:

30 Q.—What is your business lately, Mr. Peterson? A.—Works Manager of the Atlantic Cement Products, Inc.

Q.—What were you doing in the year 1917? A.—If I remember correctly, I was making concrete pipe in Long Island City.

Q.—For what company? A.—For the Lock Joint Pipe Company.

Q.—Before 1917, whom were you working for? A.—I was down in Cuba working for the Houston Concrete Company.

Q.—Until what year? A.—Until about 1917. I think I came up here in July.

40 Q.—How long were you with the Lock Joint Pipe Company before 1917? A.—Since 1910. By way of explanation of the Houston Concrete Company, they were the company that made the sewer pipe for the City of Havana.

Q.—And you were there as a representative of the Lock Joint Pipe Company? A.—I was there as the superintendent of the Houston Concrete Company making the lock joint pipe.

*Earl L. Peterson for plaintiff (direct examination).*

Q.—During that period from 1910 to 1917? A.—Yes, sir; 1910 to 1917.

Q.—Were you then connected with the Lock Joint Pipe Company? A.—In that way, yes, sir, through this company.

Q.—Were you considered as an employe of the Lock Joint Pipe Company during that period? A.—I don't know. They were, I think, a third interested in the Houston Concrete Com-  
10 pany.

Q.—Did they send you to Cuba to do that particular work? A.—No. I was with Houston before that.

Q.—When you came to New York in 1917, you did work for the Lock Joint Pipe Company? A.—Yes.

Q.—In the capacity of superintendent? A.—Yes.

Q.—For how many years? A.—I think I was with them off and on for about two years, I think. We traveled around so much that it is hard for me to remember just how long I was  
20 connected with them.

Q.—I see. How were you traveling around? A.—Well, when I came up from Cuba they put me on a job in Brooklyn.

Q.—Who did, the Lock Joint Pipe Company? A.—Yes. And I wasn't on that for more than ten days, when they sent me to Fort Worth, Texas. I was in Fort Worth, Texas, for about approximately a month, a little over, and they sent me to Phila-  
30 delphia. That would make it the winter of 1917 and 1918. Then I was in Philadelphia until the Spring of 1918, I think it was, when they sent me to Brooklyn on that first work—to Long Island City, on that first work that they had in Queens.

Q.—How long did you continue to work with the Lock Joint Pipe Company? Do you remember now? A.—I stayed in Long Island City and Corona for approximately a year and a half, if I remember correctly.

Q.—Did you ever come back to Queens to build any pipe? A.—Yes.

Q.—Do you remember the year? A.—The year, I think it was about 1924 when I came back, after I had left Lock Joint Company awhile.

Q.—You had left the Lock Joint Company for awhile? A.—In that period, yes.

Q.—When you came back to Queens in 1924, by whom were you employed? A.—By Phillips.

Q.—John M. Phillips? A.—Yes, sir.

Q.—And what job did you have with John M. Phillips? A.—I was one of his foremen.

*Earl L. Peterson for plaintiff (direct examination).*

Q.—You told us that you were superintendent for the Lock Joint Pipe Company and the Cuban concern which was connected with the same Lock Joint Pipe Company. Would you tell us in a word what you did as the superintendent? A.—Supervised the manufacture of concrete pipe.

10 Q.—You have now told us that you came back to Queens and did work for Mr. Phillips. What was Mr. Phillips doing then? A.—What was he doing?

Q.—Yes. A.—He was making pipe.

Q.—What kind of pipe? A.—Concrete pipe.

Q.—Precast concrete pipe? A.—Precast concrete pipe, yes.

Q.—You stated you were one of his foremen? A.—Yes.

Q.—Did he have many of them? A.—He had two of us.

Q.—Who was the second man? A.—A man by the name of Stephen E. Page.

20 Q.—How long did you work for Mr. Phillips in that capacity? A.—A little over two years; about two years and maybe three or four months.

Q.—While you were foreman for John M. Phillips in the Borough of Queens, in the manufacturing of precast sewer pipe, will you tell us in a word what that work was? A.—What it consisted of?

Q.—Yes, please. A.—It consisted of the management of the labor and the actual setting up of forms and building of pipe and curing them.

30 Q.—You would attend to all that? A.—I would attend to it.

Q.—You personally? A.—Yes.

Q.—What kind of pipe was Phillips selling in the Borough of Queens during the time that you were working for Phillips? A.—You mean the name of it?

Q.—Yes. A.—Lock Joint Pipe.

Q.—That is the same company for whom you had worked up to 1917, is that right? A.—That is right.

40 Q.—Do you know what was the mixture of concrete to be put in the precast sewer pipe in Queens when you were working there from 1921, did you say, to 1924; or 1924 to 1926? A.—To the first part of 1926.

Q.—I see.

MR. O'DONNELL: The specifications speak for themselves.

*Earl L. Peterson for plaintiff (direct examination).*

THE WITNESS: When I first came there they were using a 1-2-4 mix.

Q.—Could you remember the year they were using that mixture? A.—That was when I was there in 1924, when I came.

Q.—I see. Will you state approximately the year that there was any change, if there was any change, in the mixture?

10 A.—As near as I recollect, it was shortly after I had gone to work for him, something like maybe two or three months or so.

Q.—So according to the best of your recollection it would also be in 1924 that it was changed to a higher mixture, was it?

A.—To a richer mixture.

Q.—Richer mixture? A.—Yes.

Q.—What mixture? A.—It was changed to approximately a 1-1-2 mixture.

20 Q.—And did you use that 1-1-2 mixture in manufacturing Lock Joint pipe in the Borough of Queens until you left Mr. Phillips in 1926? A.—Yes.

Q.—Do you know of any change in the precast pipe that was being used for the construction of sanitary sewers in Queens?

MR. O'DONNELL: Objected to as not being the best evidence of such change.

MR. HACKETT: Same objection.

THE WITNESS: Shall I answer?

30 BY MR. GOUDRAULT:

Q.—Yes. A.—We had one more change.

Q.—What was that, Mr. Peterson? A.—And that was in the reinforcement.

Q.—Do you remember approximately the year in which that change took place? A.—Well, that was approximately about the same time. Maybe a little bit later, maybe another two months or so, after the mixture was changed.

40 MR. O'DONNELL: Same objection to all such evidence.

MR. HACKETT: Same objection.

BY MR. GOUDRAULT:

Q.—That would be also in 1924? A.—I think so, yes.



*Earl L. Peterson for plaintiff (direct examination).*

BY MR. HACKETT:

Q.—You said that the change was in the reinforcement?

A.—Yes, sir.

Q.—You put in more steel? A.—Yes, sir.

Q.—That would be a better pipe? A.—Yes.

BY MR. GOUDRAULT:

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Q.—Were those changes in the specifications? A.—In the Queens specifications?

Q.—Yes. A.—No, they were not. As far as I know there were no changes in the specifications during the time that I was there.

Q.—Were those changes left to the discretion of the contractor? A.—Of the actual sewer diggers?

Q.—Yes. A.—No.

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Q.—I mean not the sewer diggers, the contractors who would put in their pipe in those sanitary sewers? A.—The question that came up in my mind was, their specifications called for watertight construction. And it seemed to me, from my experience in making pipe, that we had to make a little better concrete than what they were making. And the same was true about the reinforcement. I had a very good reason for changing the reinforcement, and that was this: that their specifications, as I interpreted them, was that they had no latitude whereby a man could make a certain product to a certain depth of trench, with the result that there was a changed load. Well, I was afraid

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that sometime or other a pipe with a less degree of reenforcement would be used in a trench where the load would be too heavy for that pipe. So I thought the only solution that I could think of in that was to increase that reinforcement—

Q.—And you did? A.—(continuing) To such an extent that I was sure that I would not have any trouble with a failure of that pipe.

BY MR. HACKETT:

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Q.—So you made a much better pipe than was specified? A.—So I made a better pipe than was asked for.

BY MR. GOUDRAULT:

Q.—Now, at what time was that as regards the system then being built for sewers in the Borough of Queens? A.—What time was that?

*Earl L. Peterson for plaintiff (direct examination).*

Q.—Yes. A.—When I went with them the general territory that we were working in was from around Flushing, Elmhurst and toward Long Island City.

Did they have a name to describe that particular section?  
A.—That particular section?

Q.—Yes. A.—No. If I remember the locality right, it consisted of the first, second and third ward of the Borough.

10 Q.—Was that what they called the Jamaica and Rockaway system? A.—No. They started that later on.

Q.—Later on. All right. Now, from the time that you changed that wire reinforcement—

MR. HACKETT: Steel.

Q.—It was a wire reinforcement? A.—It was a steel wire.

20 MR. O'DONNELL: He did not say what it was. He just said reinforcement.

Q.—Steel wire reinforcement, I want to know if you were using a standard wire mesh reinforcement before that time in the manufacturing of pipes? A.—Yes, sir.

Q.—And when you got back to Queens for the manufacturing of pipe in 1924, is that the kind of reinforcement that you found? A.—I just don't understand your question. When I came back there they were using the standard reinforcement of the Lock Joint Pipe Company specification.

30 Q.—That is what I wanted to know. So you have answered right. Where did you get your wire mesh for the steel wire reinforcement? A.—Well, I don't know whether I can tell you that. The only thing I can tell you about it is at the time I got there I used to see it on the bills of lading that I used to use in checking the amount that I received. And if I remember correctly, they were issued to the Lock Joint Pipe Company.

Q.—And you don't know by whom? A.—I don't know.

40 Q.—Have you made a table showing the additional weight of the steel wire that you used in making Phillips' pipe as compared with this standard weight of the steel wire used by the Lock Joint Pipe Company, Mr. Peterson? A.—Yes.

Q.—Does your table compare the two? A.—Yes.

Q.—You said that you put in a stronger wire in 1924 than the regular, ordinary Lock Joint pipe. Is that right? A.—Yes.

Q.—How do you know that you did? A.—How do I know?

Q.—That you did put in a stronger wire reinforcement?  
A.—For no other reason, you would know it by the actual size

*Earl L. Peterson for plaintiff (direct examination).*

and look of the wire. You get that through the specifications of the steel company.

Q.—Did you do that table yourself? A.—Yes.

Q.—You just spoke of a steel company. What is that company? A.—The American Steel & Wire Company.

10 Q.—How did you go about to decide how much heavier wire you were going to use? A.—I did it by,—in a way it was more of a guess of what future conditions would be then anything, and from past experience as to the amount of cover and the different localities in which you would know they were building sewers, why, you calculate your steel from that, from those depths. For instance, when they were striking a depth of considerable size, you would know most likely three or four months ahead how deep that was going.

20 Q.—Was that precast pipe that you were building for Phillips from 1924 until some time in 1926, for one or two or several jobs in the Borough of Queens? A.—For several jobs.

Q.—Were these jobs of a similar depth? A.—No. Varying depths.

Q.—For one or more contractors? A.—We had several contractors.

Q.—Did you do this stronger wire reinforcement for all the pipes when you so decided that a stronger wire reinforcement should be made? A.—Yes.

30 Q.—What was the purpose of that? A.—It was the purpose,—as an illustration, take a 36 inch pipe. If that pipe was going into some particular trench that was about 12 feet deep, it is most likely it would not have required more than the standard reinforcement.

BY MR. HACKETT:

Q.—But if you dropped to 30 feet? A.—If she dropped to 30, or if she dropped to 24,—

40 Q.—She had an overburden that was apt to collapse. A.—She had an overburden. And so as not to take this 36 inches and maybe have it delivered on a job where the trench was 24, I decided that it would be better to make a 24 so that wherever that pipe went I was sure that it would be all right.

MR. COOK: That it would be good pipe?

THE WITNESS: Yes.

*Earl L. Peterson for plaintiff (direct examination).*

BY MR. GOUDRAULT:

Q.—Did Mr. Phillips have several plants in that period of time? A.—I think at one time I had something like 18 plants running. They were all small. They were different sizes of pipe.

10 Q.—I am asking you, Mr. Peterson,—I did not quite get your answer when I put you that question,—as regards the making better and stronger wire reinforcement for all the pipe, whether it was to be used in a deep trench, or shallow? A.—Or shallow, that is right.

Q.—Yes. What was the purpose of doing that? May I ask you again? A.—The purpose was that I was afraid of getting the pipe mixed up. If you had, for instance, eight or ten deliveries, and you wanted to be sure that you were not going to send them the weaker pipe for the heavier trench, you would make them all for the heavier trench.

20 Q.—You therefore made deliveries for the same job from different plants? A.—Oh, yes.

Q.—For different jobs from the same plant? A.—Oh, yes.

Q.—Was there any shifting of precast pipe from one contractor to another, to your knowledge, Mr. Peterson? A.—Not to my knowledge. The contractors might have done it. That was another thing that was a bad feature of the pipe business.

30 Q.—I see. But your pipe being built stronger, there was no real danger that it would not meet the requirements if it was all of the same standard? A.—No.

MR. HACKETT: Mr. Commissioner, may the witness be permitted to answer the last question, in which he was interrupted.

MR. GOUDRAULT: It is not fair,—

THE COMMISSIONER: I will allow the witness to finish his answer to the last question.

(Question and answer read by clerk.)

40 THE WITNESS: There was nothing more that I could add to that.

BY MR. GOUDRAULT:

Q.—Except the fact that you changed and put in a heavier wire, and except for the fact that you gave a richer mixture, in

*Earl L. Peterson for plaintiff (direct examination).*

other respects did you continue to make the regular Lock Joint pipe? A.—In other respects, yes.

Q.—Joint, thickness, and everything? A.—Yes, sir.

Q.—When you got ready to make this change to the heavier wire reinforcement, did you decide what kind of wire you would use for a 36 inch pipe or a 24 inch pipe, and so forth? A.—You mean did I decide it?

10 Q.—Yes. A.—Yes.

Q.—You did that yourself? A.—Yes.

Q.—Will you show us that table that you spoke of a few minutes ago, Mr. Peterson? A.—Yes, sir.

MR. HACKETT: Just let me see it first, Mr. Peterson, please.

THE WITNESS: Yes, sir.

20 (Defendants' counsel examine paper referred to.)

MR. GOUDRAULT: Plaintiffs offer in evidence, as Plaintiff's Exhibit C-162, this table which was prepared by Mr. Peterson.

MR. O'DONNELL: Objected to as irrelevant and illegal.

(The said paper was thereupon received in evidence, and marked Plaintiff's Exhibit C-162, of this date.)

30 Q.—I understand the changes do appear on this table, from a weaker to a stronger wire reinforcement in the precast pipe. Is that right, Mr. Peterson? A.—That is right.

Q.—Mr. Peterson, will you explain in your own way this Exhibit C-162? A.—I took each size of pipe and I then calculated the amount of square feet in a foot of length each size. Then, from the catalog of the American Steel & Wire Company, I took the sizes and their weight per square foot, and from that I calculated the weight per lineal foot of pipe according to this circular ring that had been calculated.

40 Then I took the sizes, to which I had changed it, and found crease of the steel per foot of pipe of each size of those that we each ring.

A simple subtraction of those two would give you the increases of the steel per foot of pipe of each size of those that we were manufacturing.

*Earl L. Peterson for plaintiff (direct examination).*

MR. HACKETT: So the table C-162 refers exclusively to the percentage of increase in the weight of reinforcement in a lineal foot of pipe of different diameters?

THE WITNESS: No. I think I see what you want. You say "percentage". It just shows the actual increase in pounds.

10 MR. HACKETT: I see.

BY MR. GOUDRAULT:

Q.—Now, you have been referring to a book. Will you look at this book and state if that is the book you are referring to? A.—Yes, sir.

MR. HACKETT: Your name appearing in the front of this American Steel & Wire Company book does not mean that you wrote it, does it?

20 THE WITNESS: No, sir.

MR. HACKETT: It belongs to you?

THE WITNESS: It belongs to me.

MR. HACKETT: I see.

MR. GOUDRAULT: Plaintiffs now wish to offer this book of the American Steel & Wire Company, Engineer's Hand Book Triangle Mesh Reinforcement, as Plaintiff's Exhibit C-163.

30 MR. O'DONNELL: Same objection.

(The said book was thereupon received in evidence and marked Plaintiff's Exhibit C-163, of this date.)

BY MR. GOUDRAULT:

Q.—Now, will you please look at this table, C-162, and just tell us what the various columns contain. A.—The first column contains the square feet per lineal foot of pipe. Then the next column contains the style of reinforcement used in Queens.

40 Q.—What do you mean by style of reinforcement? A.—That is the style that is designated by the American Steel & Wire Company in their catalog, and the weight per square foot is also taken from the catalog. The third column under Queens contains the weight per lineal foot of pipe of the complete circle. The next column contains the style of reinforcement as used by Lock Joint

*Earl L. Peterson for plaintiff (direct examination).*

under their standard specifications. The next column the weight per square foot, of the same. The next column contains the weight per lineal foot of pipe of that one-foot circle. The last column contains a subtraction between the fifth column and the eighth column.

10 Q.—Now, let us go back a little ways. You decided to put in a heavier type of wire. That is right? A.—Yes, sir.

Q.—Did you select the wire? A.—Yes.

Q.—Where did you get your data as regards the weight per hundred square feet of wire mesh? A.—In the catalog.

Q.—The catalog of the American Steel & Wire Company? A.—Yes.

Q.—Will you point out the page, please, Mr. Peterson? A.—Page 110.

Q.—And those are the very weights that you used in the manufacture of the pipe after the change was made? A.—Yes.

20 Q.—In order to get your weight per square foot you would use American Steel & Wire Company's table if you used their products? A.—That is right.

Q.—Is that the custom of manufacturers of such pipe, to use that table? A.—Where they use American Steel & Wire products, yes.

MR. HACKETT: I object to the evidence of any custom.

Q.—And you did use that particular product? A.—Yes.

30 Q.—Is that table of the American Steel & Wire Company a standard table?

MR. HACKETT: I object to that as leading and suggestive and irrelevant.

A.—That was a standard table of their products at the time that we were manufacturing this pipe.

Q.—And it would be a table to which any manufacturer,—

MR. HACKETT: That is leading and suggestive.

40 MR. GOUDRAULT: Withdrawn. We will put it otherwise and get it just the same.

Q.—If a manufacturer of precast pipe wished to know how the American Steel & Wire Company made their calculation as regards weight, and I mean the weight per square foot, what would that manufacturer have to do?

*Earl L. Peterson for plaintiff (direct examination).*

MR. COOK: I object, on the ground that this is irrelevant, and we are very, very far from the beaten track.

MR. O'DONNELL: And it is illegal and not the best evidence.

MR. HACKETT: Same objection.

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BY MR. GOUDRAULT:

Q.—Did you get my question? A.—Yes. He would get it from the American Steel & Wire Company's catalog.

Q.—Is it used generally by men manufacturing sewer pipe?

MR. HACKETT: Objected to as leading and suggestive.

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A.—It is not used by all manufacturers. In fact, this particular table, this part of it, was gotten pretty near all of it, used by Lock Joint Pipe Company in their particular pipe. Other manufacturers don't use it. I used it on a different type when I was with the Independent Pipe Company. But all manufacturers don't use the same type of reinforcement. That is a matter for the engineer's or designer's opinion.

Q.—Mr. Peterson, do you know of your own knowledge the kind of pipe, the makes, that were being sold in New York City and vicinity say between 1917 and 1927? A.—Yes.

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Q.—Would you name the companies making such pipe that was generally sold at the time? A.—Aside from the Lock Joint, the Independent Concrete Pipe Company, of Indianapolis, the Core Joint Concrete Company and the Federal Concrete Pipe Company.

MR. HACKETT: The Federal, they didn't amount to much, did they?

THE WITNESS: They were a kind of quarrelsome bunch.

BY MR. GOUDRAULT:

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Q.—Did you know the companies, Mr. Peterson? A.—Yes, sir.

Q.—The Core Joint, and the Federal? A.—Yes, sir. And there was the Newark Concrete Pipe Company, too.

Q.—Do you know if the Independent Concrete Pipe Company of Indianapolis, made pipe for use in New York City? A.—Yes, they did.



*Earl L. Peterson for plaintiff (direct examination).*

Q.—My question was did they sell considerable pipe in New York City during that period 1917 to 1927? A.—I can't say what amount of pipe they sold, but they were making pipe up in the Bronx.

Q.—Did they sell any pipe in the Borough of Queens between 1917 and 1927 to your knowledge? A.—No.

10 Q.—Did the Newark Pipe Company sell any precast pipe in the Borough of Queens between 1917 and 1927? A.—No, I don't know,—during the time that I was making pipe for Phillips, they didn't.

I can't tell you now just when they did come into Queens and make pipe.

MR. COOK: They did ultimately?

THE WITNESS: Ultimately they came in, yes.

BY MR. GOUDRAULT:

20 Q.—Do you know the date, ultimately; the year? A.—It was just about the time that the sewer investigation was on; the latter part of the sewer investigation.

Q.—Do you remember the year? A.—I don't remember just what year it was. I know that they sold pipe over there shortly after the sewer investigation started.

30 Q.—Do you know about the Core Joint Pipe Company selling precast pipe for sanitary sewers in the Borough of Queens between 1917 and 1927? A.—The Core Joint didn't, they didn't sell any in Queens until about a year or so ago.

Q.—That would be in 1929,— A.—In 1929.

Q.—Now, you know the special features of the Lock Joint Pipe, of the Core Joint Pipe, of the Federal Pipe, and of the Newark Pipe, Mr. Peterson? A.—Yes.

Q.—Will you describe, in a very few words how the joints on the Lock Joint Pipe were sealed? A.—Were sealed?

Q.—Yes.

40 MR. HACKETT: I would only suggest to Mr. Goudrault, without making objection, that he do not question this witness about that, as we have had most detailed information concerned this from Mr. Hirsh, who is the president of that company, and from at least two or three other witnesses.

MR. GOUDRAULT: Mr. Hackett is right. We will ask Mr. Peterson in his capacity of expert and superintendent of sewer pipe manufacturing concerns, how the joints were being sealed with the Core Joint Pipe?

*Earl L. Peterson for plaintiff (direct examination).*

THE WITNESS: They were sealed by breaking a piece out of the female end of the joint.

Q.—And the grout would be poured in? A.—And pouring the grout until it was filled.

Q.—Now, in a word, tell us about the sealing of the Federal pipe? A.—The Federal Pipe, the only difference is they had instead of one groove, as the Core Joint had, they had two.

Q.—And the sealing was done practically the same? A.—The same way.

Q.—Pouring grout? A.—Pouring grout.

Q.—Can you describe the sealing process of the Newark Pipe, Mr. Peterson? A.—The Newark had several types, but as I remember it their tongue and groove pipe was just sealed by buttering the different surfaces with mortar and shoving them together.

Q.—You are always speaking of reinforced concrete pipe? A.—Reinforced concrete pipe, yes.

Q.—Will you now, Mr. Peterson, look at the annexed sheet, page 66, of Exhibit C-9, which is a contract between the City of New York and Joseph L. Sigretto & Company for the construction of a sanitary sewer on Collins Avenue, in the Borough of Queens, dated April 23, 1917. Will you read the part of the specifications calling for the jointing of the precast concrete pipe? A.—“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.”

Q.—Will you now look at Plaintiff's Exhibits C-121 and C-122 which is model of the Lock Joint pipes. A.—Yes.

Q.—You are quite familiar with that pipe, I understand. A.—Yes.

Q.—Will you describe, as briefly as possible, the process of jointing? A.—After the pipe is laid in the trench,—

MR. HACKETT: I would simply observe that we have had this process explained twice. I think everybody here understands it.

MR. GOUDRAULT: But you have a man here who actually manufactured the pipe.

*Earl L. Peterson for plaintiff (direct examination).*

MR. HACKETT: We have had the men who laid the pipe. We have had a man, Mr. Hirsh, who is the president of the company. It is just the futility of it.

If you want to put it in again, all right.

MR. GOUDRAULT: The purpose will appear in a few  
10 minutes.

MR. HACKETT: Yes, but you have got it in so abundantly already. However,—

BY MR. GOUDRAULT:

Q.—Mr. Peterson, will you make this proof. Mr. Hackett knows it very well.

MR. HACKETT: We all know it.

20 THE WITNESS (answering): You would mortar this part (indicating) up to the spring line, which is called the middle half of the pipe. After you trowelled that down, you would put this steel band on the inside, which had a locking device at either the top or the bottom or the side, wherever the locking device would happen to come on account of its length, and prior to laying it you would have a piece broken off the bell where you would pour this grout until this remaining chamber was full. (indicating)

30 Q.—Would that be according to the specifications that you have just read? A.—Yes.

Q.—Could you do that process called for in the specifications, with any other of the mentioned pipes, Mr. Peterson? A.—No, you could not.

Q.—Why? A.—This was the only one that had the recess on the inside that required this sealing.

MR. COOK: Is that all?

40 MR. GOUDRAULT: That is all on this point. Now, I am taking Mr. Peterson as a contractor in the Borough of Queens; of the firm of Petracca & Peterson.

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(Whereupon, at 12.50 o'clock, p. m., a recess was taken to 2.00 o'clock, p. m.)

*Earl L. Peterson for plaintiff recalled (direct examination).*

AFTER RECESS

2 P. M.

DEPOSITION OF EARL L. PETERSON.  
(recalled).

10 EARL L. PETERSON was recalled as a witness on behalf  
of the plaintiff, and having been previously duly sworn, deposes  
and saith as follows:

BY MR. GOUDRAULT:

Q.—Mr. Peterson, you were a member of the firm of Pe-  
tracca & Peterson? A.—Yes.

Q.—And that firm built a sewer in the Borough of Queens?  
A.—One, yes.

20 Q.—Can you describe it by the name of the street? A.—  
107th Avenue and Liberty Avenue, that is where it started.

Q.—Will you look at Plaintiff's Exhibit C-128 and state  
if that is not the sewer that you are referring to?

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DEPOSITION OF EMIL WEITZNER.

30 EMIL WEITZNER, age 34, of 115 Harold Road, Wood-  
mere, Long Island, in the County of Queens, a lawyer, a witness  
produced, sworn and examined on the part and behalf of the  
defendant, The Crown Trust Company, defendant en reprise  
d'instance, deposes and saith as follows:

THE COMMISSIONER: Do you want to stipulate on the  
record that this witness has been called by Mr. Hackett and his  
examination is taken by consent of all the counsel present? Does  
that satisfy you, gentlemen?

MR. COOK: Yes.

40 MR. GOUDRAULT: I may state as attorney for plaintiff,  
that I was notified this noon, before the recess, that Mr. Hackett  
might examine this gentleman, the witness now on the stand, and  
that was the time I did receive a notice.

MR. COOK: What has that got to do with it? You have  
no objection, have you?

*Emil Weitzner for defendant (direct examination).*

MR. GOUDRAULT: No, I have no objection that he be heard. I may have an objection to the questions to be put to him. But we don't object to the gentleman testifying.

10 THE COMMISSIONER: I know, but I don't want to be put in the position of examining people that I am not directed to examine. I am willing to examine people on consent of the attorneys in the case, but not otherwise. I do not think that the Superior Court of the District of Montreal would allow me to do that. I am limited in my jurisdiction. I want a stipulation and consent that the witness be examined, otherwise I don't want him examined before me. I have rights in this proceeding.

MR. COOK: As far as I am concerned, Mr. Commissioner, I have no objection whatever to having this witness examined, and I consent.

20 MR. GOUDRAULT: The same as far as we are concerned.

MR. HACKETT: But you reserve the right to object to questions.

MR. GOUDRAULT: Yes.

THE COMMISSIONER: That I have no objection to.

DIRECT EXAMINATION BY MR. HACKETT:

30 Q.—Mr. Weitzner, you are a practicing lawyer? A.—Yes.

Q.—And you had something to do with the affairs of the Hammen Construction Company a few years back when it was in financial difficulty, did you not? A.—I had something to do with the interests of creditors of that company.

Q.—Creditors of that company? A.—Yes.

Q.—Can you tell us the aggregate amount of the creditors of that company? A.—From memory, no.

40 Q.—Can you from any document in your possession prepared by you? A.—I think perhaps that you will find attached to the agreement which you hold in your hand, a list of creditors of that company.

MR. GOUDRAULT: Before you put another question, I wish to put in a formal objection. My objection is that this evidence is immaterial, illegal, and not the proper way to impeach a witness; and it relates to collateral matters, upon which the defendants are bound by the answers of the witness Paulsen.

*Emil Weitzner for defendant (direct examination).*

(Question and answer read by clerk.)

BY MR. HACKETT:

10 Q.—I have in my hand a draft agreement between the Hammen Construction Company, Hammen & Company, Inc. and Henry Loveridge, Trustee, and creditors; showing that on the 28th of February, 1927, the creditors of Hammen Construction Company were owed by that company \$533,207.95. Is that accurate?

MR. GOUDRAULT: We object to all this line of evidence, on the part of this witness, on the same grounds, for the same reasons.

THE WITNESS: Just what do you mean by “is that accurate”?

20 Q.—That the Hammen Construction Company owed at that time to sundry creditors \$533,207.95? A.—Well, it was represented to us at that time that the Hammen Construction Company did owe to the creditors enumerated in Schedule A the respective amounts set opposite their names.

Q.—Yes. A.—We made no examination of the books of the company at that time. The company was represented by counsel who at a meeting of creditors presented us with a list of creditors.

Q.—Aggregating,—

30 MR. GOUDRAULT: I move that this part of the evidence of the witness be stricken out, it being hearsay evidence.

Q.—Aggregating \$533,207.95? A.—The list that was presented to us at that time was duplicated in the proposed agreement which you hold in your hand.

MR. GOUDRAULT: Do I understand, Mr. Hackett that you are going to produce and file that as an exhibit?

MR. HACKETT: Yes.

40 MR. GOUDRAULT: May we look at it?

MR. HACKETT: Certainly.

(Plaintiff's counsel examines the paper referred to.)

*Emil Weitzner for defendant (direct examination).*

BY MR. HACKETT:

Q.—You were representing the trustee? A.—I originally represented the creditor, Mahoney, Clarke, Inc., and attended the meeting of creditors which was convened at the instance of the attorney for the debtor company, and at that meeting, at an adjourned meeting, a committee of creditors was elected by the  
10 creditor group, and I was designated as attorney for the committee. Subsequently, as attorney for the trustee named in the proposed agreement which you hold in your hand.

MR. GOUDRAULT: We object to this form of evidence as being all hearsay evidence, and as not the proper way of proving that.

BY MR. HACKETT:

Q.—It is to your knowledge that these debts were not  
20 paid? A.—Well, it is within my knowledge that the agreement which you hold in your hand was never effective, by reason of the fact that the required percentage of creditors declined to join in the agreement; the consummation of the agreement itself being contingent upon the consent of a specified percentage of the creditors. I think you will find a provision in the agreement itself to the effect that a specific percentage of creditors was required to join in its execution.

Q.—Yes. A.—And unless that percentage did join, that  
30 the agreement was not to be effective. If you will look at paragraph 19 you will find a provision to the effect that 85 percent. of number and amount of creditors were required to join in the agreement before it was effective.

Q.—But there was never any question as to the accuracy of the amount of the debts owed by the company to the creditors? A.—Never any question by whom?

Q.—By the creditors or by the company? A.—I should say the creditors assumed the debts to amount to the amount appearing on Schedule A.

Q.—As a matter of fact you did take from the manager of  
40 the Hammen Construction Company, Paulsen, a certain number of notes in acknowledgement of these debts, did you not?

MR. GOUDRAULT: Just a moment. That is objected to as not being the best evidence; and furthermore, this question is leading and improper, illegal and irrelevant.

*Emil Weitzner for defendant (direct examination).*

THE COMMISSIONER: I will allow the answer, subject to counsel's objections, exceptions and reservations. Will you please answer the question.

THE WITNESS (answering): I think perhaps the best way to answer that question is to produce the notes.

10 MR. HACKETT: Yes.

THE WITNESS: My clients, Mahoney, Clarke, Inc., took from Paul W. Paulsen,—

MR. GOUDRAULT: Objected to as absolutely improper, illegal and incompetent, as the witness has not received the said notes he is referring to, from Paulsen; and it is collateral matter on which the defendants are bound by the answers of the witness Paulsen.

20 THE WITNESS: What am I to do now, Mr. Commissioner? Continue my answer?

THE COMMISSIONER: You are to continue your answer, subject to the objections made by counsel for plaintiff.

THE WITNESS: I believe I was interrupted in the middle of a sentence.

THE COMMISSIONER: Will you please read it back?

30 (Answer read by clerk.)

THE WITNESS (continuing): Three promissory notes, which I have in my possession at this moment, aggregating \$5882.89, they being three separate notes, the first of which is dated January 4, 1928, in the amount of \$1882.89; the second of which is dated April 4, 1928, in the amount of \$2,000; and the third, which is dated July 3, 1928, in the amount of \$2,000.

MR. GOUDRAULT: Plaintiffs object to the,—

40 MR. COOK: One moment. Let him finish, Mr. Goudrault.

THE WITNESS (continuing): These notes matured respectively nine months, twelve months, and twelve months after their respective dates.

MR. GOUDRAULT: Plaintiffs move that this part of the evidence of the witness be stricken out, for this reason: That it



*Emil Weitzner for defendant (direct examination).*

is not the best evidence. The notes should be produced. And for all the other reasons already stated.

THE COMMISSIONER: The evidence will stand as it is, subject to the ruling of the Superior Court in Montreal.

BY MR. HACKETT:

10 Q.—I assume that these notes have not been paid? A.—So far as I know these notes have not been paid. They are still in my possession.

MR. GOUDRAULT: Same objection.

Q.—Have you brought action upon them against Paulsen?

A.—The answer to that is no.

Q.—Why?

20 MR. GOUDRAULT: Same objection.

THE WITNESS: Because we have been unable to effect the service of process upon Mr. Paulsen.

Q.—You couldn't find him? A.—Our process servers were unable to find him.

MR. HACKETT: I ask, Mr. Commissioner, that this composition agreement be filed as The Crown Trust Company, defendant en reprise d'instance Exhibit No. 1.

30 (The said document was thereupon received in evidence and marked The Crown Trust Company, defendant en reprise d'instance Exhibit No. 1, of this date.)

MR. GOUDRAULT: Plaintiffs object to the production of this document, as it is not signed, not an original, and is not proper evidence; immaterial; and for all the reasons stated before.

BY MR. HACKETT:

40 Q.—Do you know anything about Hammen & Company, Inc.? A.—That is a pretty broad question. What do you mean?

MR. GOUDRAULT: Same objection.

Q.—Do you know that it is in bankruptcy? A.—No, I don't.

*Emil Weitzner for defendant (direct examination).*

MR. GOUDRAULT: I wish to make an objection to all this line of evidence regarding this new company.

Q.—Do you know anything about the Paulsen Company? Do you know whether that is in bankruptcy or not? A.—Paulsen Construction Company?

Q.—Yes.

10 MR. GOUDRAULT: Plaintiffs object to that evidence also, for the reasons above stated.

A.—It is my understanding that the Paulsen Construction Company is in bankruptcy.

MR. GOUDRAULT: That is hearsay, isn't it?

THE WITNESS: What do you mean by hearsay with relation to a fact that is a matter of record?

20 MR. GOUDRAULT: Are you the attorney for the liquidator?

THE WITNESS: I filed a claim for Mahoney, Clarke, Inc. in a bankruptcy proceeding in which the Paulsen Construction Company was the bankrupt.

MR. GOUDRAULT: Are you the attorney for the liquidator?

30 THE WITNESS: I am the attorney for that creditor. I received a dividend two or three weeks ago for my client.

MR. GOUDRAULT: That is hearsay.

MR. HACKETT: A substantial dividend, do you know?

THE WITNESS: I can't say of hand.

MR. GOUDRAULT: Same objection.

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*Earl L. Peterson for plaintiff recalled (direct examination).*

DEPOSITION OF EARL L. PETERSON  
(recalled).

EARL L. PETERSON 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: (Resumed):

Q.—Is this the contract, C-128? A.—Yes.

Q.—Where did you get your pipe for the sanitary sewer?

A.—From John M. Phillips.

Q.—Did you ask any other company for quotations? A.—No, I didn't.

Q.—How much pipe did you use and what did you pay for it? A.—The actual footage I don't remember, but the job called for 1011 feet, I think, of Phillip's pipe.

20

Q.—Do you remember how much you paid for it? A.—A lump sum of \$9,000.

Q.—Both Mr. Petracca and yourself signed the contract? A.—Yes, sir.

Q.—You spoke of how many feet—about a thousand, did you say? A.—About 1,011 feet.

Q.—By looking at the exhibit, could you state the diameter, the size of the pipe? A.—27-inch; 2 foot 3.

30

Q.—Did you know Andrew Zorn? A.—Yes.

Q.—Did you have occasion to meet him often? A.—Not very often, no.

Q.—Who was he? A.—Well, I can't tell whether he was associated with Phillips or not, but he was an agent for the Atlas Portland Cement Company.

Q.—Did you ever buy any material from Andrew Zorn? A.—We bought it from a dealer that he handled the material through.

Q.—I hand you a series of notes and checks, on which your name appears as well as that of Mr. Petracca, your partner. Will you tell me if that is your signature on all of these?

40

MR. COOK: The defendants object to the production of these checks and notes, and to all evidence in regard thereto, as irrelevant and illegal and having no bearing on the issues.

MR. HACKETT: I associate myself with that objection.

*Earl L. Peterson for plaintiff recalled (direct examination).*

MR. GOUDRAULT: Plaintiff's attorneys are satisfied that one formal objection be made to that evidence, and to the production of the said documents.

Q.—Here is the note which I would ask you to identify. Does your signature appear on the note (indicating)? A.—Yes.

10 Q.—I understand the signatures appearing on the other checks and notes are your own signature (indicating)? A.—Yes, sir.

MR. GOUDRAULT: Plaintiffs offer in evidence four checks and two notes, all payable to the order of Andrew Zorn, for various amounts, as Plaintiff's Exhibit C-164.

(The said checks and notes were thereupon received in evidence and marked Plaintiff's Exhibit C-164 (a), C-164 (b), C-164 (c), C-164 (d), C-164 (e) and C-164 (f).)

20 Q.—Do you know what those checks and notes were for? A.—Yes.

Q.—Will you look at Exhibit C-164 (a), check for \$2,000, and state what that is for? A.—Payment of one of those notes.

Q.—What was the note given for? A.—The note was given—I was told it was given for the payment of the job, buying that job from the Riverdale Contracting Company by Petracca.

30 Q.—He was a partner of yours at the time? A.—I became a partner of his after this transaction had already been completed. I didn't know anything about it until I was asked to endorse these notes, and I was then told that that was what they paid the Riverdale Company for the job.

Q.—The note that you refer to is Exhibit C-164 (e), is it not? A.—That was the first note that I was shown on this job. I was shown it to have me endorse it so that we would pay that note for the amount that it called for, for the job.

Q.—Now, will you look at C-164 (c), and state what this check for \$5,000 is? A.—That is for the same thing. All of those checks are in payment of those notes.

40 Q.—And you mean the checks forming part of that Exhibit C-164? A.—Yes.

Q.—I now show you a check signed by Carmine Petracca, \$553, payable to Andrew Zorn, dated September 2, 1927, on which your name does not appear. Do you know anything about this check? A.—No, I don't.

Q.—Will you now look at this check, describe it, and say what it is, if you know? A.—This man Campbell, from what I

*Earl L. Peterson for plaintiff recalled (cross-examination).*

know of this amount, this was some sort of party or celebration that they were going to give and they asked us if we would donate a little toward it. And they started with \$100, and they finally worried \$500. out of us. And it finally ended up that they were going to give Phillips a present, and as near as I now know, the party was never held, that I ever heard about it, but it ended up in this gold set that they were talking so much about.

10

MR. GOUDRAULT: Plaintiffs offer in evidence this check to Peter Campbell for \$500., dated December 16, 1926, as Plaintiff's Exhibit C-165.

MR. COOK: I object to any evidence in regard to this check, as irrelevant and illegal, and having no bearing on the issues in the case.

MR. HACKETT: I associate myself with that objection.

20

(The said check was thereupon received in evidence and marked Plaintiff's Exhibit C-165, of this date.)

MR. GOUDRAULT: That is all.

CROSS EXAMINATION BY MR. HACKETT:

Q.—From witnesses who have preceded you, we have learned that the construction of sewers in the Borough of Queens was all wet and very difficult work; is that your idea of it? A.—A lot of it was, yes.

30

Q.—And a lot of it was way below sea level? A.—Yes. There were some jobs that were below sea level.

Q.—And a lot of soil that you had to sink your shafts through was silt, clay and shifting, and had to be held back by dikes and pumped out by wellpoints and was fraught with many of the incidents that go to make for very difficult work? A.—A lot of it, yes.

Q.—A contractor who is supplying pipe is naturally obliged to guarantee that pipe, and if it fails he is responsible, is he not? A.—He is.

40

Q.—So the more difficult the construction, and the greater the stress that is put upon the pipe, the greater is the responsibility and the liability of the contractor? A.—Yes.

Q.—And the greater is his hazard? A.—Yes.

Q.—I don't suppose he can get anybody to insure him; he has to take the risk himself? A.—I never heard of such insurance.

*Earl L. Peterson for plaintiff recalled (cross-examination).*

Q.—So with your long experience as a maker of pipe, you felt that it was to make a much better pipe than the specifications called for, to protect your employer or the manufacturer of the pipe? A.—Yes, sir.

10 Q.—And because of the unusual difficulties that were inherent in sewer work in Queens, you improved your mix from 1-2-4 to 1-1-2, and you stiffened your reinforcement as shown in the table which you have produced as Exhibit C-162? A.—That is right.

Q.—And that made a pipe vastly superior to the one specified? A.—Yes.

Q.—Phillips realizing the hazard, — and I believe it has been said that in some instances the trench was 30 feet deep or more— A.—There were such places.

20 MR. GOUDRAULT: I object to this line of evidence as being illegal and being hearsay. He does not know what Phillips' idea was as to the construction of sanitary sewers in Queens.

MR. HACKETT: He was Mr. Phillips' experienced adviser in the construction of pipe. He came to Mr. Phillips in the capacity of an experienced pipemaker.

BY MR. HACKETT:

Q.—And I understand that it was at your suggestion that this improvement in pipe was brought about? A.—Yes.

30 Q.—Now, the deeper the pipe is sunk, the greater are the stresses and strains to which it is subjected? A.—That is right.

Q.—If your pipe is to be laid only a few inches under the soil, it does not require to be of the same texture and the same durability as if it is going down 30 or 40 feet, does it? A.—No, you are off there, because if you go too close to the surface you still have the condition that you have in the ditch trench, because then your loads are more or less impact loads through which the structure underneath would suffer. So if you have, say, approximately five or six feet of cover on it, I would say that then you would have a condition that would be the least harmful to the structure.

40 Q.—But when you get down deep you have the heavy loads? A.—You have the heavy loads. And when you get up very shallow, you have the heavy impacts.

Q.—But there is this added difference, that if damage come to the pipe when it is sunk very deep, the expense of repairing it is much greater than if it were near the surface? A.—Yes.

*Earl L. Peterson for plaintiff recalled (cross-examination).*

Q.—So it is a much more serious thing for the person who assumes the hazard of the integrity of the pipe? A.—I should say so, yes.

Q.—The effect of richening the mix from which the concrete pipe is made, — and I understand that 1-1-2 is just about as rich a mix as you could make? A.—Yes.

10 (Q.—(Continuing) Is not only to toughen the pipe, but it is to make it more impervious to water? A.—That is right.

Q.—It is to waterproof if just about as much as that can be done? A.—As it is humanly possible to do.

Q.—And this area though which this pipe was being laid, was extremely wet? A.—Yes, it was.

Q.—It was. And the sewer being below sea level, or at least the pipe being below sea level, the sewage had to be raised at a given point in order that it might flow out to sea? A.—That is right.

20 Q.—So it was extremely important that there be no seepage into the pipe, to keep the cost of raising the water as low as possible? A.—That is right, yes.

Q.—It was important that all surface waters be kept out of the sewer? A.—Yes.

Q.—You know from your experience as a manufacturer of sewer pipe that there was a time when solid sewers or monolithic sewers or the type of sewer that is built in the trench, was much more favored than it is today? A.—Yes.

30 Q.—In the old days they built sewers out of brick or concrete blocks, or out of some other commodity in the trench? A.—Yes.

Q.—And as time went on, the pipe began to replace this heavier and more cumbersome construction? A.—That's right.

Q.—And the company with which you were associated, the Lock Joint Pipe Company, was one of the early manufacturers of sewer pipe? A.—Yes, they were.

Q.—They were. And are you associated now with some manufacturer of sewer pipe? A.—Yes, the Atlantic Cement Products, Inc.

40 Q.—Well, I suppose you could say without disloyalty to your present occupation, that the Lock Joint Pipe is a good pipe? A.—Certainly.

Q.—It is one of the best? A.—It is. In fact, it is the one from which we all received our education in the business.

Q.—And is it not a fact, Mr. Peterson, that this open recess, to which you made reference this morning, into which the mortar has to be troweled, gives one the certainty of a good joint that

*Earl L. Peterson for plaintiff recalled (cross-examination).*

he did not always get in the Core or the Federal joint where the grout was poured in from a little opening at the top? A.—The Lock Joint for a very long time, and even now, are supposed to have one of the best joints on the market.

10 Q.—Yes; because we had here this morning a gentleman who was associated with the Federal Pipe Company, and he admitted that one of the criticisms that was levelled at his product was that the grout being poured in to the opening at the top of the crown, and running down either side of the pipe, very naturally left air spaces. There being air in the bottom, it might prevent the grout from making solid contact with the pipe. A.—It might.

Q.—It might. And the people who were competing for preference, did not omit to point out any little deficiency in the pipe of any of their competitors? A.—No.

Q.—No. So we can say that the Lock Joint Pipe Company put out just about as good a sewer pipe as anybody else? A.—Yes.

20 Q.—And a great many people thought it was a better pipe than that of anybody else? A.—Yes.

Q.—And you were one of those who thought it was a better pipe? A.—Oh, yes.

Q.—I am not going to ask you what you think about it today, because you are working for somebody else; but for many years you thought it was the best sewer pipe in the country? A.—Yes.

30 Q.—And some people said things about Phillips that were not altogether complimentary, but apparently he was desirous of making the very best pipe that could be made, and furnished you with the materials to do it. Is that correct? A.—He furnished me with the very best of materials.

Q.—Irrespective of the specifications? A.—Oh, yes. When I went to him and proposed these changes, he agreed with me at once.

Q.—And he did not grumble at the additional cost for making something that he thought was absolutely A-1 in every way? A.—No.

40 Q.—And of course there was additional cost? A.—Oh, yes, there was additional cost.

MR. COOK: Which came on Mr. Phillips; which was borne by Mr. Phillips?

THE WITNESS: Yes.



*Earl L. Peterson for plaintiff recalled (cross-examination).*

BY MR. HACKETT:

Q.—In the larger sizes of the Lock Joint Pipe Company, were there two layers of the reinforcing metal or steel? A.—Yes, an outside ring and an inside ring.

Q.—Yes; I thought that. And you fortified both the outside ring and the inside ring? A.—Yes.

10 Q.—You put in a heavier steel both inside and outside? A.—Yes, that's right.

Q.—You had during the period of your administration of Mr. Phillips' plants in Queens, a good many men working for you? A.—Yes, sir; at times we had quite a few.

Q.—And it was a first class pipe manufacturing plant, was it not? A.—Oh, yes.

Q.—None better in the country? A.—There was nothing the matter with that plant in any respect.

Q.—Mixers and equipment? A.—Everything was.

20 Q.—Apparently he wanted a good man to run it because he got you with your 20-odd years' experience? A.—Yes.

Q.—And you did not have experience all over the world, but a pretty broad experience? A.—Quite a few places.

Q.—Did you know anything of some of the collateral interests of Mr. Phillips? Do you know if he liked the ponies?

30 MR. GOUDRAULT: Before you put in your answer, I make a formal objection to this line of cross-examination of the witness, as it does not arise from the examination in chief, and it is not relevant; also illegal.

THE COMMISSIONER: You may proceed to answer, subject to counsel's objection.

40 THE WITNESS: There is really only one time that I had absolute knowledge of his operations at the race track, and that was a certain plant that we had close to the Jamaica race track, and he came in there one day after leaving the races, and told me that he had had a pretty good time over there, and that he won, I don't know what it was, a thousand dollars, or something like that, on a certain race. He got into his car and left. That is the only time.

BY MR. HACKETT:

Q.—But as a matter of common repute, you knew? A.—As a matter of common repute and hearsay, I heard a lot of it.

*Earl L. Peterson for plaintiff recalled (redirect examination).*

Q.—You know that he was a follower of the horses, and went frequently to the race track? A.—Yes.

Q.—And bet heavily on the horses? A.—That I don't know.

REDIRECT EXAMINATION BY MR. GOUDRAULT:

10 Q.—Mr. Peterson, having the interior recess in the pipe, did that increase the cost of manufacturing the pipe? A.—The recess itself?

Q.—Yes. A.—No.

MR. HACKETT: It did increase the cost of sealing, though?

THE WITNESS: Compared with other systems, yes.

20 Q.—You spoke of reinforcement in precast concrete pipe. Was there any size where all precast pipe had to be reinforced with two rings of reinforcement? A.—No. From 24 inches up to 48, — and before I came there on 48-inch they had a single cage reinforcement, but I changed that to a double cage on the 48, and from 48 up to the larger sizes, all had two rings.

MR. O'DONNELL: On your own suggestion?

THE WITNESS: We made that change, yes.

BY MR. GOUDRAULT:

30 Q.—Do you know anything about the other makes of precast concrete pipe? A.—Yes.

Q.—Did they also have double ring reinforcement? A.—Double ring reinforcement.

Q.—From what size up? A.—From 24-inch up to 48, and some of them even in 48 will make a single ring reinforced pipe. But that is weaker construction than the other. Out at the plant where I am now, we reinforce pipe from 12 inches up, and we do that because we make pipe under specifications that call for it. That is the real reason of reinforcement.

40 Q.—Do you know if in all makes of concrete pipe made from a certain size up, they use two rings of reinforcement? A.—They all use it above 48 inch. The circle then is so large, that the loads that it is subject to make the leverage of that action with the load on it so great, that they must have the two rings.

*Earl L. Peterson for plaintiff recalled (redirect examination).*

MR. HACKETT: Of course these specifications that you have just told us about for the small size pipe, would keep out all pipes of ordinary construction, wouldn't they?

THE WITNESS: This pipe that we are making out there?

MR. HACKETT: Yes.

10 THE WITNESS: Yes. That is a pipe made with a machine. That is a machine-made pipe.

BY MR. GOUDRAULT:

Q.—Will any make of pipe of a standard mixture of 1-2-4 have the same resisting power or force? Is that clear to you, Mr. Peterson? A.—It is clear enough in this way: That a 1-2-4 mix, properly made, that is to say with the proper amount of voids in that stone for the cement paste, as you might call it, gluing those  
20 larger particles together, properly filled, if you assume that that 1-2-4 is a perfect designed mix, yes.

MR. HACKETT: But perfection is not of this Vale of Tears.

THE WITNESS: Perfection is not of concrete.

MR. HACKETT: You are allowing a margin of safety?

THE WITNESS: Yes.

30 MR. HACKETT: That is all, Mr. Peterson.

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MR. GOUDRAULT: Mr. Commissioner, I wish to make an application. I will make as brief and clear as possible. Mr. Decker, I wish him to be examined again, for two purposes: I have here seven checks, which I did not have when I made my examination of Mr. Elkin, the president of the Riverdale Construction Company, Inc., and which I did not have when I made  
40 the examination of Mr. Decker. I have them now in my possession, and I simply want to know from Mr. Decker if that is his signature appearing on the back of these checks, and also ask him what they were for; and also, I want to ask him a question on a different matter, if he has been paid by the City for the seven contracts of the Muccini & Decker firm, which question I must admit I forgot when he was first examined here. And with

*Albert Decker for plaintiff recalled (direct examination).*

the permission of the attorneys for the defendant, I would like to ask him that sole question as regards that.

And then, thirdly, I would like to ask him just one question pertaining to the production as one exhibit of 53 checks, in order to connect each and every one of these checks with the payments referred to in the ledger sheet which Mr. Decker produced in his examination. That question was not put quite clearly in evidence at the time. And that will be all.

MR. HACKETT: I merely object to the calling of a witness who has been disposed of.

MR. COOK: I join in the objection.

20

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DEPOSITION OF ALBERT DECKER  
(recalled).

ALBERT DECKER 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. Decker, you already have taken the oath and been examined in this case? A.—Yes, sir.

Q.—Will you now look at a series of seven checks, seven cancelled checks on which your signature appears in the endorsement, and state what you know of these checks, and what they were for? A.—That is the return of the certified checks used for bidding.

MR. GOUDRAULT: Plaintiffs wish to offer in evidence these seven checks, as Plaintiffs' Exhibit C-166.

MR. COOK: The defendants object to the production of these checks as irrelevant and as having no bearing on the issues.

MR. HACKETT: Same objection.

(The said seven checks were thereupon received in evidence and marked Plaintiff's Exhibit C-166).

40

*Albert Decker for plaintiff recalled (direct examination).*

BY MR. GOUDRAULT:

Q.—Were they all for the same purpose, Mr. Decker? A.—  
Yes.

Q.—What were they for? A.—The money that the Riverdale Contracting Company put a bid in, on seven contracts it must be.

10 Q.—You have already, Mr. Decker, identified these 53 checks produced as Exhibit C-89? A.—Yes, last time.

Q.—Do these checks, each one of these checks, appear on your ledger sheet, C-86? A.—Yes; we checked them last time.

Q.—You are satisfied? A.—If it is the same batch of checks, yes, sir.

MR. O'DONNELL: That is subject to the same objections which were formerly made with regard to the evidence of this witness.

20 Q.—Was the firm of Muccini & Decker paid by the City of New York for the several contracts mentioned in our declaration?

MR. O'DONNELL: Objected to as not the best evidence of payment.

Q.—(Continuing) And about which you have testified? A.—Yes, sir. Paid for all of them.

Q.—Paid in full? A.—Yes, sir.

30 MR. GOUDRAULT: Any cross-examination?

MR. HACKETT: No cross-examination.

MR. COOK: No cross-examination.

MR. GOUDRAULT: Thank you very much, Mr. Decker.

*Mary E. Ryan for plaintiff (direct examination).*

DEPOSITION OF MARY E. RYAN.

MARY E. RYAN, age, over 21; residence, 19 West 69th Street, New York City; New York County; occupation, Secretary and Treasurer of Harry S. Hart, Inc., a witness produced, sworn and examined on the part and behalf of the People of the State  
10 of New York, the Plaintiff, deposeth and saith as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—What is the business of Mr. Hart? A.—Sales of concrete pipe.

Q.—How long have you been associated with Mr. Hart?  
A.—Ever since he started in business.

Q.—When was that? A.—1925.

Q.—Is it the business of selling concrete pipe? A.—Yes,  
20 sale of concrete pipe.

Q.—Does he represent any company? A.—Yes.

Q.—What company does Mr. Hart represent? A.—At the present time?

Q.—Yes. A.—Core Joint Company.

Q.—Between 1925 and subsequent to 1925? A.—Well, at that time he represented the Newark Pipe Company.

Q.—That is the Newark Concrete Pipe Company? A.—Yes, the Newark Concrete Pipe Company.

Q.—What was Mr. Hart doing before he started in business for himself? A.—He was vice president and sales manager  
30 of the Standard Concrete Pipe Company.

Q.—Were you with him at that time? A.—Yes.

Q.—What was your job with Mr. Hart at that time? A.—Secretary.

Q.—In 1925 did Mr. Hart start business individually, or did he incorporate? A.—No. He just worked individually.

Q.—And you were his secretary then, also? A.—Yes.

Q.—When was this company of Mr. Hart's incorporated?  
A.—In 1928—July, 1928.  
40

Q.—What was your position with Mr. Hart in 1925 down to the formation of the Corporation in 1928? A.—Private secretary and office manager.

Q.—What was his business during that time? A.—Sale of concrete pipe.

Q.—Is that the time that he was selling the Core Joint Concrete Pipe? A.—Yes, Core Joint and Newark, both.

*Mary E. Ryan for plaintiff (direct examination).*

Q.—What other brands did he sell besides the Core Joint?

A.—He sold the Newark Concrete Pipe and Standard.

Q.—And any other kind? A.—Well, he sold for clients up-state.

Q.—Exactly what were your duties as secretary and office manager? A.—Well, the handling of correspondence in connection with quotations and general inquiries, and also the working up of estimates in connection with jobs that were let.

Q.—Will you tell us how you worked up your estimates?

MR. HACKETT: I object to this as being entirely irrelevant to the matters at issue.

MR. COOK: I join in that objection.

THE COMMISSIONER: I will allow the answer, subject to counsel's objection.

20 A.—We have a base price which we get from the different plants, and in addition we add the necessary overhead and selling expenses, and a fair amount of profit, and with those additions, why, the sales price would be arrived at to be quoted to the contractors.

Q.—Did you make quotations on reinforced concrete pipe for the Core Joint Pipe and on reinforced concrete pipe for the Newark Pipe Company for sewer jobs? A.—Yes.

Q.—In making these estimates and quotations, did you know what the job was? A.—Why, not always.

30 Q.—Did you sometimes know? A.—Yes.

Q.—How were you called upon to make quotations and estimates? A.—Either by letter or on the phone.

Q.—Did you ever read any advertisements? A.—Oh, well, that was where we got our idea of the different jobs, from advertisements in the newspapers, in the City Record, or else from the reports from our salesmen.

Q.—Who did the figuring on the computations and quotations, Miss Ryan? A.—I did the figuring.

40 MR. O'DONNELL: Objected to as irrelevant and illegal.

Q.—Who decided what the overhead expenses were, and the selling expenses, and so forth? A.—I did that.

MR. O'DONNELL: Same objection.

Q.—And who decided what was the fair profit? A.—I did it.

*Mary E. Ryan for plaintiff (direct examination).*

MR. O'DONNELL: Same objection.

Q.—Did you send the estimates to the prospective bidders?

MR. HACKETT: I object to this question as leading and suggestive.

10 THE COMMISSIONER: I will allow the witness to answer, subject to counsel's objection.

A.—Yes.

Q.—Who did that? A.—I did it.

Q.—Does that apply to all the quotations? A.—Yes.

Q.—Can you remember the quotations, Miss Ryan? A.—I wouldn't remember them.

Q.—Will you look at this and see if that will refresh your recollection (indicating).

20 MR. HACKETT: Mr. Commissioner, under the rulings which have been made by you, under your instructions pretty nearly everything that has been offered has been accepted; and I notice that my friend has stocks of orders and estimates, which I think he intends to put in, and if you would induce him to put them all in at once, instead of seriatim, it would help in the matter of time.

30 THE COMMISSIONER: Mr. Goudrault, can you see your way clear to doing that, asking the lady an omnibus question covering the various estimates after she has refreshed her recollection?

(Question read by Clerk).

A.—Yes.

BY MR. GOUDRAULT:

40 Q.—Will you now give us the sizes of the pipe, and quotations for each size, place of delivery, the prices and quantities, and so forth?

MR. HACKETT: I object, Mr. Commissioner, to this vast volume of irrelevant matter, and I ask you to rule that its introduction is illegal.

THE COMMISSIONER: I will allow the answer subject to counsel's objection.



*Mary E. Ryan for plaintiff (direct examination).*

MR. GOUDRAULT: I understand that one formal objection will be made and avail for all this line of evidence on the part of the witness.

10 MR. COOK: I associate myself very strongly, Mr. Commissioner, with the objection taken by my friend, Mr. Hackett. It seems to me that this evidence is absolutely illegal and irrelevant, and we are making a record here that will be an unnecessary burden to any appellate court, and for which the defendants are in no way responsible.

THE COMMISSIONER: I assume the State of New York is endeavoring to show some form of market value, for the purpose of damages, and that is my reason for allowing the introduction of the evidence into the record, subject to the final ruling of the Superior Court in Canada.

20 (Question read by Clerk).

THE WITNESS: (Answering) 490 feet of 30-inch reinforced pipe, quoted at \$3.05, delivered on the job at Long Island City. Do you want the date of it?

BY MR. GOUDRAULT:

Q.—Yes, please. A.—January 28th, 1925. 400 feet of 36-inch reinforced pipe at \$4.05, same delivery and date.

30 Q.—Was that delivered on the job? A.—Delivered on the job. Core Joint pipe.

Q.—This is all precast pipe? A.—Precast, reinforced pipe.

Q.—Do you remember any other quotations? I couldn't remember without looking at these papers.

Q.—Will you look at this quotation and state if that refreshes your recollection? A.—500 feet of 48-inch precast reinforced pipe, at \$5.65, delivered on the job at Staten Island. The date is February 4, 1925.

40 Q.—Miss Ryan, will you please look at these 15 books of quotations, and of estimates, and state if you have done the figuring appearing in these books? A.—Yes, they are all mine.

Q.—Your own figuring? A.—Yes.

MR. GOUDRAULT: Plaintiffs offer in evidence these 15 books of quotations, to be produced as separate exhibits, C-167 (a), C-167 (b), C-167 (c), C-167 (d), C-167 (e), C-167 (f), C-167 (g), C-167 (h), C-167 (i), C-167 (j), C-167 (k), C-167 (l), C-167 (m), C-167 (n), C-167 (o).

*Mary E. Ryan for plaintiff (direct examination).*

MR. COOK: The defendants object to the production of these 15 books as irrelevant and illegal, and as having no bearing whatever on the issues in the present case, and request that all evidence in regard to these books and their contents be subject to the same objection.

MR. HACKETT: I avail myself of the same objection.

10 (The said 15 books were thereupon received in evidence and marked Plaintiff's Exhibits C-167 (a), C-167 (b), C-167 (c), C-167 (d), C-167 (e), C-167 (f), C-167 (g), C-167 (h), C-167 (i), C-167 (j), C-167 (k), C-167 (l), C-167 (m), C-167 (n) and C-167 (o), of this date).

BY MR. GOUDRAULT:

Q.—I understand some of the quotations,—

20 MR. HACKETT: Just a minute. Don't put the question in that form.

BY MR. GOUDRAULT:

Q.—What are these documents, Miss Ryan? A.—They are the estimate books.

Q.—Would you have one or two estimates on a sheet, or each sheet is for a separate job or a special job? A.—Each sheet is for a special job.

30 Q.—Did these quotations always result in a sale? A.—No, not always.

Q.—Is there any indication on the sheet stating when there was a sale or not? A.—Yes.

MR. O'DONNELL: Objected to as not the best evidence of any such sales.

Q.—When the quotations resulted in a sale, how is that indicated?

40 MR. O'DONNELL: Same objection.

A.—We would mark the word "sold" across the page.

Q.—And when that does not appear, what does that indicate?

MR. O'DONNELL: Same objection.

*Mary E. Ryan for plaintiff (direct examination).*

A.—That it was just a quotation worked up and offered to a contractor to bid on the job.

Q.—Miss Ryan, do you remember your company, or I mean yourself, making quotations in the Borough of Queens? A.—Yes.

Q.—Do you remember to whom? A.—We made so many of them, I don't remember.

10 Q.—I am always speaking of precast concrete pipe. A.—  
Yes, I know.

BY MR. HACKETT:

Q.—Some of these quotations were not for precast pipe?  
A.—24 inches up would be precast.

Q.—Are you sure of that? A.—Yes.

Q.—No exception? A.—No.

BY MR. GOUDRAULT:

20 Q.—Do these quotations also state the place where the pipe  
was to be delivered? A.—In most instances. We would not be  
able to figure our cost otherwise.

Q.—I see. And do I understand it was delivered on the  
job, or as near as possible to the job? A.—As near as possible  
by truck.

Q.—You said a minute ago that you made quotations and  
estimates for jobs in the Borough of Queens? A.—Yes.

30 Q.—I understand that would be from 1925 to 1928, when  
Mr. Hart incorporated his concern? A.—Yes.

Q.—Do you remember if any of these quotations or estim-  
ates sent by you or given by you to contractors on precast rein-  
forced pipe in the Borough of Queens resulted in a sale during  
that period of 1925 to 1928? A.—I don't know. We had no sales  
there in that time.

Q.—Did you say to us that you did not recollect any par-  
ticular instance where you had made a quotation in the Borough  
of Queens? A.—No. I said I wouldn't remember all of them.

40 Q.—I see. Do you remember one in particular, or two, or  
three, or four? A.—Quotations that we had made?

Q.—Yes. A.—I wouldn't be sure of the date.

Q.—But the contractors' names or the individual? A.—  
Yes, I think we made one to the Peter Connolly Company, and I  
think to the Hammen Construction Company. I wouldn't be sure,  
though, of the date.

Q.—Did any of those quotations result in a sale? A.—No.

*Mary E. Ryan for plaintiff (direct examination).*

Q.—You spoke of the Hammen Construction Company.

A.—Yes.

Q.—Would you remember the date of that quotation?

A.—No.

Q.—Or the price of the estimates on that job? A.—No.

Q.—Will you look at this and see if it will refresh your recollection?

10

MR. COOK: What is that, Mr. Goudrault?

(Defendants' counsel examine paper referred to).

Q.—Does this refresh your recollection, Miss Ryan? A.—Yes.

Q.—Will you state then what quotations you made for that particular job, and what particular firm or contractor, state the sizes of the pipe and the prices, etc.? A.—Do you want me to read this?

20

Q.—Now that you have refreshed your recollection, will you state what the prices were, and the sizes of the pipe?

MR. COOK: Whom was it to, Miss Ryan?

THE WITNESS: To the Hammen Construction Company. Mr. Paulsen.

MR. COOK: Mr. Paulsen of the Hammen Construction Company?

30

THE WITNESS: Yes.

MR. COOK: And what did you offer Mr. Paulsen?

THE WITNESS: We offered him 2807 feet of 42-inch precast reinforced pipe at \$7.50 a foot; and 154 feet of 48-inch, at \$9.25 a foot, delivered on the job.

BY MR. GOUDRAULT:

Q.—And that was on what date, Miss Ryan? A.—The 20th of August, 1926.

40

MR. COOK: Did it result in a sale?

THE WITNESS: No, sir.

Q.—Miss Ryan, have you looked up for the dates when delivery started of pipe on some eight contracts? Did you look that up at one time? A.—I did some time ago.

*William Welsh for plaintiff (direct examination).*

Q.—Do you remember? Can you tell us the dates on which certain deliveries started, on certain contracts? A.—No, I can not.

MR. COOK: Well, well, well —

10 MR. GOUDRAULT: Then we will take contract by contract. That is all, as far as plaintiffs are concerned.

MR. HACKETT: No cross-examination.

MR. COOK: I declare, Mr. Commissioner, that I have no cross-examination of this lady.

THE COMMISSIONER: And Mr. Hackett, you say the same?

MR. HACKETT: I say the same.

20 THE COMMISSIONER: That seems to be all, Miss Ryan. Thank you very much for your attendance at the commission.

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DEPOSITION OF WILLIAM WELSH.

30 WILLIAM WELSH, age 46; residence, 14 Queen Street, Long Island City, Queens 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.—What is your business, Mr. Welsh? A.—General contractor.

Q.—Did you know Mr. John M. Phillips in his lifetime? A.—Yes, sir.

40 Q.—Were you a friend of his? A.—Yes, sir.

Q.—How long did you know him before his death? A.—Before his death?

Q.—Yes. A.—I knew him all my life.

Q.—Are you one of the guardians of his children, in his will? A.—Yes, sir.

MR. O'DONNELL: Objected to as irrelevant and illegal.

*William Welsh for plaintiff (direct examination).*

Q.—Did you ever build any sewers in Queens? A.—Yes, sir.

Q.—How many? A.—A few.

Q.—Did you ever build any sanitary sewers in Queens?  
A.—What do you mean by sanitary sewers?

Q.—Did you build them as an individual or as an official  
of a company? A.—Official of a company.

10 Q.—What was the name of the company? A.—Welsh  
Brothers Contracting Company.

Q.—Do you know what is a sewer in which precast pipe  
is used? A.—Precast pipe is used in a sanitary sewer, or a dry  
sewer. Either one you want, it can be used for it. You mention  
the jobs to me and I'll tell you.

Q.—Do you remember the 20th Avenue job? A.—Yes, sir.

Q.—Was that a sanitary sewer? A.—Yes, sir.

20 Q.—Do you remember the second contract for the same  
20th Avenue job? A.—Yes, sir.

Q.—Was that a sanitary sewer? A.—Yes; part of it.

Q.—Part of it? A.—Yes, sir.

Q.—Will you look at Plaintiff's Exhibit C-139 and C-143,  
and state if these are the two jobs that you are referring to?

MR. COOK: Defendants object to this evidence as irrelev-  
ant and illegal and improper, and having no bearing on the issues.

MR. HACKETT: Same objection.

30 A.—Yes, sir.

Q.—Was your company paid by the City for the construc-  
tion of these two sewers? A.—Yes, sir.

Q.—In full? A.—Yes, sir.

Q.—From whom did you get the pipe? A.—I bought some  
of the pipe from G. D. Raymond; and some of it from John M.  
Phillips.

40 MR. COOK: Defendants renew the objection, inasmuch as  
the purchase by this witness of the pipe from Mr. Raymond can  
have no possible bearing upon the issues in this case, and further-  
more, that the evidence is not the best evidence of any purchases.

THE COMMISSIONER: I will take the answer, subject  
to counsel's objection.

BY MR. GOUDRAULT:

Q.—Whom did you get the present pipe from for those two  
jobs? A.—John M. Phillips.

*William Welsh for plaintiff (direct examination).*

Q.—For those two jobs on the 20th Avenue sewer? A.—  
Yes, sir.

Q.—Do you remember how much you paid? A.—I do not.

Q.—Did your company pay Phillips? A.—Yes, sir.

MR. O'DONNELL: Objected to as not the best evidence  
of payment.

10 Q.—For all the pipe? A.—Yes, sir, for all the pipe we  
bought from him.

Q.—Naturally. A.—Yes.

Q.—Have you got your checks with you? A.—No, sir.

BY MR. COOK:

Q.—For the pipe you bought from Mr. Phillips, you paid  
him? A.—Yes, sir. Certainly. We did.

20 Q.—We did not suggest that you did not. A.—What we  
had to pay for that.

BY MR. GOUDRAULT:

Q.—Do you remember how much you paid, Mr. Welsh?  
A.—No.

Q.—Do you know how much pipe was used in those two  
contracts? A.—Offhand, I don't know.

30 Q.—Will you look at Exhibit C-139, Type B, summary of  
proposals of yours, or specifications, rather, which are annexed  
to this contract, and state if that refreshes your recollection as  
to the amount of pipe that was used in the construction of the  
sewer?

MR. COOK: What sewer?

MR. GOUDRAULT: We said it already. By his company.

MR. COOK: What sewer, though?

MR. GOUDRAULT: 20th Avenue.

40 MR. COOK: 20th Avenue. But there were two on 20th  
Avenue.

MR. GOUDRAULT: We said Exhibit C-139, Mr. Cook.

A.—790 feet of 3 by 9; and 96 feet 2 by 9. All the rest is vitrified  
pipe, as far as I see there.

*William Welsh for plaintiff (direct examination).*

Q.—Do you remember the price you paid for that precast pipe to Phillips?

MR. O'DONNELL: Objected to as not the best evidence.

A.—No, sir.

10 Q.—Did you pay him a lump sum, or did you pay him so much a foot? A.—Well, if the bill was \$10,000. it would be \$10,000. for the pipe.

Q.—A lump sum? A.—No, it was a bill, so many feet, whatever it was. You would call that a lump sum.

Q.—You don't remember what it was in that particular instance for this job, Exhibit C-139, even by refreshing your recollection, do you? You refreshed your recollection as regards the number of feet of pipe. A.—Well, you can see it there, the number of feet.

20 Q.—But I mean the price? A.—Oh, no; there is no price there.

Q.—And you can not state? A.—No, sir, not offhand.

Q.—All right. Now, will you look at Plaintiff's Exhibit C-143, which is the other contract that you had in Queens for the construction of sanitary sewer on 20th Avenue, and see if that will refresh your recollection as to the size of pipe and the price of pipe which you paid Phillips?

MR. O'DONNELL: Defendants object to any verbal evidence as to purchases from or payments to Phillips.

30 MR. HACKETT: Same objection.

Q.—Does that refresh your recollection as to the number of feet used on this job? A.—It tells you right here how many feet of pipe.

Q.—My question is, does that help to refresh your recollection? A.—It tells you how many feet of pipe was in it, and it tells you precast and vitrified.

40 Q.—I am always speaking of precast pipe. And do you remember how many feet of precast pipe was used by your company in that sewer, C-143? A.—No, I don't.

Q.—Will you then look at this exhibit, C-143, and see if that will refresh your recollection? A.—Yes, sir. 790 feet of 3 by 9 — this is the same contract you gave me before, isn't it — the same one I read out?

Q.—Don't read out. Just state if you can refresh your recollection? A.—96 feet of 2 by 9, precast pipe.



*William Welsh for plaintiff (direct examination).*

Q.—How many feet did you say? A.—96.

Q.—Do you remember how much you paid for that pipe?

A.—No, I do not.

Q.—Do you remember if it was a lump sum, or so much a foot? A.—Well, it might have been a lump sum.

Q.—Now that you recollect that it might have been a lump sum, would you state about the figure it was?

10

MR. O'DONNELL: Objected to as not the best evidence of any such payment.

A.—Mr. Buckner had my checks and never returned them.

Q.—I am just wondering if you can recall it. A.—No, sir. If you show me my checks, I will tell you.

Q.—It was not a million dollars, was it? A.—No, no, sir; it wouldn't be a million dollars for pipe like that.

20

MR. COOK: The suggestion is absurd — a million dollars!

THE WITNESS: I don't know anything about that. I know I never paid any million dollars.

MR. GOUDRAULT: We will leave that to Mr. Cook, that remark.

Q.—Those two contracts were the only contracts that your company did for sanitary sewers in Queens? A.—Yes, sir.

30

MR. GOUDRAULT: That is all.

MR. HACKETT: No cross-examination.

MR. COOK: No cross-examination.

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(Adjourned at 4:15 p. m. to Feb. 11, 1931, at 11 a. m.)

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Depositions of witnesses, sworn and examined on the 11th day of February, 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: Mr. Hastings has requested us to send him back his original receipt that he received from the Special Agent of the Department of Justice of the United States.

MR. COOK. What exhibit is that ?

MR. GOUDRAULT: And we are substituting a photostatic copy of the said exhibit, C-32 (three sheets).

30 THE COMMISSIONER: Does that meet with the approval of counsel for the defendants ?

MR. COOK: I agree to that, Mr. Commissioner.

MR. HACKETT: I agree, Mr. Commissioner.

THE COMMISSIONER: It will be so substituted and marked.

(The said photostatic copy of Exhibit C-32 was substituted and marked Plaintiff's Exhibit C-32.)

40 MR. GOUDRAULT: Mr. Commissioner, I wish to offer in evidence the check for \$9,000. of the firm of Petracca & Peterson, dated August 5, 1927, with check we did not have in our possession when, at page 1396 of the deposition Mr. Peterson did say that he paid \$9,000. lump sum for pipe to Phillips.

MR. COOK: Whom are you going to produce that by ?

MR. GOUDRAULT: Myself.

MR. COOK: No objection. I do object to the relevancy of the document, but have no objection to its production.

MR. HACKETT: No objection, except as to relevancy.

(The said check was thereupon received in evidence and marked Plaintiff's exhibit C-168, of this date.)

10

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 and saith as follows:

DIRECT EXAMINATION BY MR. GOUDRAULT:

20 Q.—Mr. Reilly, you have been requested by myself and Mr. Hackett to produce for evidence, summary of proposals, and more especially, original bid sheets on Type A and Type B. Have you succeeded in locating a few of those? A.—None outside of what I have in my hand. These are the only ones I could locate.

30 MR. HACKETT: I just want to say that my request was limited to this: When summaries of proposals were produced for Type B, it seemed to me necessary that the summaries for Type A should be produced at the same time, because the bids invariably were for Type A and Type B both, and the summary when it refers exclusively to Type A or Type B is incomplete, and consequently apt to be misleading.

Is that statement correct?

THE WITNESS: I understand Mr. Hackett. I understand what he means.

MR. COOK: Mr. Hackett's statement is a correct statement, is it not?

40 THE WITNESS: Yes, sir.

MR. GOUDRAULT: I think so myself.

MR. COOK: I wanted Mr. Reilly to say so.

BY MR. GOUDRAULT:

Q.—Will you make further search in your department, together with Mr. Tully, of the Comptroller's department, and we

*Jefferson J. Reilly for plaintiff recalled (direct examination).*

may ask you to produce at a further date, any of these original bid sheets or summaries of proposals, or other original documents.

A.—Yes, sir.

Q.—Will you produce, and we will offer for evidence, whatever original bid sheets and summaries of proposals you now have before you? A.—If you consider all the types A and B for the time they were introduced, we would need a couple of trucks for them. So if you specifically mention the ones you need, I will have another search made for you.

MR. HACKETT: But, Mr. Reilly, you have a memorandum of the contracts concerning which summaries were required. My request for production was limited to those contracts for which summaries on type B had been produced, and of which summaries on type A were missing. There could not have been more than 3 or 4 or 5 of them.

20 THE WITNESS: I think I have got that list.

MR. GOUDRAULT: Have you those exhibits here with you?

THE WITNESS: No.

MR. GOUDRAULT: Plaintiffs reserve their right to produce these exhibits now shown to us by Mr. Reilly, at a future hearing of this commission, or any other commission, or at the trial.

30 MR. HACKETT: I want to make it abundantly clear, in so far as the defendant whom I represent is concerned, that there is to be no future commission on behalf of the plaintiff. We have been here for nearly a month. Every opportunity has been afforded to plaintiff to bring his witnesses, and if it can not be arranged, I think the onus, or at least the balance of convenience, should be considered, and any absentee witnesses called before the tribunal which must render the decision in the case. I would suggest that anything you have got now, you produce.

40 MR. GOUDRAULT: All right.

Q.—Then, Mr. Reilly, will you please produce and describe these papers that you are now asked to produce for evidence by the plaintiff. You have put them in order, haven't you? A.—Yes. (Indicating). This is two summaries of proposals and five bid sheets on the Collins Avenue sewer, bids for which were opened on August 16, 1916.

*Jefferson J. Reilly for plaintiff recalled (direct examination).*

MR. HACKETT: Are these summaries of proposals on Type A ?

THE WITNESS: There are no types. They are two identical copies.

10 MR. HACKETT: So these are not documents for which I called ?

THE WITNESS: No, sir.

MR. COOK: On behalf of the defendants, I object to the production of these documents as irrelevant and illegal, and having no bearing on the issues in the case.

MR. HACKETT: And they antedate the period mentioned in the action during which the alleged irregularities occurred.

20 MR. GOUDRAULT: We will offer, Mr. Commissioner, these Exhibits one by one.

MR. COOK: Mr. Commissioner, I ask that my objection apply to all these exhibits, without having to be repeated. I think Mr. Goudrault consents to that.

MR. GOUDRAULT: Yes; that one formal objection by Mr. Cook be entered. And it is understood that Mr. Cook's objection applies to all the exhibits that are now being offered.

30 MR. HACKETT: And that the objection made by Mr. Cook avail as if made by myself also.

MR. GOUDRAULT: Yes.

BY MR. GOUDRAULT:

40 Q.—Then we have to change, Mr. Reilly, your description of the documents, because they are going to be offered separately. Will you look at this paper and state what it is? A.—This is one bid sheet for sewer on Collins Avenue, bids for which were opened on August 16, 1916.

MR. GOUDRAULT: Plaintiffs offer in evidence this document as Exhibit C-169.

(The said paper was thereupon received in evidence and marked Plaintiff's Exhibit C-169 of this date).

*Jefferson J. Reilly for plaintiff recalled (direct examination).*

Q.—Will you look at this sheet and state what it is? A.—This is a bid sheet submitted by Joseph De Cola and John S. Martino, for sewer in Collins Avenue, bids for which were received on August 16, 1916.

MR. GOUDRAULT: Plaintiffs offer in evidence the said sheet, as Exhibit C-170.

10 (The said paper was thereupon received in evidence and marker Plaintiff's Exhibit C-170 of this date).

Q.—Will you look at this paper and state what it is? A.—Bid submitted by Joseph L. Sigretto, Collins Avenue sewer, bids for which were opened on August 16, 1916.

MR. GOUDRAULT: Plaintiffs offer in evidence, as Exhibit C-171, the said bid sheet.

20 (The said paper was thereupon received in evidence and marked Plaintiff's Exhibit C-171 of this date).

Q.—Will you look at this paper and state what it is? A.—Bid submitted by Peace Brothers, for sewer in Collins Avenue, bids for which were opened on August 16th, 1916.

MR. GOUDRAULT: Plaintiffs offer in evidence, as Exhibit C-172, the said bid sheet.

30 (The said paper was thereupon received in evidence and marked Plaintiff's Exhibit C-172, of this date).

Q.—Will you look at this paper and state what it is? A.—Bid submitted by John C. Schrade, for sewer in Collins Avenue, bids for which were opened August 16, 1916.

MR. GOUDRAULT: Plaintiffs offer in evidence as Exhibit C-173, the said bid sheet.

(The said paper was received in evidence and marked Plaintiff's Exhibit C-173 of this date).

40 Q.—Will you look at this paper and state what it is? A.—Bid submitted by Ward & Tully, Inc., for sewer in Collins Avenue, bids for which were opened on August 16, 1916.

MR. GOUDRAULT: Plaintiffs offer in evidence as Exhibit C-174, the said bid sheet.

*Jefferson J. Reilly for plaintiff recalled (direct examination).*

(Received and marked Plaintiff's Exhibit C-174, in evidence, of this date).

Q.—Will you look at this paper and state what it is?

A.—This is summary of proposals on Collins Avenue sewer, bids for which were opened December 29, 1916.

10 MR. GOUDRAULT: Plaintiffs offer in evidence as Exhibit C-175, this summary of proposals.

(Received and marked Plaintiff's Exhibit C-175, in evidence, of this date).

Q.—Mr. Reilly, I see here in pen writing, the words "Checked by A.F.K. and R.P., computed and checked Bertram, Zip". Will you explain to us what that means? A.—Yes, sir. That is after the bids are opened, it is turned over to these gentlemen, and one checked after the other, and then approved. Those are the initials  
20 of the engineers who have checked it.

Q.—Do you know if this Mr. Bertram is the same Mr. Bertram who is now assistant engineer in the Borough of Queens Sewer Department? A.—Yes, sir.

MR. HACKETT: And who is Zip?

THE WITNESS: Zipfel, an engineer in the department.

BY MR. GOUDRAULT:

30 Q.—Will you look at these papers, and state what they are?  
A.—These are summaries of proposals on type A and type B, for sewer in Collins Avenue, bids for which were opened April 4, 1917.

MR. GOUDRAULT: Plaintiffs offer in evidence, as Exhibit C-176 (a) and Exhibit C-176 (b), these summaries of proposals.

(The said papers were thereupon received in evidence and marked Plaintiff's Exhibits C-176 (a) and C-176 (b).)

40 Q.—Will you look at this paper and state what it is?  
A.—This is the summary of proposals for a sewer in Linden Street, bids for which were opened on November 19, 1919, Type A.

MR. GOUDRAULT: Plaintiffs offer in evidence, as Exhibit C-177, this summary of proposals.

(Received and marked Plaintiff's Exhibit C-177, in evidence, of this date).

*Jefferson J. Reilly for plaintiff recalled (direct examination).*

Q.—This Exhibit C-177, Mr. Reilly, is one of the summaries of proposals that Mr. Hackett requested? A.—Yes, sir.

Q.—It is on type A? A.—Yes, sir.

Q.—Will you look at these two sheets, and state what they are? A.—This is a summary of proposals on 150th Avenue sewer, Type A and Type B, bids for which were opened February 13, 1925, with a recap attached on Type B.

10

MR. GOUDRAULT: Plaintiffs offer in evidence as Exhibit C-178 (a) and C-178 (b), these summaries of proposals.

(Received and marked Plaintiff's Exhibits C-178 (a) and C-178 (b) in evidence, of this date).

Q.—Will you look at this paper and state what it is? A.—This is a Type A bid sheet, submitted by Duit, Inc., for sewer in 150th Avenue; submitted and opened on February 13th, 1925.

20

MR. GOUDRAULT: Plaintiffs offer in evidence as Exhibit C-179, this bid sheet.

(Received and marked Plaintiff's Exhibit C-179, in evidence, of this date.)

Q.—Will you look at this paper and state what it is? A.—This is bid of Awixa Corporation, Type A, sewer on 150th Avenue, submitted and opened on February 13, 1925.

30

MR. GOUDRAULT: Plaintiffs offer in evidence as Exhibit C-180, this bid sheet.

(The said paper was thereupon received in evidence and marked Plaintiff's Exhibit C-180 of this date).

Q.—Will you look at this paper and state what it is? A.—Bid of Angelo Paino, Type A, sewer on 150th Avenue, submitted and opened February 13, 1925.

40

MR. GOUDRAULT: Plaintiffs offer in evidence as Exhibit C-181, this bid sheet.

(The said paper was thereupon received in evidence and marked Plaintiff's Exhibit C-181 of this date).

Q.—Will you look at this paper and state what it is? A.—Bid of Duit, Inc., Type B, sewer on 150th Avenue; submitted and opened February 13, 1925.



*Jefferson J. Reilly for plaintiff recalled (direct examination).*

MR. GOUDRAULT: Plaintiffs offer in evidence as Exhibit C-182, this bid sheet.

(The said paper was thereupon received in evidence and marked Plaintiff's Exhibit C-182 of this date).

10 Q.—Will you look at this paper and state what it is?  
A.—Bid of Angelo Plaino, Type B, sewer on 150th Avenue; submitted and opened February 13, 1925.

MR. GOUDRAULT: Plaintiffs offer in evidence as Exhibit C-183, this bid-sheet.

(The said paper was thereupon received in evidence and marked Plaintiff's Exhibit C-183 of this date).

20 Q.—Will you look at this paper and state what it is?  
A.—Bid of Awixa Corporation, Type B, sewer on 150th Avenue, submitted and opened February 13, 1925.

MR. GOUDRAULT: Plaintiffs offer in evidence as Plaintiff's Exhibit C-184, this bid sheet.

(The said paper was thereupon received in evidence and marked Plaintiff's Exhibit C-184 of this date).

30 Q.—Will you look at this paper and state what it is?  
A.—Bid of John D. Walsh, Inc., Type B, sewer on 150th Avenue; submitted and opened February 13, 1925.

MR. GOUDRAULT: Plaintiffs offer in evidence as Plaintiff's Exhibit C-185, this bid sheet.

(The said paper was thereupon received in evidence and marked Plaintiff's Exhibit C-185 of this date).

Q.—Will you look at this paper and state what it is?  
A.—Summary of proposals, Type A, sewer on 150th Avenue; bids submitted and opened February 25, 1925.

40 MR. GOUDRAULT: Plaintiffs offer in evidence as Exhibit C-186, this summary of proposals.

(The said paper was thereupon received in evidence and marked Plaintiff's Exhibit C-186, of this date).

Q.—Will you look at this paper and state what it is?  
A.—Bid of Necaro Company, Inc., Type A, sewer on 150th Avenue, submitted and opened February 25, 1925.

*Jefferson J. Reilly for plaintiff recalled (direct examination).*

MR. GOUDRAULT: Plaintiffs offer in evidence as Exhibit C-187, this bid sheet.

(The said paper was thereupon received in evidence and marked Plaintiff's Exhibit C-187, of this date).

10 Q.—Will you look at this paper and state what it is?  
A.—Bid of Awixa Corporation, Type A, sewer on 150th Avenue; submitted and opened February 25, 1925.

MR. GOUDRAULT: Plaintiffs offer in evidence as Exhibit C-188, this bid sheet.

(The said paper was thereupon received in evidence and marked Plaintiff's Exhibit C-188, of this date).

20 Q.—Will you look at this paper and state what it is?  
A.—Bid of Hammen Construction Company, Type A, sewer on 150th Avenue, submitted and opened February 25, 1925.

MR. GOUDRAULT: Plaintiffs offer in evidence as Exhibit C-189, this bid.

(The said paper was thereupon received in evidence and marked Plaintiff's Exhibit C-189, of this date).

30 Q.—Will you look at this paper and state what it is?  
A.—Bid of Hammen Construction Company, Type B, sewer on 150th Avenue, submitted and opened February 25, 1925.

MR. GOUDRAULT: Plaintiffs offer in evidence as Exhibit C-190( this bid.

(The said paper was thereupon received in evidence and marked Plaintiff's Exhibit C-190, of this date).

40 Q.—Will you look at this paper and state what it is?  
A.—Bid of J. F. Cogan Company, contractors, Type B, sewer on 150th Avenue, submitted and opened February 25, 1925.

MR. GOUDRAULT: Plaintiffs offer in evidence as Exhibit C-191, this bid.

(The said paper was thereupon received in evidence and marked Plaintiff's Exhibit C-191, of this date.)

Q.—Will you look at this paper and state what it is?  
A.—Bid of Necaro Co., Inc., Type B, sewer on 150th Avenue, submitted and opened February 25, 1925.

*Jefferson J. Reilly for plaintiff recalled (direct examination).*

MR. GOUDRAULT: Plaintiffs offer in evidence as Exhibit C-192, this bid.

(The said paper was thereupon received in evidence and marked Plaintiff's Exhibit C-192, of this date).

Q.—Will you look at this paper and state what it is?  
10 A.—Bid of John D. Walsh, Inc., Type B, sewer on 150th Avenue, submitted and opened February 25, 1925.

MR. GOUDRAULT: Plaintiffs offer in evidence as Exhibit C-193, this bid.

(Said paper was thereupon received in evidence and marked Plaintiff's Exhibit C-193, of this date.)

Q.—Will you look at this paper and state what it is?  
20 A.—Bid of Awixa Corporation, Type B, sewer on 150th Avenue, submitted and opened February 25, 1925.

MR. GOUDRAULT: Plaintiffs offer in evidence as Exhibit C-194, this bid.

(Said paper was thereupon received in evidence and marked Plaintiff's Exhibit C-194, of this date).

Q.—Will you look at this paper and state what it is?  
A.—Summary of proposals, Type B, sewer on Horstman Avenue, bids opened May 7, 1925.

30 MR. GOUDRAULT: Plaintiffs offer in evidence as Exhibit C-195, this summary of proposals.

(Said paper was thereupon received in evidence and marked Plaintiff's Exhibit C-195, of this date).

Q.—Will you look at these papers and state what they are?  
A.—Summaries of proposals, Type A and Type B, sewer on 150th Street; bids opened July 9, 1925.

40 MR. GOUDRAULT: You don't object that a photostatic copy of the proposal for Type B be put in?

MR. COOK: No objection.

MR. HACKETT: No objection.

MR. GOUDRAULT: Plaintiffs offer in evidence as Exhibits C-196 (a) and C-196 (b) these summaries of proposals.

*Jefferson J. Reilly for plaintiff recalled (direct examination).*

(Said summaries of proposals were thereupon received in evidence and marked Plaintiff's Exhibits C-196 (a) and C-196 (b).)

Q.—Will you look at this paper and state what it is?  
A.—This is bid of Welsh Brothers Contracting Company, Type A, for the sewer on 150th Street, bids for which were opened on July 9, 1925.

MR. GOUDRAULT: Plaintiffs offer in evidence as Exhibit C-197, this bid sheet.

(Said paper received in evidence and marked Plaintiff's Exhibit C-197 of this date).

Q.—Will you look at this paper and state what it is?  
A.—This is bid of Welsh Brothers Contracting Company, Type B, for a sewer on 150th Street, bids for which were opened on July 9, 1925.

MR. GOUDRAULT: Plaintiffs offer in evidence as Exhibit C-198, this bid sheet.

(Said paper was thereupon received in evidence and marked Plaintiff's Exhibit C-198 of this date).

Q.—Will you look at this paper and state what it is?  
A.—This is a summary of proposals, Type B, sewer in Jamaica Avenue, bids for which were opened April 7, 1926.

MR. GOUDRAULT: Plaintiffs offer in evidence as Exhibit C-199, this summary of proposals.

(The said paper was thereupon received in evidence and marked Plaintiff's Exhibit C-199 of this date).

THE WITNESS: That is all.

MR. GOUDRAULT: Plaintiffs wish to renew their application that they be allowed to produce further exhibits at the adjournment of this commission, or any other commission that may sit.

THE COMMISSIONER: What do you mean now, definitely?

MR. GOUDRAULT: Mr. Commissioner, I mean this: That we have been unable to reach a certain number of witnesses, and I will now read in the names of such witnesses:

*Jefferson J. Reilly for plaintiff recalled (direct examination).*

10 Arthur E. Keating,  
George W. Titcomb,  
Paul J. Artella,  
Andrew Zorn,  
Thomas M. Cassidy,  
Francis William Hopkins,  
Clare D. Schlemmer,  
Peter P. Campbell,  
James M. Kelly,  
Herbert C. Smith,  
James J. Deegan,  
Angelo Paino,  
James Gallo,  
Carmine Petracca.

20 Of the above named witnesses, we wish to point out that James Gallo and Herbert C. Smith reside in Philadelphia. We have not endeavored to serve a subpoena on Albert H. Byer or on Paul J. Artella.

Plaintiffs wish to file and produce with the Commissioner, the affidavits of process servers so that these affidavits form part of the record. This, Mr. Commissioner, will be done today or tomorrow at the latest.

30 MR. HACKETT: You can file those affidavits as your Exhibit C-200. They have to go in as something. Put them in as the last exhibit of the commission.

MR. GOUDRAULT: These affidavits of the process servers will be filed as Exhibit C-200, and if attorneys for the defendants wish to examine these process servers, they are at your disposal.

MR. HACKETT: Where ?

MR. GOUDRAULT: Here, before the Commissioner.

MR. HACKETT: They are not here now.

40 MR. GOUDRAULT: No, not at this moment, no. But we could have them in here today.

After the sitting of last Friday, I asked Mr. Cook and Mr. Hackett and Mr. O'Donnell if they would agree to have me bring before yourself, Mr. Commissioner, Mr. Glen Hall, a member of the firm of Root, Clark, Buckner & Ballantine. The purpose of my request at the time was that we had several witnesses on the

*Jefferson J. Reilly for plaintiff recalled (direct examination).*

stand making the statement that their papers, checks, documents and contracts were left with Mr. Buckner.

10 Since this Commission was opened, we endeavored to do our best to get these various documents from Mr. Buckner's office, and we are satisfied that all due search was made, and on the 30th of January, 1931, we sent a letter to Mr. Hall and asked him more particularly to look into the files of the previous trial, and to produce with us the cheks, contracts and receipts purport-  
ing to be the property of the Hammen Construction Company and the Welsh Brothers Contracting Company, Oxford Engineer-  
ing Company, Everett Construction Company, Muccini & Decker, Angelo Paino, Dominick Bonacci, Necaro Company, Kennedy & Smith, Inc., Carmine Petracca, and Petracca & Peterson.

20 I understand from Mr. Mayer, of the Attorney General's Department, that he and Mr. Hall did look through all the files for two or three hours, and looked in all the files, and were un-  
able to find any documents, checks or receipts that we requested them to produce.

And that was the purpose of my request to Mr. Cook and Mr. Hackett. But I could not have Mr. Hall here unless I had their consent, owing to the fact that he is not named in the commission before Mr. Fales.

30 MR. HACKETT: In regard to the statement of Mr. Goudrault, I think we have been before you, Mr. Commissioner, for a sufficiently long time to have enabled him to bring forward any and all documentary evidence that he wished to bring forward; and in fact I don't think the record discloses that he has sought any documentary evidence which he has not found. I don't see the purpose of this long declaration by him, unless it be again a foundation upon which he hopes to rest an application either to reopen this commission, or to obtain another. And so far as I am concerned, I wish to express my objection and my decision to oppose any such request.

40 If there is any other information, we are here and I assume, Mr. Commissioner, you are ready to hear further witnesses and accept further documents. But when the Commission is closed, it should be final.

MR. COOK: I entirely associate myself with the remarks made by Mr. Hackett. We have been here, Mr. Commissioner, engaged constantly in this matter for nearly four weeks. I well understand, from what my learned friends on the other side say, that they have had a difficult matter to get their evidence ready.